

Western Sydney Airport Procurement Activities

WSA Co Limited

© Commonwealth of Australia 2019

ISSN 1036–7632 (Print)

ISSN 2203–0352 (Online)

ISBN 978-1-76033-504-5 (Print)

ISBN 978-1-76033-505-2 (Online)

Except for the content in this document supplied by third parties, the Australian National Audit Office logo, the Commonwealth Coat of Arms, and any material protected by a trade mark, this document is licensed by the Australian National Audit Office for use under the terms of a Creative Commons Attribution-NonCommercial-NoDerivatives 3.0 Australia licence. To view a copy of this licence, visit <http://creativecommons.org/licenses/by-nc-nd/3.0/au/>.

You are free to copy and communicate the document in its current form for non-commercial purposes, as long as you attribute the document to the Australian National Audit Office and abide by the other licence terms. You may not alter or adapt the work in any way.

Permission to use material for which the copyright is owned by a third party must be sought from the relevant copyright owner. As far as practicable, such material will be clearly labelled.

For terms of use of the Commonwealth Coat of Arms, visit the *It's an Honour* website at <https://www.pmc.gov.au/government/its-honour>.

Requests and inquiries concerning reproduction and rights should be addressed to:

Senior Executive Director
Corporate Management Group
Australian National Audit Office
19 National Circuit
BARTON ACT 2600

Or via email:

communication@anao.gov.au.



Canberra ACT

4 December 2019

Dear Mr President
Dear Mr Speaker

In accordance with the authority contained in the *Auditor-General Act 1997*, I have undertaken an independent performance audit in WSA Co Limited. The report is titled *Western Sydney Airport Procurement Activities*. I present the report of this audit to the Parliament.

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

Yours sincerely



Grant Hehir
Auditor-General

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

AUDITING FOR AUSTRALIA

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

For further information contact:
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Phone: (02) 6203 7300
Fax: (02) 6203 7777
Email: ag1@anao.gov.au

Auditor-General reports and information about the ANAO are available on our website:
<http://www.anao.gov.au>

Audit team

Tracey Bremner
Dr John Cusbert
Brian Boyd

Contents

Summary and recommendations.....	7
Background	7
Conclusion	8
Supporting findings.....	8
Recommendations.....	10
Summary of entity responses	10
Key messages from this audit for all Australian Government entities	11
Audit findings.....	13
1. Background	14
Introduction	14
Rationale for undertaking the audit	15
Audit approach	15
2. Procurement framework	17
Was a procurement framework in place before procurement activities commenced?	17
Did the procurement framework draw appropriately from the Commonwealth Procurement Rules?	20
Was the procurement framework complied with?	23
3. Open and competitive procurement	28
To what extent has WSA Co employed open tender processes?	28
Was market interest generated and were sufficient numbers of competitive proposals received?	33
Was competition encouraged and competitive tension maintained?	38
What was the basis for the use of limited approaches to market in 2017–18 for advisor and consultancy services?	39
Was the evaluation and shortlisting of proposals appropriate, transparent and consistent with the approach to market?	46
Was probity maintained and were conflicts of interest managed?	49
4. Obtaining value for money	52
Were financial and non-financial costs and benefits adequately considered?	53
Were selected proposals expected to fulfil all requirements at an acceptable level of risk and cost?	54
Was documentation maintained on how value for money was considered and achieved (including appropriate use of benchmarking data)?	56
Did WSA Co fulfil its requirement to notify Shareholder Ministers of its procurement activities?	58
Appendices	61
Appendix 1 Entity responses	62
Appendix 2 Statement of Expectations for WSA Co Limited	67



Audit snapshot

Auditor-General Report No.16 2019–20

Western Sydney Airport Procurement Activities



Why did we do this audit?

- ▶ The significant value of WSA Co's procurement activities.
- ▶ It follows on from the performance audits of the procurement activities in two other Government Business Enterprises (the Australian Rail Track Corporation and the Moorebank Intermodal Company), which were also completed at the request of the Joint Committee of Public Accounts and Audit.



What did we find?

- ▶ WSA Co now has an appropriate procurement framework in place, with procedures and systems that support compliance.
- ▶ WSA Co identified and addressed some early poor practices, such as poor record keeping and frequent contract variations.
- ▶ WSA Co's procurement activities have mostly been open and competitive.
- ▶ Value for money outcomes were, in large part, demonstrably obtained.



Key facts

- ▶ WSA Co was established in August 2017 to construct and operate a new airport in Western Sydney. The airport is scheduled to open in December 2026.
- ▶ WSA Co is a Government Business Enterprise. It is wholly owned by the Australian Government, and its primary focus is on procurement, however it is not subject to the Commonwealth Procurement Rules.
- ▶ The Australian Government expects WSA Co 'to undertake the procurement of goods and services to a high standard, to achieve value for money, and ensure appropriate financial and probity controls are in place'.



What did we recommend?

- ▶ The Auditor-General made two recommendations directed at the Department of Finance relating to: better enabling Government Business Enterprises to take advantage of government procurement panels; and requiring such Enterprises to use AusTender to publicise their procurement opportunities and report on procurement results.
- ▶ The Department of Finance agreed to the first recommendation and noted the second recommendation.

\$5.3 billion

over 10 years from 2017–18 has been committed to the project by the Australian Government.

\$599 million

in goods and services were procured by WSA Co under 189 contracts within its first two years of operation.

67%

of these contracts by value, or 19% by number, were let by open tender or using a panel established by open tender.

Summary and recommendations

Background

1. WSA Co Limited (WSA Co) is a Government Business Enterprise incorporated under the *Corporations Act 2001 (Cth)* and operating under the *Public Governance, Performance and Accountability Act 2013*. The Australian Government established WSA Co in August 2017, and its ownership interest in WSA Co is represented by the Minister for Finance and the Minister for Population, Cities and Urban Infrastructure.
2. WSA Co's obligations are set out in a Project Deed signed with the Australian Government in October 2017. It is to plan, construct and operate the Western Sydney International (Nancy-Bird Walton) Airport. The Australian Government has committed up to \$5.3 billion and expects WSA Co 'to undertake the procurement of goods and services to a high standard, to achieve value for money, and ensure appropriate financial and probity controls are in place'.¹ WSA Co entered at least 189 contracts totalling \$599 million during the period covered by this audit, being August 2017 to June 2019.

Rationale for undertaking the audit

3. Under the *Auditor-General Act 1997* (the Auditor-General Act), the Auditor-General may conduct a performance audit of a wholly-owned Commonwealth company that is a GBE only on request by the Joint Committee of Public Accounts and Audit (JCPAA). Pursuant to the Auditor-General Act, in August 2018 the Auditor-General asked the JCPAA to request that the ANAO undertake a performance audit of WSA Co's procurement framework and procurement activities. The request drew attention to:
 - the significant value of WSA Co's procurement activities (with a project budget of up to \$5.3 billion over 10 years from 2017–18); and
 - performance audits of procurement activities that had been completed at the request of the JCPAA in two other Government Business Enterprises (the Australian Rail Track Corporation and the Moorebank Intermodal Company).²
4. A request from the JCPAA to conduct the proposed audit of WSA Co was received in September 2018.

Audit objective and criteria

5. The objective of the audit was to examine whether WSA Co's procurement framework and procurement activities are achieving value for money.
6. To form a conclusion against this objective, the following high-level criteria were applied:
 - Was an appropriate procurement framework developed in a timely manner?

