

The Auditor-General
Audit Report No.19 2008–09
Performance Audit

CMAX Communications Contract for the 2020 Summit

Department of the Prime Minister and Cabinet

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of Australia 2009

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Canberra ACT
4 February 2009

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit in the *Department of the Prime Minister and Cabinet* in accordance with the authority contained in the *Auditor-General Act 1997*. I present the report of this audit and the accompanying brochure to the Parliament. The report is titled *CMAX Communications Contract for the 2020 Summit*.

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian McPhee'.

Ian McPhee
Auditor-General

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

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office. The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits and financial statement audits of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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Summary and Recommendation

Summary

Introduction

1. On 3 February 2008, the Prime Minister announced the Government would convene the Australia 2020 Summit at Parliament House on 19 and 20 April 2008. The Summit was to bring together 1000 leading Australians to Canberra to debate and develop long term options for the nation across ten areas.

2. The Department of the Prime Minister and Cabinet (PM&C) was responsible for Summit planning, logistics and secretariat support (but not the Summit program, content or facilitation arrangements). A secretariat was established in the department on 8 February 2008 with responsibility for event planning and logistics, including technology support, transport, broadcasting, catering, scribing and reporting, protocol, liaison and security, along with accreditation and registration arrangements.¹ To deliver on its responsibilities, PM&C entered into a range of contracts with various providers.

3. PM&C and other agencies subject to the *Financial Management and Accountability Act 1997* (FMA Act) are responsible for procuring consultants in accordance with the Commonwealth Procurement Guidelines (CPGs). The CPGs require (with certain exemptions) that open tender processes be undertaken for procurements expected to cost more than \$80 000,² and encourage the use of competitive procurement processes for less expensive procurements. Revised CPGs took effect in January 2005, which, amongst other matters, gave effect to the government procurement provisions of the Australia-United States Free Trade Agreement (USFTA).³ It was expected that the dominant impact of the revised CPGs would be an increase in the number and scope of procurement opportunities offered to the full market. At the time

¹ Department of the Prime Minister and Cabinet, *Annual Report 2007–08*, p. 77.

² Other than those for construction services where, prior to the introduction of the new CPGs in December 2008, the threshold was \$6 million.

³ The Department of Finance and Deregulation advised entities of proposed changes to government procurement in June 2004, and issued a series of Procurement Updates providing additional information. A draft copy of the revised CPGs was issued in October 2004 for comment and the Department of Finance and Deregulation suggested that entities affected by the changes should prepare for the implementation of the revised government procurement framework, including reviewing and preparing to amend agency Chief Executive Instructions and internal procurement procedures.

of the Summit, PM&C had taken some action to implement the new CPGs,⁴ but the department's Chief Executive's Instruction (CEI) relating to procurement was dated November 2001 and so did not reflect the January 2005 revision to the CPGs.⁵

4. PM&C's procurement strategy for the Summit was documented on 6 March 2008. Under the documented strategy, PM&C decided to rely on a clause in the CPGs which provides (for procurements expected to cost more than \$80 000) that an agency may conduct procurement through direct sourcing where, for reasons of extreme urgency brought about by events unforeseen by the agency, the property or services are unable to be obtained in time under open tendering procedures. Against this background, while some contracts associated with organising the Summit were tendered, the majority were not.

5. On 6 March 2008, PM&C signed a contract with CMAX Communications for the provision of media management services for the Summit. This engagement was not tendered. The contract specified that CMAX Communications was to receive \$1 300 per day (plus GST) for a period of no more than 40 working days. This was equal to a maximum payment of \$52 000 (plus GST).

6. The CMAX Communications employee who provided media management services for the Summit is married to the Defence Minister's Media Adviser, who was at the time of the Summit the sole shareholder and Managing Director of CMAX Communications. He had established CMAX Communications in September 2004, more than three years prior to accepting

⁴ Specifically, the department's Annual Report for 2004-05 indicated (at page 86) that an achievement in that year was reviewing and amending the departmental standard contracts to incorporate additional contract clauses relating to the new Commonwealth Procurement Framework. The 2004-05 Annual Report also indicated (at page 102) that Information Technology procurement processes, procedures and templates were reviewed and updated following the introduction of the USFTA. In addition, PM&C advised ANAO that further advice on changes to delegations, reflecting the new procurement thresholds and to streamline administration, was provided to departmental division heads in September 2006.

⁵ The CEI adopted indicative benchmarks for procurement with 'intermediate decisions' for procurements expected to cost between \$5 000 and \$50 000 requiring sufficient oral and/or written quotes to be obtained to achieve value for money through open and effective competition, and 'advanced decision making' for procurements expected to cost over \$50 000 requiring senior officer consideration of the most appropriate methodology that would provide value for money through open and effective competition (including, arranging to appropriately test the market place). The procurement CEI was updated in August 2008.

the position as the Defence Minister's Media Adviser (on 28 December 2007).⁶ The company name was transferred in April 2008 to a new entity owned by his spouse (in which the Media Adviser is neither a shareholder nor director) with the company formerly known as CMAX Communications being deregistered in July 2008.

7. Concerns regarding the engagement of CMAX Communications were initially raised in media articles in late April 2008. In the May 2008 Estimates hearings, the Senate Standing Committee on Finance and Public Administration also raised concerns about the appointment process.⁷ Particular concerns revolved around the Managing Director of CMAX Communications being, at the time of the engagement, employed by the Minister for Defence as his Media Adviser, and that the engagement of CMAX Communications followed a suggestion from a Senior Adviser in the Prime Minister's Office, who was involved with the organisation of the Summit.

Audit scope and objectives

8. Senator the Hon Michael Ronaldson (Liberal Senator for Victoria and Shadow Special Minister of State) wrote to the Auditor-General in May 2008, requesting that the ANAO investigate the probity of the contractual arrangement between PM&C and CMAX Communications.⁸ Following discussions with PM&C, and after allowing for a review of staff conduct matters by the Government Staffing Committee to be undertaken,⁹ the Auditor-General decided in August 2008 to undertake a performance audit of

⁶ The current Defence Minister's Media Adviser completed three Statement of Private Interests forms, dated 28 February 2008, 22 April 2008 and 5 May 2008. The first form disclosed both a shareholding and directorship of CMAX Communications. The second disclosed a shareholding and directorship of Maximum Communication, with his spouse having a shareholding and directorship of CMAX Communications. The third Statement of Private Interests stated that the Media Adviser had no shareholdings and held no directorships, and continued to disclose his spouse as having a shareholding and directorship of CMAX Communications.

⁷ In addition, the previous work of CMAX Communications and its Managing Director in the Department of Defence and the Defence Materiel Organisation was raised in June 2008 Estimates hearings of the Senate Standing Committee on Foreign Affairs, Defence and Trade.

⁸ A letter was also received from Senator the Hon David Johnston, a Liberal Senator for Western Australia, requesting that ANAO fully investigate this matter and provide a detailed report on the findings and any proposed further actions that should be undertaken by relevant authorities.

⁹ After being advised by ANAO that an audit was to be undertaken, the Government Staffing Committee suspended its consideration of Ministerial staff conduct matters related to the CMAX Communications contract. The Committee advised ANAO that it planned to resume its considerations once ANAO's report was presented to Parliament and inform itself of any relevant ANAO findings in reaching conclusions about staff conduct matters.

the CMAX Communications contract for the 2020 Summit. The audit objectives were to:

- examine whether the appointment of CMAX Communications Pty Ltd as a provider of communications support and advice for the 2020 Summit was consistent with the Commonwealth procurement framework and sound principles of public administration; and
- assess the effectiveness of the administration of the CMAX Communications contract by PM&C.

9. The audit was planned and undertaken to obtain reasonable assurance that the audit conclusion is based on sufficient and appropriate evidence. Audit fieldwork commenced in early September 2008. ANAO officers met a number of times with officials in PM&C and interviewed officials and other relevant individuals concerning matters relating to the conduct of the audit. In addition, interviews were undertaken with the Project Director that had been contracted by PM&C, PM&C's Assistant Secretary in charge of the Summit Secretariat, the Senior Adviser in the Prime Minister's Office, the contracted CMAX Communications employee and the Defence Minister's Media Adviser. The audit methodology also involved examination of:

- relevant PM&C records as well as those of other Australian Government agencies that had engaged CMAX Communications;
- documentation held by the Australian Securities and Investments Commission in relation to CMAX Communications; and
- the three reports produced for the Government Staffing Committee, and documents associated with these reports.

10. Consistent with the focus of the audit objectives on PM&C's engagement and contract management practice related to the CMAX Communications contract, and having regard to the requirements of the *Auditor-General Act 1997*, the performance audit did not consider the actions of persons employed or engaged under the *Members of Parliament (Staff) Act 1984* other than the extent to which their actions may have affected PM&C's procurement activities.

11. Copies of the proposed report were provided under section 19 of the *Auditor-General Act 1997* to: PM&C; the Department of Finance and Deregulation (Finance); the Defence Materiel Organisation; the Department of Defence; the Senior Adviser in the Prime Minister's Office; the Project Director

that had been contracted by PM&C; the Defence Minister's Media Adviser; and the contracted CMAX Communications employee.