1 Shareholder Ministers of WSA Co, 'Statement of Expectations for WSA Co Limited', 13 September 2017.

2 Auditor-General Report No.9 2017–18 *Management of the Pre-construction Phase of the Inland Rail Programme*, Auditor-General Report No.23 2017–18 *Delivery of the Moorebank Intermodal Terminal* and Auditor-General Report No.9 2018–19 *Procurement Processes and Management of Probity by the Moorebank Intermodal Company*.

- Were the procurement activities open and competitive?
- Were value for money outcomes demonstrably obtained?

Conclusion

7. WSA Co's procurement framework and procurement activities are largely achieving value for money.
8. WSA Co now has in place an appropriate procurement framework. The company was slow to develop a procurement framework, with significant procurement activity undertaken before a framework was in place. The company now has procedures and systems that support compliance with its procurement framework, having identified and addressed some early poor practices.
9. WSA Co's procurement activities have mostly been competitive and, particularly for the higher value procurements, conducted through open approaches to the market. In the early procurements, non-competitive processes were often used to engage and re-engage advisory firms due, to some extent, to the deadlines imposed on WSA Co during its establishment phase. Public disclosure of procurement outcomes has been limited.
10. Value for money outcomes were, in large part, demonstrated. Key to this was the adoption of selection processes that considered financial and non-financial costs and benefits, and WSA Co choosing candidates that had been assessed as best meeting the relevant evaluation criteria. Where value for money outcomes had not been demonstrated, for the highest value contract this was primarily the result of insufficient analysis being presented and for the remainder this was the result of poor record keeping practices.

Supporting findings

Procurement framework

11. A procurement framework was not in place before procurement activities commenced. The framework was progressively developed, with an overarching Procurement Plan for the delivery of the airport in place by January 2018. WSA Co's Procurement Policy and Procurement Manual were finalised in November 2018. By November 2018, 124 contracts for corporate and enabling activities had commenced. Four of these contracts accounted for 85 per cent of the \$529 million total value.
12. The company's procurement framework drew appropriately from the Commonwealth Procurement Rules except in relation to the threshold for requiring an open approach to the market. It set its threshold relatively high at \$5 million given it included non-construction services. In September 2019 the threshold was reduced to \$400,000, which aligns with the Commonwealth Procurement Rules and implements a decision taken by the WSA Co Board at its first meeting in August 2017.
13. The highest-value procurements complied with WSA Co's procurement framework. Beyond this, compliance was mixed in 2017 and 2018, including inadequate record keeping. WSA Co undertook a series of initiatives to identify and address compliance issues. This included creating procurement records retrospectively and then leaving those records undated, an approach that is inconsistent with the principles of probity and ethics. WSA Co achieved broad compliance with its framework by the end of 2018–19.

Open and competitive procurement

14. WSA Co employed an open tender process, or used an arrangement established by open tender, for 19 per cent of its contracts by number or 67 per cent by value.

15. Market interest was generated by WSA Co in the nine open tenders it had conducted. Sufficient numbers of competitive proposals were received for the eight open tenders where adequate records were available for ANAO analysis. There has been limited public reporting on procurement activities, with only eight contracts reported on WSA Co's website as at June 2019. An improved approach was recently introduced, with the report expanding to cover 69 contracts and nine panel arrangements by November 2019.

16. Competition was encouraged and competitive tension maintained for the majority of procurements conducted where a market existed. An area where competition was lacking related to the frequency with which contract variations significantly increased the total value of the engagement.

17. During WSA Co's establishment phase, the terms of the Project Deed created an environment that was not conducive to maximising value for money through open and competitive procurement. Particular pressure stemmed from an unnecessary requirement that WSA Co enter into \$300 million worth of design and construction contracts within 12 months of the new company being registered. This pressure was reflected in WSA Co using methods involving little to no competition to engage technical advisors and other consultants in 2017–18. Frequent and poorly documented contract variations significantly increased the total value of these engagements.

18. From mid-2018, technical and corporate advice was procured from panel arrangements that had been established by open tender. This was beneficial. The ANAO identified some room for further improvement.

19. For the majority of high-value procurements, the evaluation and shortlisting of proposals was appropriate, transparent and consistent with the approach to market. Beyond this, the degree of consistency was mixed. Common shortcomings included the evaluation criteria not being listed in the request documentation or being inconsistent with those then applied, or insufficient records being maintained. The likelihood of these shortcomings being repeated was reduced in 2019 with the introduction of improved processes by WSA Co.

20. Probity was maintained and conflicts of interest were managed.

Obtaining value for money

21. Financial and non-financial costs and benefits were adequately considered for 80 per cent of the procurements tested.

22. For the majority of procurements tested, the records demonstrated that WSA Co expected the selected proposals to fulfil all requirements at an acceptable level of risk and cost. The records of the highest value procurement did not adequately demonstrate the basis on which it was concluded that the successful tenderer would fulfil all requirements at an acceptable level of risk and cost.

23. For most procurements, adequate documentation was maintained on how value for money was considered and achieved. Practices were more robust for the competitive

procurements than for those that involved direct sourcing. WSA Co did not document why a \$25 million incentive payment it offered to the market as part of the Delivery Partner payment regime represented value for money.

24. WSA Co notified Shareholder Ministers of its procurement activities over the \$50 million threshold as required but not in accordance with the 10 business days required.

Recommendations

Recommendation no.1 Paragraph 3.14

To assist Government Business Enterprises obtain value for money from their procurement activities, the Department of Finance take steps to better enable those Enterprises to take advantage of coordinated and cooperative procurements, such as panel arrangements.

Department of Finance response: *Agreed.*

Recommendation no.2 Paragraph 3.45

The Department of Finance require Government Business Enterprises to use the AusTender website to publicise procurement activities and report on procurement results.

Department of Finance response: *Noted.*

Summary of entity responses

25. Summary responses from the Western Sydney Airport and the Department of Infrastructure, Transport, Cities and Regional Development are below, with full responses included in Appendix 1. The draft report was also provided to the Department of Finance and the response received is included in Appendix 1.

Western Sydney Airport (WSA) Board and Management

WSA acknowledges the positive findings in relation to the commercial approach and governance of procurement activities undertaken by WSA since incorporation in August 2017. WSA Board and Management are committed to continuous improvement and whilst noting no recommendations for WSA, the report highlights opportunities in record keeping and transparency of procurement outcomes, which have all been addressed.

Department of Infrastructure, Transport, Cities and Regional Development

The Department of Infrastructure, Transport, Cities and Regional Development (the Department) acknowledges the ANAO's overall conclusions and welcomes the recommendations.

Responsibility for the delivery of the Western Sydney International (Nancy-Bird Walton) Airport (the Airport) rests with WSA Co. The Department has an oversight role as both a Shareholder in WSA Co and as the Counterparty to the Project Deed. While WSA Co is required under the Project Deed to deliver a number of Project Plans, including the Procurement Plan, the Department only reviews these plans for the purpose of ensuring that they meet the requirements of the Project Deed.

The Department notes that the ANAO has concluded that WSA Co was under pressure to enter into \$300 million worth of design and construction contracts within 12 months of the company

becoming registered due to particular milestones included in the Project Deed. The Department is of the view that the milestones contained within the Project Deed were appropriate and part of a broader approach to overarching compliance with the Right of First Refusal obligations associated with the 2002 sale of Sydney (Kingsford Smith) Airport and to ensure that the Airport is completed within the Government's timeframe.