Audit conclusion

Engagement process

12. Irrespective of the expected cost of a procurement, agencies have a responsibility under the CPG's to assure themselves that they obtain value for money. This is commonly achieved by comparing proposals from a number of potential service providers. For contracts with an estimated value less than \$80 000, there is no requirement to approach the market if the agency is able to obtain assurance concerning value for money by other means. Further, there is no restriction on Ministers' offices suggesting particular consultants for consideration, providing it is clearly understood that the decision is a matter for the agency (taking into account the requirements of the CPGs). However, given the sensitivities which attach to suggestions of this kind from Ministers' offices, it will be in an agency's interests to have made its own inquiries, explicitly consider more than one option and accurately document its decision-making process. The use of competitive procurement processes by agencies can also protect the reputation of contractors where questions are raised about particular engagements.

13. Initial efforts by PM&C to obtain media adviser expertise for the Australia 2020 Summit focused on the availability of officials employed within the Australian Public Service (APS). In the limited time available, only one of the two media adviser roles was able to be filled by an APS official. There was no panel of prequalified consultants in place, and insufficient time was available for an open tender process to be conducted.

14. In these circumstances, it was reasonable for PM&C to consider the credentials of an employee of CMAX Communications who had been recommended to them by a Senior Adviser within the Prime Minister's Office involved with organising the Summit. A quote was obtained from CMAX Communications. PM&C did not consider an abbreviated approach to the market, such as seeking quotes from any other media management firms operating in the Canberra market, noting that the value of the contract was less than the \$80 000 threshold at which agencies are required (with certain exemptions) to undertake open tender processes.

15. The decision to interview an employee of CMAX Communications for the senior Media Adviser role for the Summit was made by PM&C. On the

basis of our inquiries, including evidence given on oath, there was no indication of any pressure on PM&C to appoint CMAX Communications. Following an interview at which previous work was discussed, and after consideration of the quotation provided by CMAX Communications, the decision to engage CMAX Communications was made by PM&C alone.

16. In deciding whether an actual conflict of interest existed, the first report provided to the Government Staffing Committee noted that there was no evidence found of any involvement on the Defence Minister's Adviser's part or of any influence exerted by him in relation to the letting or the carrying out of the contract.¹⁰ The report also concluded that there was no actual conflict of interest arising from the Defence Minister's Adviser's connection with CMAX Communications and his employment as a member of Ministerial staff. Nevertheless, it noted that there was the possibility of an appearance of conflict of interest arising from the Adviser's continued connection with CMAX Communications after he was employed as a member of Ministerial staff. Subsequent inquiries, and evidence taken under oath by ANAO, supported these conclusions.

17. The basis on which the PM&C delegate made the decision that engaging CMAX Communications represented value for money was not clear from the departmental record that had been made. In particular, PM&C's documentation did not accurately record the way in which CMAX Communications was identified to it as a possible provider, or the inquiries it undertook to satisfy itself that engaging CMAX Communications represented value for money. That said, ANAO analysis indicates that the fee paid by PM&C was comparable to contracts entered into by CMAX Communications with Australian Government agencies prior to the Summit, as well as being reasonable having regard to rates charged by media and communications consultants in other contractual arrangements examined by ANAO in recent years.

18. Overall, while there was scope for some improvements in PM&C's administration of the engagement process, there was no evidence of any external pressure being applied to PM&C in making the decision to engage CMAX Communications, or that the fee payable to CMAX Communications was not reasonable in the circumstances of the engagement.

¹⁰ The report also noted that there was no evidence found that anything had been done in the letting or carrying out of the contract for the purpose of advancing the Adviser's interests.

Contract management

19. PM&C signed a contract with CMAX Communications to deliver the required services. In accordance with its contract, CMAX Communications worked to raise awareness of the Summit and its objectives and to encourage and manage media coverage of the Summit in the lead up to, and during, the event. Delivering these services involved CMAX Communications working with the Summit Steering Committee to organise interviews and have articles placed in national and local media. Positive feedback was provided to CMAX Communications in respect to the company's work by a number of key individuals involved in the Summit.

20. ANAO observed a number of shortcomings with PM&C's contract management. In particular, the contract document did not specify the name of the individual that was to deliver the contract services; and the total amount paid to CMAX Communications (\$56 358 plus GST) exceeded the maximum amount specified in the contract (\$52 000 plus GST), and there is no evidence that this issue was identified by PM&C prior to the payment being made.

Improvement opportunities

21. Each year, the Australian Government lets numerous contracts for services such as media advice, communications advice and public relations. A significant proportion of these contracts have been reported as not resulting from a competitive selection process, with urgency a factor in agencies direct sourcing. This situation does not sit comfortably with competition being a key element of the Australian Government procurement policy framework.

22. The CPGs state that effective competition requires non-discrimination in procurement and the use of competitive procurement processes. As noted at paragraph 3, open tender processes are generally required for consultant procurements expected to cost more than \$80 000, with the use of competitive procurement processes encouraged for less expensive procurements. In this

context, a panel¹¹ or multi-use list¹² of potential suppliers of media advice, communications advice and public relations services, each of which involves an approach to the market,¹³ could be expected to promote open and effective competition as a means of securing value for money. This approach could also reduce reputational risk to agencies and contractors where concerns are raised about the process through which they were engaged.

23. Accordingly, the ANAO raised with Finance the merits of implementing coordinated procurement arrangements (such as a panel or multi-use list) for media and communications adviser services that balances the time imperatives that can exist when contracting for these types of services and the importance of open and effective competition in Australian Government procurement processes. Finance advised ANAO that the amount of expenditure on media and communications advice consultancies across government does not appear to be at a level that would warrant the cost and complexity of centralising the procurement of these services.

24. ANAO has made one recommendation focused on PM&C improving its documentation relating to procurement decisions.

Agency responses

25. The following entities provided formal comments on the proposed report of this performance audit:

¹¹ A panel may be established following either an open or select tender with an agency entering into contracts or deeds of standing offer (panel arrangements) for the provision of identified property or services. A panel is defined in the CPGs as an arrangement under which a number of suppliers, usually selected through a single procurement process, may each supply property or services to an agency as specified in the panel arrangements. The CPGs state that the respective panel arrangements must contain minimum requirements, including an indicative or set price or rate as appropriate for the property or services to be procured in the period of the panel arrangement. When selecting a provider from a panel, there remains a requirement to obtain value for money.

¹² The CPGs define a multi-use list as a list of pre-qualified businesses who have satisfied the conditions for participation for inclusion that is intended for use in more than one procurement process. A multi-use list involves an initial open approach to the market (to establish the list) being used to inform future select tender processes, through which value for money is to be obtained. Specifically, an agency may invite some or all businesses included on a multi-use list to participate in a procurement, providing that the property or services sought are consistent with those described in the approach to the market that was used to form the multi-use list.

¹³ A key difference between a multi-use list and panel relates to the stage in the engagement process at which tendering occurs. For a multi-use list, the request for application for inclusion on the list must either be published continuously or re-published annually and this list forms the basis for identifying potential suppliers some or all of which may at a later time be invited to tender for an individual engagement. By way of comparison, a panel is established through a procurement process and providers can be engaged without the need to conduct a further procurement process.

Department of the Prime Minister and Cabinet

The department notes the report's conclusions. In terms of overall performance of the CMAX contract, the report concludes that the contract price was comparable and reasonable, and that positive feedback was provided on the performance of CMAX Communications.

PM&C will be further improving its procurement and contract management systems. PM&C notes that, throughout 2008, strengthened governance arrangements have been put in place which will help ensure that the issues identified in the report in relation to PM&C are not repeated in the future. This includes updating the revised procurement Chief Executive's Instruction to reflect recent changes to the related legislation. PM&C further notes that a number of internal audits are being undertaken for the 2008-09 financial year in the areas of procurement and knowledge management, which will examine and provide assurance on aspects of the department's procurement and contract management processes.

Defence Materiel Organisation

During the period September 2004 to October 2007, CMAX Communications held several contracts with the Defence Materiel Organisation (DMO) to provide media and public affairs advice. The ANAO's report has highlighted examples of DMO contract procurement for the CMAX Communications contract which ANAO believes to be of concern. From DMO's perspective, the advisory work performed by CMAX Communications during the contractual period was of a high standard and delivered on schedule, often under time and resource pressures, and at a contract price that provided value for money for the Commonwealth. This performance and value satisfaction factor was a significant consideration regarding the additional contracts that DMO entered into with CMAX Communications.

Department of Finance and Deregulation

Finance does not believe that there is a compelling case to justify the establishment of a mechanism for the coordinated procurement of media and communications advisers.

2007-08 Annual Report data collated by the ANAO indicates that around two-thirds of media and public relations consultancies were competitively sourced. While other data derived from AusTender suggests that only half of reported contracts for media and communications advice over a nine month period involved competitive sourcing, the ANAO's own analysis suggests that these are likely to involve smaller value and therefore lower risk projects.