Key messages from this audit for all Australian Government entities

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

Procurement

- Entities not subject to the Commonwealth Procurement Rules can benefit from basing their procurement framework and practices on those Rules.
- Conducting procurement by open tender or by seeking multiple quotes generates competitive tension and this helps drive value. Competitive tension can be maintained by continuing negotiations with at least two suitable suppliers up to contract award stage.
- Where an entity foresees it may require additional works from a supplier in the future, it could pre-agree the price and terms during the initial approach to market and then include them as optional works in the contract. This approach takes advantage of the competitive tension generated, which typically results in better value for the purchaser than negotiating a contract variation with an incumbent supplier.
- Entities can optimise value for money outcomes by actively seeking to negotiate on price and on the allocation of risk.
- Benchmarking is particularly valuable in non-competitive procurements, as it is more challenging to establish that a single bid is a reasonable market price and represents value for money.

Governance and risk management

- Obtaining the benefits from probity advice requires that the engaging entity give the advisor appropriate authority and be responsive to any issues that are raised. Attendance at probity training, and the completion of probity awareness declarations, by staff can contribute to the understanding and maintenance of probity.
- Proactive engagement and leadership from senior management is necessary to establish a culture of performance and accountability. There is considerable potential for an entity to learn and to change when its management makes a clear decision to do so.

Audit findings

1. Background

Introduction

1.1 WSA Co Limited (WSA Co) is a Government Business Enterprise (GBE) incorporated under the *Corporations Act 2001 (Cth)* and operating under the *Public Governance, Performance and Accountability Act 2013*.³ It was established in August 2017 to develop and operate an airport in Western Sydney. The Australian Government has committed up to \$5.3 billion to deliver the airport and its ownership interest in WSA Co is represented by the Minister for Finance and the Minister for Population, Cities and Urban Infrastructure.

1.2 WSA Co is governed by a board of directors. Four Directors were appointed to the Board in August 2017 and they were joined by a further three Directors in November 2017. The Chief Executive Officer of WSA Co was appointed in February 2018.

1.3 WSA Co's obligations are set out in a Project Deed signed with the Australian Government in October 2017. Key Functional Specifications and an Airport Plan, both developed by the Australian Government, guide the design of the airport.⁴

1.4 WSA Co is responsible for the planning, construction and operation of the new airport, officially named the Western Sydney International (Nancy-Bird Walton) Airport. The airport site at Badgerys Creek is approximately 1,780 hectares, which is almost twice the size of the Sydney (Kingsford Smith) Airport site. It is to be a full-service airport capable of catering for domestic and international passengers as well as freight services. The airport is due to open December 2026.

1.5 Airport planning and construction involves substantial procurement activity. The Australian Government's Statement of Expectations (at Appendix 2) issued to WSA Co in September 2017 included:

Recognising the scale and national significance of Western Sydney Airport, and the substantial investment by the Commonwealth, WSA Co is to undertake the procurement of goods and services to a high standard, to achieve value for money, and ensure appropriate financial and probity controls are in place. WSA Co should maintain a high level of transparency, to give confidence to stakeholders in the integrity of WSA Co's procurement processes ...

WSA Co should ensure that the Western Sydney Airport is delivered in a way which:

- is an efficient, effective, transparent and ethical use of public resources ...
- achieves value for money for the Commonwealth ...

1.6 Work on the airport site is divided into two development phases, being the enabling activities and the main airport works. As at 30 June 2019, WSA Co had entered at least 189 contracts

3 WSA Co is one of the seven Commonwealth company GBEs defined in section 8 of the *Public Governance, Performance and Accountability Act 2013* and prescribed by section 5 (2) of the *Public Governance, Performance and Accountability Rule 2014*. There are also two corporate Commonwealth entities prescribed as GBEs by section 5(1) of this Rule.

4 The Key Functional Specifications, the Airport Plan and other technical and background documents are available from the Department of Infrastructure's Western Sydney Airport website at <https://www.westernsydneyairport.gov.au/media-resources/resources/technical-documents>.

for corporate and enabling activities totalling \$599 million and the first main airport works procurement was well underway.⁵

Rationale for undertaking the audit

1.7 Under the *Auditor-General Act 1997* (the Auditor-General Act), the Auditor-General may only conduct a performance audit of a wholly-owned Commonwealth company that is a GBE on request by the Joint Committee of Public Accounts and Audit (JCPAA). Pursuant to the Auditor-General Act, in August 2018 the Auditor-General asked the JCPAA to request that the ANAO undertake a performance audit of WSA Co's procurement framework and procurement activities. The request drew attention to:

- the significant value of WSA Co's procurement activities (with a project budget of up to \$5.3 billion over 10 years from 2017–18); and
- performance audits of procurement activities that had been completed at the request of the JCPAA in two other GBEs (the Australian Rail Track Corporation and the Moorebank Intermodal Company).⁶

1.8 A request from the JCPAA to conduct the proposed audit of WSA Co was received in September 2018.

Audit approach

Audit objective, criteria and scope

1.9 The objective of the audit was to examine whether WSA Co's procurement framework and procurement activities are achieving value for money.

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

- Was an appropriate procurement framework developed in a timely manner?
- Were the procurement activities open and competitive?
- Were value for money outcomes demonstrably obtained?

1.11 The audit scope covered examination of the procurement framework in place, and the procurement activities completed, between August 2017 and 30 June 2019. Due to probity sensitivities, the audit scope did not include any of the main airport works procurements, as the first major procurement ('Bulk Earthworks Package') was still in progress at 30 June 2019.

Audit methodology

1.12 The audit involved the collection and examination of WSA Co records, the examination of WSA Co's procurement platform and liaison with WSA Co staff. It also involved engagement with the two shareholder departments: the Department of Infrastructure, Transport, Cities and Regional Development (Department of Infrastructure); and the Department of Finance.

5 The successful tenderer for the first main airport works was announced on 1 September 2019.

6 Auditor-General Report No.9 2017–18 *Management of the Pre-construction Phase of the Inland Rail Programme*, Auditor-General Report No.23 2017–18 *Delivery of the Moorebank Intermodal Terminal* and Auditor-General Report No.9 2018–19 *Procurement Processes and Management of Probity by the Moorebank Intermodal Company*.

1.13 The ANAO examined WSA Co's procurement process through to contract signing stage for all 189 contracts identified as falling within the scope of this audit, which in total were valued at \$599 million. Sampling was used to test for specific issues, as outlined in the report. The ANAO also examined WSA Co's processes to establish procurement arrangements such as its panel of technical services suppliers. The financial values that appear in this audit report are exclusive of GST unless otherwise specified.

1.14 The audit was conducted in accordance with ANAO Auditing Standards at a cost to the ANAO of \$268,000.

1.15 The team members for this audit were Tracey Bremner, Dr John Cusbert and Brian Boyd.

2. Procurement framework

Areas examined

The ANAO examined whether an appropriate procurement framework was developed in a timely manner.

Conclusion

WSA Co now has in place an appropriate procurement framework. The company was slow to develop a procurement framework, with significant procurement activity undertaken before a framework was in place. The company now has procedures and systems that support compliance with its procurement framework, having identified and addressed some early poor practices.

2.1 WSA Co is a Commonwealth company and a GBE for the purposes of the *Public Governance, Performance and Accountability Act 2013* (the PGPA Act). An objective of the PGPA Act is 'to require Commonwealth companies to meet high standards of governance, performance and accountability.' The ANAO's expectation was that the governance arrangements established by WSA Co would include an appropriate procurement framework, given the significance of procurement to fulfilling the Australian Government's purpose for establishing the company.

2.2 WSA Co is not required to comply with the Commonwealth Procurement Rules issued under the PGPA Act and so could develop its own framework. A suitable procurement framework of policies and procedures is one that clearly conveys the Board's expectations, facilitates consistent good practice and achieves value for money. The Commonwealth Procurement Rules provide a benchmark of good practice in procurement, with achieving value for money being the core rule. It is also good practice for entities to obtain assurance on compliance with their procurement framework and on the effectiveness of systems and processes that support compliance.

Was a procurement framework in place before procurement activities commenced?

A procurement framework was not in place before procurement activities commenced. The framework was progressively developed, with an overarching Procurement Plan for the delivery of the airport in place by January 2018. WSA Co's Procurement Policy and Procurement Manual were finalised in November 2018. By November 2018, 124 contracts for corporate and enabling activities had commenced. Four of these contracts accounted for 85 per cent of the \$529 million total value.

Procurement Plan

2.3 The Australian Government established WSA Co in August 2017. WSA Co is required to execute its responsibilities in accordance with a Project Deed signed in October 2017. This included a requirement to submit a Procurement Plan to the Australian Government no later than 60 business days after the Project Deed commenced. In accordance with requirements, the Procurement Plan was submitted to the Department of Infrastructure in January 2018 and included:

- a strategy for how WSA Co would conduct procurement processes;

- a timetable for the conduct of the procurement processes, which provided for each milestone under the Project Deed to be achieved by the relevant date; and
- particulars of how the main design and construction works would be separated into packages.

2.4 Work on the airport site is divided into two development phases: enabling activities; and main airport works. The main airport works are themselves divided into multiple packages. The Procurement Plan stated it was an overarching document that would be updated upon finalisation of each standalone procurement plan for each main airport works package. This approach is consistent with the Project Deed, which required WSA Co to update the Procurement Plan to take into account changes that affect the manner in which it carries out the project activities.

2.5 WSA Co submitted an updated Procurement Plan in July 2018 that incorporated its finalised procurement plan for the first of the main airport works packages, being the Bulk Earthworks Airside Civil Works. This was in advance of inviting Expressions of Interest to undertake the first sub-package of those works (the Bulk Earthworks Package) in August 2018.

2.6 The Procurement Plan was updated again and submitted in May 2019. The update reflected progress made and responded to comments provided by the Department of Infrastructure on the July 2018 version. The Department advised the ANAO in June 2019 that it reviews each Procurement Plan submitted so as to:

- check that the Company had the understanding, capacity and capability at all times to carry out the Project Activities in accordance with [the project] deed;
- check that the Works and the Stage 1 Airport comply with this deed; and
- understand how the Company will achieve the performance outcomes specified in this deed and otherwise fulfil its obligations under this deed.

Procurement Policy and Manual

2.7 The minutes of the December 2017 meeting of the Board record that,

The Board requested that procurement controls and policies be returned to the Board for consideration in February [2018], including more detail on the delegation of authority. The Board requested that the policies consider the recent Australian National Audit Office performance audits.

2.8 WSA Co management presented a draft Procurement Policy and Procurement Manual to its Board in November 2018, which was 15 months after the company's establishment and nine months later than requested by the Board. Associated advice to the Board included that:

During the period where there was no formal approved Procurement Policy and Manual, WSA actively considered procurement risks by:

- Developing the overarching Procurement Plan, which was submitted to the Commonwealth in January 2018;
- Putting in place detailed procurement documentation to support major tender processes;
- Appointing a Probity Advisor in December 2017;
- Running workshops (including relevant learnings from previous ANAO reports) with Management to discuss procurement best practise; and

- Minimum requirements for procurement guidelines issued to all employees on 5 July 2018.

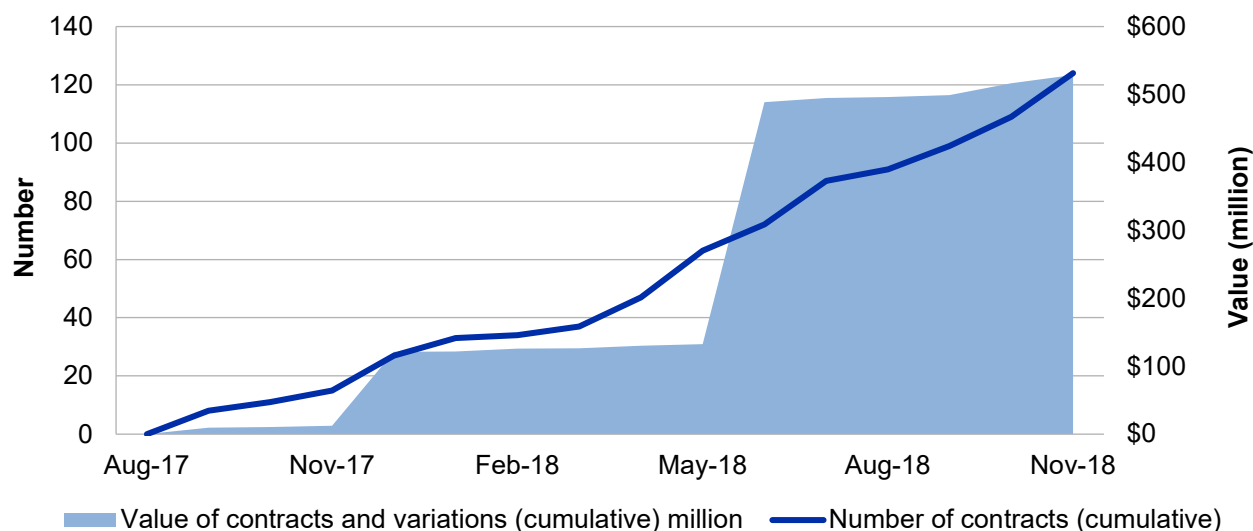
2.9 The above referenced ‘minimum requirements for procurement guidelines’ was a table containing little information but, importantly, specifying the quotation requirements for procurements at each of four expenditure levels. This table was replaced when the Procurement Manual was approved. It contained a substantially more detailed table of minimum requirements divided into five expenditure levels (referred to as ‘procurement tiers’).

2.10 The Procurement Policy and Manual were approved by the Board on 19 November 2018 and circulated to all staff on 30 November. The stated purpose of the:

- Procurement Policy was ‘to outline the minimum standards for carrying out all procurement activity on behalf of WSA’ and to describe ‘the scope, procurement framework, fundamental principles, and governance applicable to all WSA procurement activities’; and
- Procurement Manual was ‘to outline the actions and responsibilities for carrying out procurement on behalf of WSA’.

2.11 By the time that the Procurement Policy and Manual were circulated, 124 contracts for corporate and enabling activities⁷ had already commenced. Their value totalled \$528.7 million, inclusive of variations agreed by 30 November 2018. The cumulative number and value of the contracts commencing by month is outlined at Figure 2.1

Figure 2.1: Contracts that commenced before the Procurement Policy and Procurement Manual were in place



Source: ANAO analysis of WSA Co records.