Finance is not convinced that the amount of expenditure on media and communications advice consultancies across government is at a level that would warrant the cost and complexity of centralising the procurement of these services.

Recommendation

Recommendation No. 1

Paragraph 2.49

ANAO *recommends* that the Department of the Prime Minister and Cabinet enhance transparency and accountability relating to decisions to spend public money on consultants by improving its documentation of the engagement process, so as to provide an accurate record of inquiries undertaken and the key reasons for the decisions.

Department of the Prime Minister and Cabinet: Agreed

Audit Findings and Conclusions

1. Introduction

This chapter provides an overview of how the engagement of CMAX Communications Pty Ltd for the 2020 Summit became the subject of a performance audit, together with the audit objectives and approach.

Background

1.1 On 3 February 2008, the Prime Minister announced the Government would convene the Australia 2020 Summit at Parliament House on 19 and 20 April 2008. The Summit was to bring together 1000 leading Australians to Canberra to debate and develop long term options for the nation across ten areas. The Summit had five stated objectives:

- to harness the best ideas across the nation;
- to apply those ideas to the ten core challenges that the Government has identified for Australia-to secure our long-term future through to 2020;
- to provide a forum for free and open public debate in which there are no predetermined right or wrong answers;
- for each of the Summit's ten areas to produce following the Summit options for consideration by government; and
- for the Government to produce a public response to these options papers by the end of 2008 with a view to shaping the nation's long term direction from 2009 and beyond.

1.2 The Government has stated that holding the Australia 2020 Summit to listen to the concerns and ideas of thousands of Australians was one of its achievements during its first year in office.¹⁴ It has stated that the report to the Prime Minister which followed the Summit (structured across ten streams) identified important ideas and themes that are being considered as part of broader policy reform agendas or by business and community leaders across Australia.¹⁵

¹⁴ Australian Government, *One Year Progress Report*, November 2008, p. 6.

¹⁵ *ibid.*, p. 72.

Summit Media Adviser Contract

1.3 The Department of Prime Minister and Cabinet (PM&C) signed a contract with CMAX Communications Pty Ltd (ABN 29 111 021 697—CMAX Communications) on 6 March 2008 to provide: ‘communications support and advice for the Australia 2020 Summit including (but not limited to) the development and implementation of a proactive media strategy.’ The maximum amount payable under the contract was \$52 000 (plus GST).¹⁶

1.4 No tender process was conducted for the engagement of CMAX Communications. According to its response to the Request for Quotation for the Australia 2020 Summit engagement, CMAX Communications provides communication support and advice across a range of technical and practical communication disciplines, and its products and services include:

- public relations (including strategic communication planning, development and implementation; communications advice and training; event management and reputation management);
- above the line advertising (including marketing and advertising campaign development);
- below the line promotions (including newsletters and brochures and direct mail);
- corporate identity (including company positioning, logo design and merchandising);
- brand development; and
- web design.

1.5 Concerns regarding the engagement of CMAX Communications were initially raised in media articles in late April 2008. Following these media reports, in the May 2008 Estimates hearings, the Senate Standing Committee on Finance and Public Administration raised further concerns about the appointment process.¹⁷ Particular concerns revolved around the Managing Director of CMAX Communications being, at the time of the engagement, employed by the Minister for Defence as his Media Adviser, and that the engagement of CMAX Communications had occurred following a suggestion

¹⁶ The final amount paid to the company was \$56 358 (plus GST).

¹⁷ In addition, the previous work of CMAX Communications and its Managing Director in the Department of Defence and the Defence Materiel Organisation (DMO) was raised in June 2008 hearings of the Senate Standing Committee on Foreign Affairs, Defence and Trade.

from a Senior Adviser in the Prime Minister's Office, who was involved with the organisation of the Summit.

Request for ANAO audit

1.6 Senator the Hon Michael Ronaldson (Liberal Senator for Victoria and Shadow Special Minister of State) wrote to the Auditor-General in May 2008, requesting that the ANAO investigate the probity of the contractual arrangement between PM&C and CMAX Communications.¹⁸ The request expressed the hope that ANAO's investigation would be wide ranging and encompass all probity issues including the nature and extent of the role played by the Prime Minister's Office in the granting of this contract, all conflicts of interest questions and the nature and extent of the relationship between any of the Prime Minister's staff and individuals involved in CMAX Communications.

1.7 In June 2008, ANAO advised the Shadow Special Minister of State that inquiries were being made, primarily of PM&C, to inform a decision about the extent of any ANAO audit activity. ANAO further advised the Shadow Minister that the decision whether to undertake an audit would have regard to the outcome of the Government Staffing Committee review that had been announced.

Government Staffing Committee review

1.8 In the May 2008 Estimates hearings of the Senate Standing Committee on Finance and Public Administration, the Special Minister of State indicated that he had recommended to the Minister for Defence that he refer the issue of the Defence Minister's Media Adviser's association with CMAX Communications to the Government Staffing Committee.¹⁹ The Government Staffing Committee consists of the Chief of Staff of the Prime Minister's Office, the Deputy Prime Minister and the Special Minister of State (or appropriate nominees).

¹⁸ A letter was also received from Senator the Hon David Johnston, a Liberal Senator for Western Australia, requesting that ANAO fully investigate this matter and provide a detailed report on the findings and any proposed further actions that should be undertaken by relevant authorities.

¹⁹ Official Committee Hansard, Senate Standing Committee on Finance and Public Administration Estimates, Tuesday 27 May 2008, p. 151.

Reports provided to the Committee

1.9 At its meeting on 29 May 2008, the Government Staffing Committee decided to ask the Secretary of the PM&C to recommend a suitable independent person to assess the conduct of the Defence Minister's Media Adviser as a ministerial staff member with particular reference to the Adviser's relationship with CMAX Communications, and his knowledge of the company's contract for the provision of services in connection with the 2020 Summit. PM&C identified a retired senior Australian Public Service (APS) executive with experience in Ministerial staffing and government process matters to undertake the review.

1.10 Three reports were provided to the Government Staffing Committee during the course of the review, as follows:

- on 17 June 2008, an assessment of the conduct of the Defence Minister's Media Adviser was provided together with three possible systemic improvements to minimise the risk of similar future incidents;²⁰
- on 24 July 2008, at the request of the Government Staffing Committee, a recommendation on whether any sanctions should be applied in the case of the Defence Minister's Media Adviser; and
- on 20 August 2008, consideration of the conduct of the Senior Adviser in the Prime Minister's Office (this report was necessarily qualified as the focus of work had been on the Defence Minister's Media Adviser).

1.11 Also on 20 August 2008, following discussions with PM&C, the Auditor-General decided to undertake a performance audit of the CMAX Communications contract for the 2020 Summit. On 22 August 2008, the Government Staffing Committee suspended its consideration of Ministerial staff conduct matters related to the CMAX Communications contract.

1.12 On 4 September 2008, the Committee advised ANAO that it planned to resume its considerations once ANAO's report was presented to Parliament and inform itself of any relevant ANAO findings in reaching conclusions about

²⁰ The suggestions involved: timely completion and promulgation of the code of conduct for Ministerial staff (which was issued on 26 June 2008); improvements to the Statement of Private Interests form; and consideration to arranging in future for a structured induction interview for at least the more senior new members of staff conducted by a person with knowledge of probity requirements and expectations.

staff conduct matters.²¹ The Committee further advised ANAO that, whilst it had not concluded its consideration of individual staff conduct matters, it had agreed to:

- ask new staff to sign an acknowledgement that the new staff Code of Conduct had been received and understood;
- incorporate clear guidance on conflict of interest in the explanatory notes to the staff Statement of Private Interests form;²² and
- require new senior staff appointees (above Adviser level) to participate in a panel interview with the Chief of Staff of their employing Minister, the Prime Minister's Chief of Staff and Secretary of the Government Staffing Committee soon after their appointment.

1.13 Where relevant, the improvements advised by the Committee have been taken into account by ANAO in the conduct of this audit. While not a focus of the audit, our work has indicated that, in addition to incorporating clear guidance on conflict of interest in the explanatory notes to the staff Statement of Private Interests form, there would be benefit in the form being enhanced by requiring the Australian Business Number of each company shareholding and/or directorship to be disclosed (for identification purposes), the quantum of the shareholding and instituting a process by which there can be greater assurance that all shareholdings and directorships have been disclosed.

1.14 Attached to the 4 September 2008 correspondence from the Government Staffing Committee to ANAO was material relating to the appointment of the retired senior APS Executive, each of the three reports prepared for the Committee and the Defence Minister's Media Adviser's written response to the first report. The Committee also advised ANAO of its desire to assist ANAO in the discharge of the audit function. Accordingly, in response to a request from ANAO, the Committee provided ANAO on

²¹ ANAO advised the Government Staffing Committee that the suspension meant that the audit would not have the benefit of the Committee's views but that, nevertheless, the decision to suspend Committee consideration was properly a matter for the Committee and would not impede the conduct of the audit. ANAO also acknowledged that it could understand that the Committee might wish to have regard to the audit report before finalising its conclusions about staff conduct matters.

²² The current Defence Minister's Media Adviser completed three Statement of Private Interests forms, dated 28 February 2008, 22 April 2008 and 5 May 2008. The first form disclosed both a shareholding and directorship of CMAX Communications. The second disclosed a shareholding and directorship of Maximum Communication, with his spouse having a shareholding and directorship of CMAX Communications. The third Statement of Private Interests stated that the Media Adviser had no shareholdings and held no directorships, and continued to disclose his spouse as having a shareholding and directorship of CMAX Communications.

13 October 2008 with the original and complete file of records presented to it by the reviewer. Additional material was provided to ANAO on 22 October 2008.

Audit approach and objectives

1.15 The audit objectives were to:

- examine whether the appointment of CMAX Communications Pty Ltd as a provider of communications support and advice for the 2020 Summit was consistent with the Commonwealth procurement framework and sound principles of public administration; and
- assess the effectiveness of the administration of the CMAX Communications contract by PM&C.

1.16 The audit was planned and undertaken to obtain reasonable assurance that the audit conclusion is based on sufficient and appropriate evidence. Audit fieldwork commenced in early September 2008. ANAO officers met a number of times with officials in PM&C and interviewed officials concerning matters relevant to the conduct of the audit. In addition, interviews were undertaken with the Project Director that had been contracted by PM&C, PM&C's Assistant Secretary in charge of the Summit Secretariat, the Senior Adviser in the Prime Minister's Office, the contracted CMAX Communications employee and the Defence Minister's Media Adviser. The audit methodology also involved examination of:

- relevant PM&C records as well as those of other Australian Government agencies that had engaged CMAX Communications (the Department of Health and Ageing, the Defence Materiel Organisation and Wheat Exports Australia);
- documentation held by the Australian Securities and Investments Commission in relation to CMAX Communications; and
- the reports produced for the Government Staffing Committee, and documents associated with these reports, both of which were provided to ANAO by the Government Staffing Committee.

1.17 Consistent with the focus of the audit objectives on PM&C's engagement and contract management practices, and having regard to the

requirements of the *Auditor-General Act 1997*,²³ the performance audit did not consider the actions of persons employed or engaged under the *Members of Parliament (Staff) Act 1984* other than the extent to which their actions may have affected PM&C's procurement activities.

1.18 The audit was conducted in accordance with ANAO auditing standards. Audit fieldwork was undertaken between September and November 2008.

1.19 The audit was conducted in accordance with ANAO auditing standards at a cost to the ANAO of \$135 000.

²³ For example, Section 15 of the Auditor-General Act provides that the Auditor-General may at any time conduct a performance audit of an agency but that an agency is taken not to include any persons who are employed or engaged under the *Members of Parliament (Staff) Act 1984* and who are allocated to the agency by regulations for the purposes of the definition of agency in section 5 of the *Financial Management and Accountability Act 1997*.

2. Engagement process

Against the background of the Australian Government's procurement framework, this chapter examines the process by which CMAX Communications was engaged to provide media management services for the 2020 Summit.

Background

2.1 The organisation and conduct of the 2020 Summit involved the expenditure of public money²⁴ and was thus subject to applicable financial management legislation. Specifically, the *Financial Management and Accountability Act 1997* (FMA Act) provides a framework for the proper management of public money and public property. Many of the rules about how public money and property are to be dealt with are in the *Financial Management and Accountability Regulations 1997* (FMA Regulations²⁵) and the *Finance Minister's Orders*.²⁶ The FMA Act, and associated Regulations and Orders, apply to Ministers and officials in Australian Government Departments of State, Departments of the Parliament and agencies prescribed in the FMA Regulations.

2.2 Part 4 of the FMA Regulations, *Commitments to spend public money*, sets out a hierarchy of requirements that must each be satisfied, in the appropriate sequence, in order for a commitment to spend public money to be lawfully entered into. Of particular importance to the CMAX Communications engagement, Regulations 9, 10 and 12 impose obligations on approvers to:

- obtain prior written authorisation from the Finance Minister (or his delegate) where the spending proposal would involve expenditure beyond available appropriations (Regulation 10);
- not approve a spending proposal unless satisfied, after undertaking such inquiries as are reasonable, that the proposed expenditure is in

²⁴ Public money means money in the custody or under the control of the Commonwealth; or money in the custody or under the control of any person acting for or on behalf of the Commonwealth in respect of the custody or control of the money (including such money that is held on trust for, or otherwise for the benefit of, a person other than the Commonwealth) (Section 5, *Financial Management and Accountability Act 1997* (FMA Act)). Public property is similarly defined in the Act.

²⁵ Section 65 of the FMA Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

²⁶ The Orders are made by the Finance Minister under Section 63 of the FMA Act.

accordance with the policies of the Commonwealth and will make efficient and effective use of the public money (Regulation 9)²⁷ ; and

- document the terms of the approval (but not the reasons) as soon as practicable after approval is given (Regulation 12).

2.3 In addition, FMA Regulation 8 requires officials to have regard to the Commonwealth Procurement Guidelines (CPGs) issued by the Finance Minister when performing duties related to procurement. Revised CPGs took effect in January 2005. Amongst other matters, the changes to the CPGs gave effect to the government procurement provisions of the Australia-United States Free Trade Agreement (USFTA). Some of the major changes to the revised procurement requirements were:

- the classification of procurements over a specified value as covered procurements²⁸, to which Mandatory Procurement Procedures apply, including a general presumption of open tendering with selective and limited tendering available only in specific circumstances; and
- the specification of time limits and other procedures for tender processes.²⁹

2.4 It was expected that the dominant impact of the revised CPGs would be an increase in the number and scope of procurement opportunities offered to the full market. At the time of the Summit, PM&C had taken some action to implement the new CPGs. Specifically, the department's Annual Report for 2004-05 indicated (at page 86) that an achievement in that year was reviewing and amending the departmental standard contracts to incorporate additional contract clauses relating to the new Commonwealth Procurement Framework. The 2004-05 Annual Report also indicated (at page 102) that Information Technology procurement processes, procedures and templates were reviewed and updated following the introduction of the USFTA. In addition, PM&C advised ANAO that further advice on changes to delegations, reflecting the new procurement thresholds and to streamline administration, was provided to departmental division heads in September 2006. However, PM&C's Chief

²⁷ The terms of FMA Regulation 9 are to be read conjunctively such that there is a requirement for an approver to comply with all aspects in approving a spending proposal.

²⁸ Covered procurements are procurements, other than those which the Government has decided are exempt, which exceed specified procurement thresholds. For procurements in FMA agencies, other than procurements of construction services, the procurement threshold is \$80 000.

²⁹ ANAO Audit Report No.21 2006-07, *Implementation of the revised Commonwealth Procurement Guidelines*, Canberra, 31 January 2007, pp. 25-26.

Executive's Instruction (CEI)³⁰ relating to procurement was dated November 2001 and so did not reflect the January 2005 revision to the CPGs.³¹ The CEI applicable at the time of the 2020 Summit adopted indicative benchmarks for procurement with:

- 'intermediate decisions' for procurements expected to cost between \$5 000 and \$50 000 requiring sufficient oral and/or written quotes to be obtained to achieve value for money through open and effective competition; and
- 'advanced decision making' for procurements expected to cost over \$50 000 requiring senior officer consideration of the most appropriate methodology that would provide value for money through open and effective competition (including, arranging to appropriately test the market place).

2.5 PM&C's procurement strategy for the Summit was documented on 6 March 2008. The strategy noted that:

- one contract had been negotiated, being the media management contract with CMAX Communications;
- it was anticipated that a number of other contracts would be negotiated in the next week; and
- given services were required on 19 and 20 April 2008, there was not sufficient time to approach the open market to procure services. Instead, PM&C intended to rely on clause 8.65(b) of the Mandatory Procurement Procedures Division of the CPGs which provides (for procurements expected to cost more than \$80 000) that an agency may conduct procurement through direct sourcing:

where, for reasons of extreme urgency brought about by events unforeseen by the agency, the property or services could not be obtained in time under open tendering procedures.

2.6 The documented procurement strategy did not address the merits of an abbreviated approach to the market being used to inform value for money assessments. For example, this could have been achieved through select tenders or by seeking quotes from potential providers.

³⁰ FMA Regulation 6 authorised agency chief executives to give instructions to officials in their agency on any matter necessary or convenient for carrying out or giving effect to the FMA Act or FMA Regulations, including in relation to procurement.

³¹ The procurement CEI was updated in August 2008.

2.7 Consistent with the procurement strategy, whilst some contracts associated with organising the Summit were tendered, the majority were not.³²

Australian Government procurement of media and communications advice

2.8 Each year, the Australian Government lets numerous contracts for services such as media advice, communications advice and public relations. However, it has been common for such procurement to be undertaken other than following an open approach to the market.

2.9 For example, between 1 January 2008 and 30 September 2008, there were 41 contracts reported on AusTender as having been let for media advice, communications advice and similar types of services.³³ Of those, 51 per cent were reported as being direct sourced, with a further 24 per cent reported as resulting from a select tender. The remainder were reported as having been the subject of an open tender.