2.12 Four major procurements accounted for \$449.5 million (85 per cent) of the \$528.7 million. The December 2017 jump in contract value visible in Figure 2.1 related to the relocation of a 3.2 kilometre section of aboveground high-voltage transmission line to an underground cable route. The more substantial June 2018 jump resulted from the contracts awarded for Early Earthworks,

⁷ The term ‘enabling activities’ was used to denote the physical activities to be undertaken at the Badgerys Creek site before the main airport works construction program began.

the Delivery Partner and the Project Manager (Definition). Their timing was driven by a requirement included in the Project Deed that \$300 million worth of design and construct contracts be entered into within 12 months of the new company being established (see paragraphs 3.54 to 3.63).

Supporting corporate policies

2.13 The Procurement Policy and Manual were produced subsequent to a suite of other corporate governance policies.

2.14 At its inaugural August 2017 meeting, the Board approved an Interim Delegation of Authority Framework, a Continuous Disclosure Policy, a Workplace Health and Safety Policy, a Superannuation Policy, a Recruitment and Selection Policy, and (subject to amendment) a Remuneration and Benefits Policy and a Conflict of Interest Policy (Directors).

2.15 Finalised policies of particular relevance to procurement were issued as follows:

- October 2017: Corporate Credit Card Policy and Expense Reimbursement Policy (both updated October 2018);
- March 2018: Delegations of Authority Policy (updated November 2018) and Risk Management Policy;
- June 2018: Code of Conduct, Conflict of Interest (Employees and Contractors), and Fraud and Corruption Control Policy; and
- October 2018: Gifts and Benefits Policy.

Did the procurement framework draw appropriately from the Commonwealth Procurement Rules?

The company's procurement framework drew appropriately from the Commonwealth Procurement Rules except in relation to the threshold for requiring an open approach to the market. It set its threshold relatively high at \$5 million given it included non-construction services. In September 2019 the threshold was reduced to \$400,000, which aligns with the Commonwealth Procurement Rules and implements a decision taken by the WSA Co Board at its first meeting in August 2017.

2.16 Under Section 105B of the *Public Governance, Performance and Accountability Act 2013* the Finance Minister is able to prescribe that identified corporate Commonwealth entities and/or wholly-owned Commonwealth companies comply with the Commonwealth Procurement Rules (CPRs). At the time of this audit, 24 corporate Commonwealth entities were prescribed as being required to comply with the CPRs. No Commonwealth companies were prescribed.

2.17 Following an audit by the ANAO of procurement activities by a corporate Commonwealth entity (Airservices Australia) in September 2017, the JCPAA commented that 'corporate Commonwealth entities not subject to the CPRs should more closely model their procurement arrangements on the CPRs as a matter of best practice'.⁸

8 Joint Committee of Public Accounts and Audit Report 465, *Commonwealth Procurement*, September 2017, p. 10.

2.18 A January 2019 update by the Department of Finance of its guidance to corporate Commonwealth entities contained a sub-section directed at entities not subject to the CPRs, such as WSA Co, which stated that:

Entities that are not prescribed under section 30 of the PGPA Rule are not required to follow the Commonwealth Procurement Rules (CPRs), however the principles in the CPRs have been developed to reflect best procurement practice and entities are encouraged to consider them when making procurement decisions.⁹

2.19 In September 2019, the department advised the ANAO that:

WSA Co is a Commonwealth Company, not a corporate Commonwealth entity. The findings from [JCPAA] Report 465: *Commonwealth Procurement* do not suggest compliance with the CPRs by Commonwealth Companies such as WSA Co.

Finance has advised GBEs that they should consider the principles of the CPRs in developing their procurement practice, that is not to say that they should adopt the thresholds and detailed practices outlined in the CPRs that must be complied with by non-corporate Commonwealth entities and prescribed corporate Commonwealth entities.

Under the PGPA Act, while the Minister for Finance can make provisions about procurement for GBEs (CCEs or Commonwealth companies), he has not done so as GBEs operate commercially within the market and at an arms-length from Government.

Adoption of the Commonwealth Procurement Rules as a benchmark

2.20 The CPRs are the keystone of the government's procurement policy framework and achieving value for money is the core rule. They therefore provide useful guidance to WSA Co when establishing a procurement framework that would fulfil the Australian Government's expectations that 'WSA Co is to undertake the procurement of goods and services to a high standard, to achieve value for money, and ensure appropriate financial and probity controls are in place.'¹⁰ Consistent with this, a decision taken by the WSA Co Board at its first meeting of August 2017 was that:

All contracts over \$400,000 must be approved to proceed to procurement by the relevant Committee and will follow the Commonwealth Procurement Rules where possible including in relation to the mode of procurement.

2.21 Open tender is the default mode of procurement for purchases valued over \$400,000 (or \$7.5 million for construction services, GST inclusive) for prescribed corporate Commonwealth entities subject to the CPRs.¹¹ The above quoted Board decision was referenced in three proposals to the Board in 2017 seeking its approval to not use an open tender approach when procuring services over \$400,000 from seven advisory firms. (These procurements are examined at paragraphs 3.64 to 3.67).

9 Department of Finance, Resource Management Guide 206, 'Model accountable authority instructions (AAIs) Corporate Commonwealth entities', January 2019 update.

10 Shareholder Ministers of WSA Co, 'Statement of Expectations for WSA Co Limited', 13 September 2017.

11 When the expected value of a procurement is at or above the relevant threshold, and is not specifically exempt in accordance with Appendix A of the Commonwealth Procurement Rules, then the rules in Division 2 must be followed. Division 2 requires an open tender unless the specified conditions for limited tender apply.

2.22 The financial threshold for use of open tender thereafter applied was \$5 million. There was no Board decision that supported adopting a \$5 million threshold rather than the \$400,000 decided upon in August 2017 until November 2018, as outlined below.

Procurement Policy and Manual

2.23 Both the Procurement Policy and Procurement Manual approved in November 2018 stated that:

the WSA Procurement Policy has adopted several key principles from the CPRs and promotes value for money as the core principle. Value for money is enhanced and complemented by encouraging competition, transparency and accountability in decision-making.

2.24 The Procurement Policy and Manual drew appropriately from the CPRs in most respects. Importantly, they reflected a commitment to obtaining value for money when procuring goods and services. They recognised that value for money considerations extend beyond the acquisition price, and listed a range of financial and non-financial factors for consideration.

2.25 Consistent with the CPRs, the minimum procurement requirements WSA Co set were scaled according to price and risk. The requirements were divided into five 'procurement tiers' and covered, among other things, the number of quotes required, the means of approaching the market, evaluation type, contract type, payment method and minimum documentation requirements at each tier.

2.26 Also consistent with the CPRs, ethical behaviour in procurement was required by WSA Co's procurement framework and supporting corporate policies. For example, the Procurement Policy stated that 'All WSA employees and suppliers are required to maintain, and demonstrate, the highest standards of accountability and ethical behaviour in all procurement actions' and the Procurement Manual contained a section on 'ethics and personal standards of behaviour'.

Encouraging competition

2.27 Competition is a key element of the Australian Government's procurement framework. Procurements should encourage competition and be non-discriminatory. WSA Co's procurement framework gave appropriate emphasis to competition in procurement.

2.28 The procurement framework in place during the conduct of this audit could have better endorsed the use of open tenders as a means of generating competition in the procurement of non-construction services. WSA Co set its financial threshold for requiring an open approach to market at \$5 million. This is high for such purchases relative to the threshold in the CPRs for prescribed corporate Commonwealth entities (being over \$400,000 GST inclusive).