2.10 In addition to reporting through AusTender, agencies are required to report details of all consultancies³⁴ let in the reporting year to the value of \$10 000 or more (inclusive of GST).³⁵ The 2007-08 Annual Reports prepared by 17 Departments of State³⁶ reported that a significant proportion of media advice and similar consultancy contracts as having not resulted from a competitive selection process. Specifically, 34 per cent were reported as having been direct sourced with a further 34 per cent resulting from a select tender. Of the remainder, 22 per cent were reported as having been procured through an open tender process with 10 per cent of communications consultants chosen from a panel.

³² For example, the Project Director was appointed through a direct source procurement approach. After becoming aware of the Summit, the individual contracted as Project Director contacted the Prime Minister's Office and suggested that, if there were plans to engage staff, she would be interested in making a proposal. Contact details were provided by the Prime Minister's Office to PM&C. Following discussions with PM&C and after attending an interview with PM&C, the individual was contracted by PM&C.

³³ The contract values ranged from \$10 725 to \$214 543. It was more common for the larger value contracts to be subject to either a select or open tender.

³⁴ In broad terms, a consultant provides an intellectual output that assists with agency decision-making, with the output reflecting the independent views of the service provider. By comparison, a contractor provides day-to-day services and is usually under the direct supervision of the agency. Source: ANAO Audit Report No. 27 2005-06, *Reporting of Expenditure on Consultants*, p. 15.

³⁵ Department of the Prime Minister and Cabinet, *Requirements for Annual Reports for Departments, Executive Agencies and FMA Act Bodies*, 18 June 2008, pp. 25-26. These requirements apply to annual reports for financial years ending on or after 30 June 2008.

³⁶ Reports for the remaining two Departments of State were either not available, or did not include data on consultancies.

2.11 Since 2004, CMAX Communications has been one of the companies providing media and communications advisory services to Australian Government entities.

Engagement of CMAX Communications by Australian Government entities

2.12 For the three and a half years between 9 April 2001 and 25 September 2004, the Media Adviser to the current Defence Minister was employed almost continuously³⁷ by the Department of Defence (Defence) in various media and public affairs roles. He was engaged on 12 separate occasions between 9 April 2001 and 25 September 2004 as a non-ongoing employee.

2.13 CMAX Communications was registered as a proprietary company limited by shares, on 17 September 2004. The company was formed in order to allow the current Defence Minister's Media Adviser to continue working as a media adviser within Defence, but under a more long-term arrangement than was possible as a non-ongoing employee. The sole shareholder and Managing Director of CMAX Communications resigned as an employee with Defence on Saturday 25 September 2004 and commenced work through CMAX Communications on Monday 27 September 2004. On 28 December 2007, he accepted a position as the Defence Minister's Media Adviser.

2.14 Between September 2004 and October 2007, CMAX Communications had 12 contracts with the Defence Material Organisation (DMO). Prior to the 2020 Summit, CMAX Communications had also been engaged on one occasion with the Department of Health and Ageing (DOHA).

2.15 As illustrated by Table 2.1, a feature of the engagement of CMAX Communications over the period since the company was established was that, with one exception, competitive selection processes were not employed. A range of reasons were cited in DMO's approval documentation associated with the engagements for why sole sourcing was used, as outlined below:

- For the first contract (commencing 27 September 2004), the internal approval indicated that there was an urgent need to address a skills shortage in the section (to develop and implement an overarching proactive media strategy and manage media inquiries), and no suitably

³⁷ There was a break in service of four days in April 2002, a nearly five month break in service between 2 November 2003 and 28 March 2004 and a nearly three month break in service between 16 May 2004 and 8 August 2004.

qualified internal applicant could be identified. This contract was subsequently extended on three occasions.

- For the second contract (commencing 30 May 2005), the approval documentation stated the decision to sole source was based on the following considerations by DMO:
 - the project office did not have the staff or resources to undertake further Request For Tender development, evaluation and source selection processes for this requirement, which the agency expected would most likely result in the selection of CMAX Communications in any event;
 - the proposal was considered by the agency to provide value for money;
 - the company was recognised as an acceptable service provider and was previously shortlisted in other Request For Tender processes; and
 - CMAX Communications had already demonstrated and proven its productivity and capability to perform the required tasks/functions, thereby minimising risk.
- For the third sole source contract with DMO (commencing 1 September 2005), the approval documentation indicated sole sourcing was used as the contractor was considered to provide value for money, considering his extensive experience and the relevant DMO projects would benefit greatly from this experience. This contract was extended twice.

2.16 ANAO analysis indicates that, on the one occasion a tender was conducted, the procurement process employed by the DMO did not promote open and effective competition. Specifically:

- the Statement of Work contained in the proposed contract provided with the Request for Tender outlined a more detailed and extensive list of responsibilities than that which had been included in the previous two contracts between CMAX Communications and the DMO (signed in May 2005 and July 2005);
- the Statement of Work included in the Request for Tender package was drafted in a way that impinged on the ability of potential providers

other than CMAX Communications (as the incumbent) to effectively compete for the role;³⁸ and

- the Statement of Work in the signed contract differed from the Statement of Work provided in the draft contract to potential tenderers. Specifically, the list of contractor responsibilities in the Statement of Work provided to potential tenderers was more detailed and longer than that required of CMAX Communications under the contract. In November 2008, Defence advised ANAO that no information was available that would explain the reasons for the change to the Statement of Work from the time of the tender to contract signature.

2.17 In this context, DMO advised ANAO in December 2008 that:

The second dot point at paragraph 2.16, together with [the footnote in this dot point], infers that the Statement of Work included in the Request for Tender package was 'drafted in a way that impinged on the ability of potential providers other than CMAX Communications (as the incumbent) to effectively compete for the role'. DMO disputes this inference as there are several other media organisations who would meet the requirements under the proposed Statement of Work. Indeed, four organisations did tender for the contract and therefore the Statement of Work did not deter these organisations from applying. DMO considers that this inference is incorrect and the evidence produced refutes the statement made.

With regard to the ANAO concerns that the procurement processes employed by the DMO for the CMAX Communications contract did not 'promote open and effective competition', DMO has considerable practical experience in making these judgements and considers that appropriate procurement decisions were made. DMO considers that the advisory work performed by CMAX Communications during the contractual period with DMO was of a high standard and delivered on schedule, often under time and resource pressures, and at a contract price that provided value for money for the Commonwealth. This performance and value satisfaction factor was a significant consideration regarding the additional contracts that DMO entered into with CMAX Communications.

2.18 Under its 14 contracts or contract extensions with Australian Government entities for services provided between September 2004 and April

³⁸ Specifically, the Statement of Work included statements that the contractor would need to be experienced in the operation of a large Government organisation, be familiar with the mission, values and organisational structure of the DMO, and be well practiced and comfortable in dealing with officials and ministerial offices (experience in the Defence sector would be particularly well regarded.)

2008, CMAX Communications was entitled to receive \$773 376 (plus GST) in fees.

2.19 On 22 April 2008, the company name associated with ABN 29 111 021 697 was changed from CMAX Communications to Maximum Communication Pty Ltd. This was to enable the name CMAX Communications to be transferred to a new entity, with ABN 73 130 740 546, which had been registered as a proprietary company limited by shares on 22 April 2008. The only officeholder and shareholder of CMAX Communications ABN 73 130 740 546 over its existence has been the individual that undertook the media management work on the 2020 Summit.³⁹ Maximum Communication, the company formerly known as CMAX Communications (ABN 29 111 021 697) was deregistered in July 2008.⁴⁰

³⁹ The new CMAX Communications (ABN 73 130 740 546) signed a contract with the then Export Wheat Commission (now Wheat Exports Australia) in May 2008. The engagement was to provide communication support including the writing of content for the new Wheat Exports Australia website. The appointment was effective from 19 May 2008 for an initial two days of work with an option to an extension for further development of website text if needed. No other quotations were sought for the role. CMAX Communications was paid a total of \$2 200 (plus GST) for this engagement.

⁴⁰ On 2 May 2008, an application had been made to the Australian Securities and Investments Commission for voluntary deregistration of the company.

Table 2.1

Contracts entered into by the Australian Government with CMAX Communications (ABN 29 111 021 697)

CPG's applying	Procurement method	Original contract or contract extension	Date contracted (ie date contract signed)	Duration	Agency	\$
July 2004	Sole source	Original contract	14 October, 20 October 2004	27 Sep 2004-24 Dec 2004	Defence (DMO)	\$75 per hour up to a maximum of \$40 909.
	Sole source	Contract extension	16 December 2004	24 Dec 2004-25 Feb 2005		\$95 per hour with maximum increased by \$30 400.
January 2005	Sole source	Contract extension	25 February 2005	28 Feb 2005-1 Apr 2005		\$95 per hour with maximum increased by \$19 000.
	Sole source	Contract extension	1 April 2005	4 Apr 2005-27 May 2005		\$80 per hour with maximum increased by \$25 600.
	Sole source	Original contract	19 May 2005, 26 May 2005	30 May 2005-31 Aug 2005		\$95 per hour to a maximum of \$90 909.
	Sole source	Original contract	27 July 2005	1 Sep 2005-30 Jun 2006		\$95 per hour up to a maximum of \$272 727.
	Sole source	Contract extension	3 July 2006	1 Jul 2006-31 Jul 2006		Unchanged from above.
	Sole source	Contract extension	26 July 2006	1 Aug 2006-18 Aug 2006		Unchanged from above.
	Open tender	Original contract	18 August 2006	18 Aug 2006-18 Aug 2007		Twelve equal payments of \$15 416.66. Contract price not to exceed \$185 000.