2.29 In September 2019, the WSA Co Board approved a revised Procurement Policy and Procurement Manual. Revisions included reducing the financial threshold for requiring an open approach to market to \$400,000, so as to align with the CPRs and to improve competitiveness and access. Adjustments to minimum quote requirements further improved competitiveness.

Was the procurement framework complied with?

The highest-value procurements complied with WSA Co's procurement framework. Beyond this, compliance was mixed in 2017 and 2018, including inadequate record keeping. WSA Co undertook a series of initiatives to identify and address compliance issues. This included creating procurement records retrospectively and then leaving those records undated, an approach that is inconsistent with the principles of probity and ethics. WSA Co achieved broad compliance with its framework by the end of 2018–19.

Maintaining documentation

2.30 The CPRs state that relevant entities 'must maintain for each procurement a level of documentation commensurate with the scale, scope and risk of the procurement'. They outline that the 'documentation should provide accurate and concise information on: the requirement for the procurement; the process that was followed; how value for money was considered and achieved; relevant approvals; and relevant decisions and the basis of those decisions'. The minimum documentation requirements set out in WSA Co's procurement framework reflected the CPRs.

2.31 The primary type of non-compliance with WSA Co's procurement framework was inadequate documentation. Non-compliance with documentation requirements can have broader impact, particularly where works are ordered without the authorisation for, or the price and conditions of, the purchase being documented and retained.

2.32 During its first months of operation, WSA Co was staffed predominately by secondees from the Department of Infrastructure (as demonstrated in Figure 3.2 of Chapter 3). Some of these secondees administered WSA Co's early procurement activity. While they brought a knowledge of the airport project to the company, there were significant gaps in the records of the early procurement activity they undertook.

2.33 Inadequate records were maintained for the first two open tenders conducted, whereas record keeping was sound for the other seven open tenders completed by 30 June 2019. Record keeping was also sound for a number of other high value, competitive procurements. These included the significant baggage handling system design procurement for which 11 firms were invited to tender.

2.34 Otherwise, procurement record keeping was mostly inadequate in 2017–18. Many important records were not saved in the document management system or not created. In mid-2018 WSA Co focussed on cleaning up its procurement record keeping. Identified gaps were then filled by WSA Co through a combination of:

- saving into a centralised location documents that had been found in staff emails or obtained from consultants who assisted the early procurements;
- recording the procurement process in a document clearly labelled as having been produced in hindsight (such as an 'Historical Procurement Activity Review'). The ANAO identified such documents in the records of 20 procurements examined; and by
- retrospectively producing key documents that had not been prepared at the appropriate time but then not identifying them as having been produced afterwards.

2.35 Producing key documents afterwards, signing them and then leaving the signatures undated undermines transparency, is misleading, is inconsistent with the principles of probity and ethics in procurement, and does not achieve the documents' intended purpose. While the practice became evident to the ANAO, its extent could not be determined from WSA Co records.

Undated signatures

2.36 To provide insight into the issue of undated signatures, the ANAO examined 100 contract approval forms containing 446 signatures. Over half of the signatures that were made by hand were undated, notwithstanding that the standard template contained a clear date field under each signature block. The prevalence of undated signatures was addressed with WSA Co's introduction of an electronic signature platform in late 2018. All electronic signatures on the contract approval forms examined were dated. The average number of signatures on the electronically signed forms was higher than on the hand signed forms (6.3 versus 3.4 signatures on average) indicating improved workflow. Specifically, of the 100 forms examined:

- 64 forms contained 220 hand signed signatures, of which:
 - 120 signatures were undated (55 per cent);
 - 100 signatures were dated (45 per cent); and
- 36 forms contained 226 electronically signed signatures, all of which were dated.

2.37 It is important that WSA Co ensures that the authoritative time-stamp function is not bypassed when using the electronic signature platform. The ANAO noted three service orders that had been signed and witnessed on behalf of WSA Co using electronic signatures but without the associated time-stamps. Instead, a date was typed under each signature. In all three cases, the typed date was in early November 2018 while the electronic signing occurred during December 2018. To prevent future occurrences, WSA Co advised the ANAO in September 2019 that it would review the security controls in place and consider possible solutions.

Internal audit of procurement

2.38 WSA Co's Internal Audit Plan for 2018–19 included plans for an audit of the company's procurement processes. WSA Co's contracted internal auditor delivered the corresponding report in November 2018. The audit scope was to assess 'the design and operating effectiveness of the key controls established to mitigate specific risks associated with the Procurement process' and it covered the period 1 September 2017 to 31 August 2018.

2.39 The report delivered an overall rating of 'requiring improvement' and identified three risks:

- 'high' risk — contract variations — 'the governance of scope variations was fragmented with inadequate monitoring or reporting to ensure effective management oversight' and 'procurement planning and the subsequent involvement of key stakeholders is often time constrained and reactive rather than strategic or risk based' (see also paragraphs 3.79 and 3.80);
- 'high' risk — delegations of authority — 'In the sample of 20 purchases reviewed one contract was not approved by an authorised delegate'; and
- 'medium' risk — records management (procurement documentation) — 'For the selected samples it was evident that documentation was fragmented with no clear records management process. Some samples had missing documents ...'

2.40 Good practice identified in the internal audit report included the procurement processes for the appointment of the Delivery Partner, which was the highest value procurement WSA Co had completed at this time. The report 'noted the expected organisational focus and rigor for ensuring compliance with the Procurement Policy requirements of an open market approach'.

2.41 WSA Co's Procurement Policy was in draft form at the time of the internal audit. The internal audit report noted as a positive: 'current Draft Procurement Policy Updated to address identified root cause for non-compliance'. For example, WSA Co added requirements around contract variations to help address the risk identified by the internal audit, such as limiting the variation of contracts over \$50,000 'to a maximum of 15% of the initial approved contract value'.

Review of procurement activities

2.42 WSA Co agreed to the nine recommendations made by the internal audit to address the three risks identified in the report. One of the recommendations was that 'management should carry out a review of current records to ensure compliance'. WSA Co engaged a supplier in November 2018 to conduct the review, which included checking all documents on file for compliance, ensuring all information was captured correctly on WSA Co's contract register and creating a register of contract variations. According to a WSA Co summary, 'the review identified some gaps in procurement processes, breaches of governance and where the approach to market did not meet the principles of the Commonwealth Procurement Rules'.

Follow-up internal audit of procurement

2.43 WSA Co procured a follow-up internal audit, with the purpose being to:

- 'follow up on the implementation of the recommendations made in the November 2018 Procurement Internal Audit'; and to
- 'assess the design and operating effectiveness of key WSA Co procurement controls utilising transactions associated [with two consultancy firms]' (see paragraphs 3.79 to 3.82 for related internal audit findings).

2.44 The follow-up report was delivered in February 2019. The internal auditors had assessed implementation to be 'adequate' against seven of the recommendations made in November 2018, and to be 'inadequate' against the other two recommendations (both addressing the contract variation risk).

2.45 A further nine recommendations were made to address the internal audit's findings more broadly. A finding particularly relevant to ensuring compliance with WSA Co's procurement framework was a 'lack of awareness and understanding of procurement procedural requirements'. The report noted that, while all staff interviewed were aware of the Procurement Policy and Delegation of Authority Policy, 'there was a gap in knowledge of how these translated to operational activity'. WSA Co took action in response to each recommendation.