CPG's applying	Procurement method	Original contract or contract extension	Date contracted (ie date contract signed)	Duration	Agency	\$
	Sole source	Contract extension	21 August 2007	21 Aug 2007- 5 Oct 2007		Monthly payments remained \$15 416.66. Maximum contract price increased by \$20 000.
	Sole source	Contract extension	5 October 2007	6 Oct 2007 - 19 Oct 2007		Monthly payments remained \$15 416.66. Maximum contract price increased to \$8 000.
	Sole source	Contract extension	8 November 2007	Duration date not changed		Monthly payments remained at \$15 416.66. Maximum contract price increased by \$1 551.
	Sole source	Original contract	20 February 2007, 22 February 2007	Feb 2007-Jun 2007	DOHA	\$1 364 per day for a maximum of twenty consulting days.
	Sole source	Original contract	6 March 2008	3 Mar 2008 to the completion of post summit media outcomes	PM&C	\$1 300 per day for a period of no more than 40 working days.

Source: ANAO analysis of agency records and advice from agencies. All figures are on a plus GST basis.

Identification of the need for specialist media adviser skills for the 2020 Summit

2.20 A meeting was held on Wednesday 20 February 2008 between individuals from the Prime Minister's Office, PM&C and the Vice Chancellor of the University of Melbourne (who co-chaired the Summit with the Prime Minister) and his staff to discuss progress with organising the Summit. One of the matters discussed was raising public awareness and creating public debate around the Summit, and the need to bring onto the project team skilled people with media management and public relations skills. It was agreed that PM&C would examine whether any existing Australian Public Service (APS) employees were available and, if not, look at engaging consultancy expertise.

2.21 On Tuesday 26 February 2008, the Prime Minister announced the 10 individuals that would each lead one of the 10 key discussion areas of the Summit.⁴¹ Together with the Vice Chancellor of the University of Melbourne, these 10 individuals also formed the Steering Committee for the Summit. One role of the Steering Committee was to help select up to 100 participants for each of the key discussion areas.

2.22 The 26 February announcement further increased media interest in the Summit. For the PM&C project team responsible for organising the Summit, the additional media interest emphasised the importance of obtaining access to a senior, experienced individual that was skilled with media management and public relations.

Investigation of within-Service options

2.23 On 18 February 2008, the Secretary of the Department of Human Services had advised chief executives of 22 other agencies (including PM&C) that, with the closure of one of its programs, it had a number of surplus officers⁴² with skills across media and communications areas that were available for redeployment. This information was provided to the PM&C project secretariat. PM&C's contracted Project Director advised ANAO, in the context of this audit, that these surplus staff were considered but the assessment was that they did not possess the necessary skills to deal with the non-Government chairs and the national and regional media.

⁴¹ The Hon Kevin Rudd MP, Prime Minister of Australia, *Australia 2020 Summit Steering Committee*, Media Release, 26 February 2008.

⁴² At levels ranging from Senior Executive Service Band 1 to Australian Public Service Level 6.

2.24 The Project Director advised the Assistant Secretary in charge of the project secretariat that two people within the APS who possessed the requisite skills had been identified. One of these officers was available and was seconded from the Attorney-General's Department. However, the other, more senior, officer was not available to start work immediately.

CMAX Communications suggested as a possible provider

2.25 At a meeting subsequent to that held on 20 February,⁴³ the inability to recruit a suitable senior person from within the public service to perform media management services was discussed. During discussions about possible providers of media services for the Summit, a Senior Adviser within the Prime Minister's Office involved with organising the Summit was asked if she knew someone who may be able to provide these services. The Senior Adviser identified Ms Tara Daley⁴⁴ as a possible provider of these services.

2.26 Prior to accepting a position with the Prime Minister's Office, the Senior Adviser had been the Executive Director of Media Team Australia, which was established to assist community groups obtain news coverage.⁴⁵ In July 2007, following an open approach to the market, Media Team Australia had engaged Ms Daley, through CMAX Communications, to assist with the media work associated with the then Prime Minister's Business and Community Partnerships awards. This engagement continued, on a variety of projects, until November 2007. In June 2008, the Senior Adviser provided a written statement to the Government Staffing Committee's inquiry as follows:

During discussions with the Department of the Prime Minister and Cabinet about possible providers of media services for the 2020 Summit, I raised the name Tara Taubenschlag (known to me as Tara Daley).

I raised Ms Taubenschlag's name only because I had worked with her previously and had a high regard for her skill and professionalism.

⁴³ ANAO examination of records and interviews has not been able to determine the actual date of this second meeting.

⁴⁴ Ms Daley married in July 2007, shortly prior to commencing work with Media Team Australia.

⁴⁵ Media Team Australia is a company limited by guarantee which operates on a non-profit basis to help community groups obtain news coverage. It was established with funding from the Australian Government, the Alcoa Foundation and the charitable R.E. Ross Trust in Victoria. Source: <<http://www.hawkerbritton.com/hawker-britton-media/media-2007/advisory-groups-head.htm>> [accessed 21 November 2008]. The financial statements for the year ended 30 June 2008 lodged with ASIC disclose that the company is dormant and that there are no immediate plans in place for it to operate in the 2008-09 financial year.

I played no role in the contracting for any services for the 2020 Summit, including the contracting of Ms Taubenschlag's company.

2.27 In evidence provided to ANAO under oath, the Senior Adviser confirmed the accuracy of the above statements. This advice, the records examined by ANAO and ANAO interviews of relevant PM&C officials confirmed that the decision to interview an employee of CMAX Communications for the senior Media Adviser role for the Summit was made by PM&C. On the basis of ANAO's inquiries, including evidence given on oath, there was no indication of any pressure on PM&C to appoint CMAX Communications from the Senior Adviser within the Prime Minister's Office, or from the Defence Minister's Media Adviser.

PM&C assessment process

2.28 As noted at paragraph 2.5, due to time constraints, PM&C's documented procurement strategy was to involve use of direct sourcing for many of the engagements. Nevertheless, the CPGs still required PM&C to obtain value for money. Similarly, FMA Regulation 9 required that PM&C officials not approve the spending of public money on an engagement unless reasonable inquiries had been undertaken that demonstrated the proposed expenditure would make efficient and effective use of public money, and complied with any relevant Government policies.

2.29 On 3 March 2008, PM&C documented its decision to approve, under FMA Regulation 9, the engagement of CMAX Communications at an estimated cost of \$60 000 (including GST) for the provision of media management services.⁴⁶ The documentation stated that:

Background:

Following from the establishment of the Australia 2020 Secretariat, it has become necessary to immediately seek professional assistance for the management of media queries in the lead-up to and conduct of the 2020 Summit.

Issues:

This procurement was conducted by direct source as there was insufficient time to approach the market. The provider was chosen from the panel arrangement with the former Government Communications Unit, and a price

⁴⁶ FMA Regulation 12 requires that, if an approval is not given in writing, the terms of the approval be documented as soon as practicable after approval is given.

negotiated which was lower than that offered under the panel arrangement. We are therefore satisfied that value for money has been achieved.

2.30 No consideration was given by PM&C to an abbreviated approach to the market, such as seeking quotes from any other media management firms operating in the Canberra market. In addition, the FMA Regulation 9 approval did not describe any of the efforts undertaken by PM&C to obtain personnel from within the public service (see paragraphs 2.23 and 2.24). Nor did the approval record that CMAX Communications had been suggested by a Senior Adviser in the Prime Minister's Office (see paragraphs 2.25 to 2.27) but, instead, stated that the provider was chosen from a panel arrangement (see paragraph 2.44 for further information).

Assessment of experience and expertise

2.31 On Thursday 28 February 2008, PM&C's Project Director telephoned Ms Daley to ascertain her interest in, and availability for, providing media management services in connection with the Summit.

2.32 An interview was held on the afternoon of Friday 29 February 2008. CMAX Communications was not aware that it was the only firm that had been interviewed for the role. At the interview, PM&C was shown a portfolio of previous work and provided with a quotation to provide proactive media strategy services for the Summit. The quote included a daily rate of \$1 300 (plus GST).

2.33 The quote provided by CMAX Communications to PM&C at the interview included four testimonials. They included one from Mr Daniel Cotterill, who was identified in the quote as being the Chief of Staff for the Defence Minister. In the time available PM&C did not contact any of the individuals included in the quote as providing a testimonial. Instead, the Project Director made inquiries about 'Tara Daley' with people involved in lobbying and media work in Canberra and, as no adverse comments were provided, requested that a contract be prepared. In this respect, as the arrangement was, in effect, a contract for labour hire of a specific individual, it would have been prudent for PM&C to have contacted some or all of the individuals listed as providing testimonials (in these circumstances, akin to a referee). Had PM&C contacted Mr Cotterill, the relationship between the CMAX Communications' employee who had been suggested for the role and the Defence Minister's Media Adviser may have become apparent sooner.

2.34 The Ministerial Staff Code of Conduct, which took effect on 1 July 2008, states that Ministerial staff must disclose, and take reasonable steps to avoid, any conflict of interests (real or apparent) in connection with their employment, noting that staff are required to provide their employer with a Statement of Private Interests.⁴⁷ This was the first occasion on which a Ministerial Staff Code of Conduct had been issued, such that there was no extant policy guidance in place at the time PM&C engaged CMAX Communications.

2.35 In deciding whether an actual conflict of interest existed, the first report provided to the Government Staffing Committee noted that there was no evidence found of any involvement on the Defence Minister's Adviser's part or of any influence exerted by him in relation to the letting or the carrying out of the contract. The report also noted that there was no evidence found that anything had been done in the letting or carrying out of the contract for the purpose of advancing the Adviser's interests.⁴⁸ The report concluded that there was no actual conflict of interest arising from the Defence Minister's Adviser's connection with CMAX Communications and his employment as a member of ministerial staff. Nevertheless, the report noted that there was the possibility of an appearance of conflict of interest arising from the Adviser's continued connection with CMAX Communications after he was employed as a member of Ministerial staff.⁴⁹ Subsequent inquiries, and evidence taken under oath by ANAO, supported this assessment.

2.36 On the evening of 29 February 2008, PM&C contacted CMAX Communications and offered it the 2020 Summit contract. The records examined by ANAO, and interviews with relevant individuals, confirmed that the decision to engage CMAX Communications was made by PM&C alone.

⁴⁷ Other relevant sections of the Ministerial Staff Code of Conduct state that Ministerial staff must: 'divest themselves, or relinquish control, of interests in any private company or business and/or direct interest in any public company involved in the area of their Ministers' portfolio responsibilities'; 'have no involvement in outside employment or in the daily work of any business, or retain a directorship of a company, without the written agreement of their Minister'; and 'not make improper use of their position or access to information to gain or seek to gain a benefit or advantage for themselves or any other person.'

⁴⁸ The Defence Minister's Media Adviser, and the CMAX Communications employee interviewed for the Summit engagement, each advised ANAO at interview that they considered there would have been a conflict of interest in CMAX Communications undertaking work in the Defence portfolio after the Managing Director had become the Defence Minister's Media Adviser.

⁴⁹ In his response to the report, the Defence Minister's Adviser noted that he agreed with the findings that in order to avoid even the possibility of an appearance of a conflict of interest, it would have been better placed to have given up his directorship in CMAX Communications in a more timely manner.

Assessment of the proposed fee

Government Communications Unit Register of Consultants

2.37 The former Government Communications Unit (GCU) within PM&C previously administered a list of communications suppliers (referred to as the Consultants Register). The Consultants Register was drawn upon by the GCU in advising agencies of potentially suitable consultants to participate in the development and delivery of communications campaigns. It contained over 600 suppliers, although a proportion of these companies specialised in ancillary services such as technical writing, graphic design, and video production. The Consultants Register ceased to operate after the change in Government advertising arrangements that resulted from the change of government after the November 2007 Federal election.

2.38 Firms wishing to be considered for work on Government advertising campaigns had been able to register with the GCU at any time. Registrations were not invited by public advertisement and the GCU did not conduct any systematic assessment of the merits of firms who had registered nor was there any structured process to validate the claims made by firms through the registration process. In this respect the register was neither a multi-use list nor a panel as defined in the CPGs. Specifically:

- the CPGs define a multi-use list as a list of pre-qualified businesses who have satisfied the conditions for participation for inclusion that is intended for use in more than one procurement process. A multi-use list involves an initial open approach to the market (to establish the list) being used to inform future select tender processes. Specifically, an agency may invite some or all businesses included on a multi-use list to participate in a procurement, providing that the property or services sought are consistent with those described in the approach to the market that was used to form the multi-use list;⁵⁰ and
- panels are typically established following a tender process, with contracts or deeds of standing offer (panel arrangements) entered into for the provision of identified property or services. The CPGs state that:

A panel is defined as an arrangement under which a number of suppliers, usually selected through a single procurement process, may each supply property or services to an agency (or agencies where it is intended that a

⁵⁰ It is possible to establish a multi-use list in a way that enables suppliers to seek placement on the list at any point in time. This can be of value in sectors that are characterised by rapid transformation, mergers, acquisitions, and movements of key personnel.

number of agencies will access the panel arrangements). The respective panel arrangements must contain minimum requirements, usually including an indicative or set price or rate as appropriate for the property or services to be procured in the period of the panel arrangement.⁵¹

2.39 A key difference between a multi-use list and panel relates to the stage in the engagement process at which tendering occurs. For a multi-use list, the request for application for inclusion on the list must either be published continuously or re-published annually and this list forms the basis for identifying potential suppliers, some or all of which may at a later time be invited to tender for an individual engagement. By way of comparison, a panel is established through a procurement process and providers can be engaged without the need to conduct a further procurement process. Effectively implemented, either approach is able to provide value for money (which is the core principle underpinning Australian Government procurement).

2.40 An examination of the operation of the register, and experience in other jurisdictions with procuring advertising, media management and related consultants, has been undertaken as part of another audit ANAO is undertaking (titled *The Administration of Contracting Arrangements in relation to Government Advertising to November 2007*). That work indicates that there is scope to enhance efficiency and effectiveness, along with accountability and transparency, in centrally managed processes for consultant engagement by ensuring that:

- access to any panel or multi-use list is publicly notified with competitive selection based on documented criteria leading to a defined term of appointment;
- ongoing membership of any panel is subject to regular review (for example at the end of fixed terms);
- the administrative arrangements provide a record of the number of times that consultants are considered for selection, the jobs for which they are selected and their performance in those jobs; and
- the use of consultants that have not been subject to a systematic prequalification be subject to the normal procurement provisions relating generally to the purchase of specialist services.

⁵¹ Department of Finance and Deregulation, *Commonwealth Procurement Guidelines*, Financial Management Guidance No. 1, 2008, p. 32.

2.41 From April 2009, it will be mandatory for FMA Act agencies undertaking advertising and information campaigns valued at over \$250 000 to use a multi-use list when engaging specialist communications providers. This list is to be continuously notified on AusTender.

2.42 ANAO notes that it is not only in respect to campaign advertising that agencies have found it necessary to engage specialist communications consultants in timeframes that have prevented an open approach to the market. ANAO raised with Finance the merits of also implementing coordinated procurement arrangements (such as a panel or multi-use list) for media and communications adviser services that balances the time imperatives that can exist when contracting for these types of services and the importance of open and effective competition in Australian Government procurement processes. However, Finance advised ANAO that:

Finance does not believe that there is a compelling case to justify the establishment of a mechanism for the coordinated procurement of media and communications advisers.

2007-08 Annual Report data collated by the ANAO indicates that around two-thirds of media and public relations consultancies were competitively sourced. While other data derived from AusTender suggests that only half of reported contracts for media and communications advice over a nine month period involved competitive sourcing, the ANAO's own analysis suggests that these are likely to involve smaller value and therefore lower risk projects.

Finance is not convinced that the amount of expenditure on media and communications advice consultancies across government is at a level that would warrant the cost and complexity of centralising the procurement of these services.

CMAX Communications inclusion on the Register of Consultants

2.43 CMAX Communications submitted a Consultant Registration Form to the GCU, which was entered into the GCU data base on 28 February 2007. The Consultant Registration Form contained a number of details about the company, including: contact details; the number of employees; a contact point; details of executives; ownership details; the company's core business; current clients; and recent projects.

2.44 On Wednesday 27 February 2008, PM&C produced an extract from the Consultant Register listing 88 firms, including CMAX Communications. PM&C records and ANAO interviews of officials did not reveal the parameters used to produce the list. The PM&C Project Director for the Summit and the

Assistant Secretary responsible for the Summit Secretariat each advised ANAO that the list was used, not to identify potential suppliers as had been suggested by documentation of the spending approval (see paragraph 2.29), but to derive some assurance that CMAX Communications was a recognised supplier of media management services to the Australian Government.

2.45 In addition, PM&C's documented spending approval referred to the Consultants Register as a panel. However, as noted, this was not accurate.

Fee comparisons

2.46 As the Consultants Register was not established as a panel, it did not include any information on rates that listed firms would charge for their services. In this respect, the PM&C documentation of the spending approval (see paragraph 2.29) incorrectly suggested that a price was negotiated with CMAX Communications that was 'lower than that offered under the panel arrangement'. On this issue, the evidence to ANAO was that this advice had been provided by officials who had previously been employed in the GCU and that, in any event, the rate of \$1 300 per day (plus GST) was considered reasonable having regard to the individual's previous experience and the work likely to be required of CMAX Communications.