Increasing compliance

2.46 The two internal audits and the procurement activity review highlighted areas for improvement. WSA Co undertook a number of initiatives to address these areas, which should improve compliance with its procurement framework. The ANAO assessed the conduct of the seven open tenders completed in 2018 as demonstrating sound practice and compliance with WSA Co's

procurement framework. The ANAO noted considerable improvement in WSA Co's other procurement activities over the period examined, with compliance being broadly achieved by 30 June 2019. The positive state of WSA Co's procurement by mid-2019, and its plans for further improvement, is an example of the potential for an entity to learn and to change when its management makes a clear decision to do so.

Introduction of a procurement platform

2.47 A key initiative was the introduction of a procurement platform, with associated procurement training and guidance delivered to staff. The procurement platform (Open Windows) was purchased in October 2018 following a competitive limited tender, with customisation, implementation and training finishing by February 2019. The system manages the following processes and procedures: source to contract, eTendering,¹² contract management and supplier relationship management.

2.48 The procurement platform had a particular focus on workflow and document retention. Key documents used in the procurement process were generated and recorded in the system, with final documents saved in WSA Co's SharePoint. Pre-existing agreements were moved into the system. New contracts and variations were managed through the system, wherein the workflow requires they be approved by the relevant authorities and that they include mandatory information such as a value for money statement.

2.49 The ANAO examined the procurement platform in July 2019. The implementation of the system and the associated workflow should positively impact WSA Co's procurement practices, with improved compliance already evident in the first half of 2019. At the time ANAO audit work was completed, WSA Co was progressing the introduction of an enterprise resource planning system to provide controls and workflow across three main domains: procurement; finance and administration; and people and culture.

Management reinforcing the requirements

2.50 Proactive engagement and leadership from senior management is necessary to establish a culture of performance and accountability. In early 2019, WSA Co management reinforced the importance of compliance with its procurement framework.

- The Chief Executive Officer of WSA Co met with all members of the senior executive leadership team to discuss how procurement operated at WSA Co and to reinforce the key points to adhere to in any procurement activity. These key points were then distributed to all staff and to key contractors by the Chief Financial Officer.
- All WSA Co staff were required to attend 'Procurement Process & Delegation of Authority' training.
- The Chief Executive Officer emailed all staff, stating:
Best practice corporate governance is a critical success factor for our project. In terms of the procurement of all products and services for WSA it is essential that each of us complies with

12 From February 2019, the procurement platform was to be used as WSA Co's eTendering portal for most procurements over \$50,000, with high-value open tenders being conducted through a separate virtual data room.

Procurement Policy and Procedures. In essence each of us has the responsibility to ensure that for **every** procurement:

- The Procurement team is contacted prior to any procurement commencing.
- A requisition is completed within Open Windows.
- There is a written scope of works (SoW) that details all deliverables and milestone dates.
- There is a written agreement or contract in place.
- There is confirmation that sufficient budget has been allocated.
- Approval to engage has been obtained under the appropriate delegation of authority (DoA).

Checking compliance

2.51 WSA Co has put in place procedures and systems that appear to have improved record keeping. During the conduct of this performance audit, the ANAO suggested that the company would benefit from periodic checks to provide assurance that the changes have had the desired effect. In response, WSA Co advised the ANAO in September 2019 of the following:

Procurement assurance framework is to be developed as part of the assurance framework developed by WSA Risk. The procurement assurance framework is to be developed by WSA Procurement in conjunction with WSA Risk.

The Board has also deemed that additional procurement internal audits are to be conducted on an ongoing basis and will be included in the Internal Audit Plan.

Learning from the audits of other entities

2.52 ANAO performance audits identify where improvements can be made to aspects of public administration, and identify instances of good practice, that may be relevant for the operations of other entities. On a number of occasions over the period examined, there was evidence of WSA Co identifying lessons from audits of other entities and taking actions to address applicable findings.

2.53 For example, following each of two ANAO procurement audits of another GBE,¹³ WSA Co assessed its own performance and then presented the audit findings to its Board along with the actions taken by management to address those findings in WSA Co. The audit findings were also communicated to WSA Co staff. There was evidence of WSA Co having considered and addressed the findings of at least three other ANAO performance audits and of one NSW Auditor-General report.

13 Auditor-General Report No.23 2017–18 *Delivery of the Moorebank Intermodal Terminal* and Auditor-General Report No.9 2018–19 *Procurement Processes and Management of Probity by the Moorebank Intermodal Company*.

3. Open and competitive procurement

Areas examined

The ANAO examined whether WSA Co's procurement activities were open and competitive. Openness was considered both in terms of the use of open approaches to the market and the level of transparency achieved.

Conclusion

WSA Co's procurement activities have mostly been competitive and, particularly for the higher value procurements, conducted through open approaches to the market. In the early procurements, non-competitive processes were often used to engage and re-engage advisory firms due, to some extent, to the deadlines imposed on WSA Co during its establishment phase. Public disclosure of procurement outcomes has been limited.

Areas for improvement

The ANAO has made two recommendations to the Department of Finance to better enable GBEs to take advantage of government procurement panels and to require such entities to use AusTender to publicise their procurement opportunities and report on procurement results.

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

To what extent has WSA Co employed open tender processes?

WSA Co employed an open tender process, or used an arrangement established by open tender, for 19 per cent of its contracts by number or 67 per cent by value.

3.2 In Australian Government terminology, procurement is conducted by open tender or by limited tender.

- An open tender involves the entity publishing an open approach to market and inviting submissions. This includes multi-stage procurements provided that the first stage is an open approach to market. An open approach to market is any notice inviting *all* potential suppliers to participate in a procurement.
- A limited tender involves the entity approaching one or more potential suppliers to make submissions. Limited tender includes the procurement approach previously termed as 'direct source'.¹⁴

¹⁴ See Auditor-General Report No.11 2010–11 *Direct Source Procurement*.

Preferred supplier and panel arrangements established by open tender

3.3 WSA Co's procurement manual requires that, where a suitable preferred supplier or panel arrangement has been established for the good or service through a previous approach to market, then it must be used. WSA Co defines:

- a preferred supplier arrangement as 'an agreement with a Preferred Supplier that allows WSA to periodically purchase specific goods or services from the contracted supplier at fixed and firm pricing rates'; and
- a procurement panel arrangement as 'a standing offer arrangement under which several Panel Members may be requested to provide firm quotations for the supply of goods or services'.

3.4 Where the preferred supplier or panel arrangement was established by open tender, then purchases made from it are also categorised as being made by open tender.¹⁵ This is subject to the purchase falling within the scope, terms and conditions provided for within the original arrangement.

Establishment of a panel arrangement by WSA Co

3.5 During mid-2018 WSA Co established a technical and design services panel by open tender. The two categories of services provided under the panel were: engineering services, comprising four suppliers; and quantity surveying services, comprising three suppliers. Thirteen service orders totalling \$9.6 million at execution had been issued under the panel by 30 June 2019. (These service orders are among the 23 examined at paragraphs 3.74 to 3.78.)

Use of procurement arrangements established by other entities

3.6 GBEs can join an existing coordinated procurement or cooperative procurement arrangement that has been established by an Australian government entity, where the initial request documentation and the contract specifies potential use by GBEs.

- Coordinated procurements are whole-of-government arrangements for goods and services in common use.
- Cooperative procurements involve more than one entity as the buyer.