2.47 Against this background, ANAO analysis indicates that the Summit rate was comparable to contracts entered into by CMAX Communications with the Australian Government prior to the 2020 Summit Agreement. For example, the Department of Health and Ageing contract, signed in February 2007, involved a rate of \$1 364 per day (plus GST) for a maximum of 20 days. CMAX Communications' daily rate was significantly less for its final contract with the Defence Materiel Organisation. For this contract,⁵² CMAX Communications' rate was \$15 416.66 (plus GST) a month, or approximately \$771 (plus GST) a day.⁵³ However, the engagement had extended for a considerably longer period (one year) than the 2020 Summit contract, with the engaged individual operating in an employee-like manner.

2.48 The rate charged by CMAX Communications for the 2020 Summit was also reasonable having regard to rates charged by communications consultants in other contractual arrangements examined by ANAO in recent years.

⁵² A contract was signed on 18 August 2006 between the Defence Materiel Organisation and CMAX Communications. The duration of this contract was one year. However, it was subsequently amended on three separate occasions. The monthly rates did not change for any of these amendments.

⁵³ Assuming 20 working days each month.

Recommendation No.1

2.49 ANAO *recommends* that the Department of the Prime Minister and Cabinet enhance transparency and accountability relating to decisions to spend public money on consultants by improving its documentation of the engagement process, so as to provide an accurate record of inquiries undertaken and the key reasons for the decisions.

Agency response

2.50 PM&C agreed with the recommendation.

3. Contract management

This chapter examines the effectiveness of PM&C's management of the CMAX Communications contract for the 2020 Summit.

Background

3.1 The aim of contract management is to ensure that deliverables are provided to the required standard, within the agreed time frame and achieve value for money.⁵⁴ Risks to successful contract management are likely to arise from a number of sources. These include:

- contract management capability (for example, failure to have sufficiently skilled and experienced resources to effectively manage the contract);
- contractor performance (for example, failure to adhere to agreed budget);
- changes in circumstances and/or requirements (for example, contract changes not dealt with as contract variations); and
- stakeholder relationships (for example, differing and/or conflicting stakeholder expectations).⁵⁵

3.2 PM&C's contracted internal audit provider conducted an audit of 2020 Summit related procurement. The objective of the audit was to determine if all PM&C procurement policies and procedures were adhered to for all 2020 Summit related procurement, but not whether the procurement was reasonable or justified or to offer a view on the efficiency or effectiveness of PM&C's processes. The audit involved: a review of PM&C policies and procedures surrounding procurement; the preparation of a compliance checklist based on PM&C procurement policies and procedures; assessment of all 2020 procurements against the compliance checklist; and preparation of an exception based report.

3.3 The internal audit was finalised in August 2008. It identified a number of deficiencies in the 2020 Summit procurement, including in relation to: FMA

⁵⁴ Australian National Audit Office, *Better Practice Guide—Developing and Managing Contracts: Getting the Right Outcome, Paying the Right Price*, February 2007, Canberra, p. 72.

⁵⁵ *ibid.*, pp. 92-93.

Regulation 9 approvals; the gazettal of contract amounts; and adherence to PM&C's documented procedures on obtaining quotations.

Contract preparation and signature

3.4 The contract development phase is critical to achieving the outcomes sought by the acquiring entity. It also facilitates the effective management of the contract.⁵⁶ A written contract is generally accepted as the appropriate means of managing procurement risk, particularly to specify requirements such as price, performance, duration, termination, confidentiality, risk management and intellectual property.⁵⁷ Contracts need to be sufficiently comprehensive to facilitate timely delivery of goods or services that meet specified performance measures and provide value for money.⁵⁸

3.5 CMAX Communications commenced work with the PM&C Summit secretariat on Monday 3 March 2008. On Wednesday 5 March 2008, PM&C prepared a contract, which was signed by both PM&C and CMAX Communications on Thursday 6 March 2008.

The contract document

3.6 The contract was based on a standard PM&C short form template. Standard form contracts are useful for the consistency, predictability and efficiency of contract development and other aspects of contracting, such as finalising the contract and its later management.⁵⁹ However, care needs to be taken when using a standard form contract to ensure that modifications and additions made do not alter the meaning of the contract, and that important information is not inadvertently omitted. In this respect, ANAO observed a number of shortcomings with the document (which was referred to as a 'Letter of Offer'.) Some of the shortcomings in the document related to poor cross-referencing throughout the document, which undermines the ability of the contract to effectively govern the relationship.⁶⁰

⁵⁶ *ibid.*, p. 16.

⁵⁷ *ibid.*, p. 22.

⁵⁸ *ibid.*, p. 22.

⁵⁹ *ibid.*, p. 23.

⁶⁰ For example, clause 4.1 of the contract stated: 'Except as provided by this clause 5...', which should have referred to clause 4. In addition, clauses 4.5, 4.6 and 4.7 of the contract all referred to clause 5.4 but there was no clause 5.4 in the contract and clause 5.4 in Attachment A to the contract related to intellectual property. Clause 4.7 of the contract also stated: '...before the Supplier is entitled to payment of an amount under clause 4.1', but this should have referred to clause 3.1.

3.7 The most significant shortcoming in the contract related to the document not specifying the name of the individual that was to deliver the contract services. Specifically, under the definitions in Attachment A to the contract, 'Specified Personnel' is defined as 'the officers, employees, agents and subcontractors of Contractor listed in paragraph 3.2 of the Letter of Offer.' However, paragraph 3.2 in the Letter of Offer refers to fees. The 'Specified Personnel' were not otherwise identified anywhere in the contract. This is not sound practice where the intention is to enter into a contract to obtain the services of a particular individual.

Delivery of contracted services

3.8 The joint ANAO/Finance Better Practice Guide on Developing and Managing Contracts advocates that:

Contract evaluation should encompass the overall performance of the contractor and of the acquiring entity. The evaluation of the operation of the contract and of contract outcomes can be very useful in understanding and improving overall contract management, improving contractor performance and can assist in future stakeholder decision-making. An evaluation should be undertaken at the end of all contracts.⁶¹

3.9 However, PM&C did not undertake formal post-contract evaluations of the services provided by the various 2020 Summit contractors, including CMAX Communications. In addition, whilst ANAO understands some discussions were had within PM&C and an internal audit of procedural compliance was undertaken (see paragraph 3.2), a broader post-project review was also not undertaken to identify project management lessons for any future events similar in organisation to the 2020 Summit. There would be benefit in PM&C considering undertaking this form of analysis following any future major events it is asked to organise.

3.10 In accordance with its contract, CMAX Communications worked to raise awareness of the Summit and its objectives and to encourage and manage media coverage of the Summit in the lead up to, and during, the event. Delivering these services involved CMAX Communications working with the Summit Steering Committee to organise interviews and have articles placed in national and local media.

3.11 ANAO discussed CMAX Communications' performance with PM&C's contracted Project Director and the Assistant Secretary in charge of the Project

⁶¹ Australian National Audit Office and the Department of Finance and Administration, op. cit., p. 104.

Secretariat. Each emphasised the continuous nature of the work and the long hours that were involved and, in this context, the energy and commitment that had been demonstrated. In addition, positive feedback in respect to the work of CMAX Communications was provided in writing by three of the individuals that led one of the ten key discussion areas of the Summit, as well as by the Secretary of PM&C.

Contract payments

3.12 Under clause 3.1 of the Letter of Offer of the Agreement between CMAX Communications and PM&C, CMAX Communications was to receive \$1 300 per day (plus GST) for a period of no more than 40 working days. This was equal to a maximum payment of \$52 000 (plus GST). However, in total CMAX Communications was paid \$56 358 by PM&C (plus GST).

3.13 CMAX Communications provided three invoices to PM&C. The first payment related to Invoice Number 2008/01, dated 8 April 2008. This invoice was for communication services provided from 10 March to 8 April 2008. The invoice stated that 27 of the 30 calendar days in this period had been worked. The invoice total was \$35 100 (plus GST).

3.14 The second invoice, Number 2008/02, dated 24 April 2008, was for communication services from 9 April to 24 April 2008. The invoice stated that services were provided on each of the 16 calendar days in this period. The amount charged in the invoice for services was \$20 800 (plus GST). In addition to the amount charged for services, the invoice contained an amount to cover the reimbursement of mobile phone calls (\$458 plus GST). In paying this invoice, PM&C exceeded the total amount CMAX Communications was to be paid under the Agreement, but there is no documented evidence that this issue was identified prior to the payment being made.

3.15 The third and final invoice, Number 2008/03, was dated 3 June 2008. This invoice was for communication services from 3 March to the 7 March 2008 (that is, for the work undertaken at the beginning of the engagement). The invoice stated that five days were worked in this period. The amount charged in the invoice for services was \$6 500 (plus GST). Attached to the invoice was a letter from CMAX Communications stating that the first invoice did not reflect the correct start date of 3 March 2008. PM&C wrote to CMAX Communications in June 2008, indicating that it would not pay the invoice, on the basis that the contract could not be varied to increase the number of days payable.



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