3.7 By joining such an arrangement, GBEs may be able to obtain better prices from suppliers by leveraging government buying power as well as gain efficiencies in the procurement process. GBEs may also benefit by using the prices established by government through open tender as a benchmark when evaluating the value for money of supplier bids. For example, WSA Co benchmarked the rates offered by legal services providers in a limited tender exercise against those of the Whole of Australian Government Legal Services Panel arrangement.

15 This categorisation is consistent with Australian Government reporting practices. The Commonwealth Procurement Rules state that 'Officials should report the original procurement method used to establish the standing offer when they report procurements from standing offers'.

3.8 In addition to accessing Australian Government arrangements, WSA Co registered as a customer able to purchase all products and services on NSW state government contracts and panels. By 30 June 2019, WSA Co had joined the following arrangements that had been established by a government entity using an open approach to market:

- Whole of Australian Government Travel Services arrangement (Department of Finance);
- Whole of Australian Government Stationery and Office Suppliers panel (Department of Finance);
- Whole of Australian Government Fleet Services Contract (Department of Finance);
- Consultancy and Business Services panel (Department of Home Affairs);
- Talent Acquisition Scheme (NSW Procurement); and
- Contingent Workforce panel (NSW Procurement).

Supporting GBE access to Australian Government panels

3.9 It took WSA Co time and effort to identify and access Australian Government panels. WSA Co then provided information to another GBE of longer standing to help it access panel arrangements.

3.10 Potential barriers to GBEs taking advantage of coordinated and cooperative procurements include: confidentiality requirements that prevent the contract and pricing information being provided to GBEs; the contract not including a GBE access clause; and lack of awareness as to which arrangements GBEs may access. There is no list of the panels that contain GBE access clauses, whereas those accessible to entities covered by the CPRs can be readily identified via the Australian Government's AusTender website.

3.11 Advice from the Department of Finance to the ANAO in September 2019 was that:

Finance's guidance on cooperative agency procurement advises entities to consider cooperative procurement options as part of their procurement planning and provides advice and guidance on clustering and piggybacking arrangements.

None of the deeds for the whole of government arrangements that are administered by Finance preclude GBEs from participating and some GBEs, including WSA, have chosen to participate in some arrangements.

Entities, including Finance, make decisions on a case-by-case basis about the most efficient means to deliver outcomes through individual procurements, including the extent to which it is appropriate to include multi-agency access clauses in panel arrangements.¹⁶ Amongst other things, entities will consider whether additional resourcing would be required to manage a panel arrangement that is available to other agencies.

Finance has a range of regular engagement activities with GBEs that provide opportunities to inform them of the availability of whole-of-government and panel arrangements. These include information updates such as quarterly Shareholder meetings and Company Secretaries' Forums, as well as emails that update GBEs on relevant Commonwealth matters (such as when GBEs are updated on the findings of relevant ANAO audits).

¹⁶ As outlined at paragraph 3.62, WSA Co could not use the Department of Infrastructure panel for the advisory services it needed to scope the airport works because the panel arrangement did not have a GBE access clause.

3.12 The Department subsequently advised in October 2019 that:

Procurement Policy Branch within Finance is currently reviewing and consolidating (where appropriate) procurement guidance as part of the broader Finance web redevelopment project ... The Panel Establishment and Management Guidance is intended to pull together guidance provided by Finance across its website in consultation with entities. We are currently drafting the guidance, which will be circulated through our usual networks for review. In light of the audit [of the Western Sydney Airport Procurement Activities] underway, Finance will take into account relevant observations by the ANAO in drafting the new guidance.

3.13 The differentiated approach applied to GBEs, corporate and non-corporate entities, and the impact this has had on WSA Co, indicates there would be benefit from the Department of Finance doing more to help GBEs identify and navigate the various Australian Government procurement arrangements and templates available. This is particularly the case for newly formed GBEs.¹⁷ The Department of Finance is responsible for procurement policy and is a shareholder department for each GBE.

Recommendation no.1

3.14 To assist Government Business Enterprises obtain value for money from their procurement activities, the Department of Finance take steps to better enable those Enterprises to take advantage of coordinated and cooperative procurements, such as panel arrangements.

Department of Finance response: *Agreed.*

3.15 *Finance will provide further assistance to GBEs to identify panel opportunities. Future panel guidance being developed by Finance will also have regard to GBE participation.*

Other procurements by open tender

3.16 Where there is not a suitable preferred supplier or panel arrangement established, then the minimum requirements WSA Co had in place during the conduct of this audit were that:

- a multi-stage open tender process be used for procurements with estimated total expenditure of greater than \$5 million or with a risk profile of 'very high'; and
- a limited tender process be used for all other procurements.

3.17 ANAO analysis of procurements completed by 30 June 2019 identified that seven contracts had been let by open tender, of which two were valued below \$5 million and five over \$5 million.

Proportion of contracts let by open approach

3.18 WSA Co either conducted an open tender, or used an arrangement established by open tender, for 19 per cent of its contracts by number or 67 per cent by value.

17 Of the nine GBEs as at September 2019, Australian Naval Infrastructure and WSA Co were created in 2017. Moorebank Intermodal Company was formed in 2012.

3.19 The Commonwealth Procurement Rules (CPRs) require an open approach to market be used for most purchases over \$400,000 made by prescribed corporate Commonwealth entities.¹⁸ If only those contracts over \$400,000 at execution are considered, then the proportion WSA Co let by open approach rises to 31 per cent by number or 69 per cent by value.

3.20 Information on the contracts let by procurement method is provided in Table 3.1. Contracts valued over \$400,000 at execution are identified to reflect the CPR threshold for open tender, as are those over \$5 million to reflect the threshold WSA Co set in its Procurement Policy of November 2018.

Table 3.1: Contracts by procurement method by value

Contract value on signing	Up to \$400,000		\$400,000 to \$5 million		Over \$5 million	
	Number	Value (inc variations)	Number	Value (inc variations)	Number	Value (inc variations)
Open approach used for 19% of contracts or 67% of contract value						
From panel/supplier let by open tender	22	\$2.2m	5	\$7.5m	1	\$5.1m
Open tender conducted	–	–	2	\$1.7m	5	\$386.8m
Limited approach used for 78% of contracts or 31% of contract value						
Competitive approach	55	\$7.7m	14	\$16.4m	–	–
Direct source approach	36	\$6.9m	9	\$34.2m	1	\$14.0m
Sole supplier in market	30	\$2.3m	1	\$0.5m	2	\$100.8m
Novated from the Department of Infrastructure: 3% of contracts or 2% of contract value						
Novation	4	\$1.0m	1	\$1.0m	1	\$10.9m

Note: Contracts are categorised based on their value on execution. The total value of the contracts then recorded in each category, however, includes any subsequent amendments. Deeds of Standing Offer with panel members are not included in this table, only the service orders issued under those Deeds.

Source: ANAO analysis of WSA Co records of contracts that commenced between 17 August 2017 and 30 June 2019.

3.21 September 2019 revisions to WSA Co's minimum requirements for procurement will likely increase its use of open tender. The company revised its financial threshold from \$5 million to \$400,000 for requiring an open approach to market should no preferred supplier or procurement panel exist.

18 The threshold for prescribed corporate Commonwealth entities has been used for analysis on the basis that it is a more relevant benchmark for WSA Co (as a Commonwealth company) than the lower threshold set for non-corporate Commonwealth entities.

Was market interest generated and were sufficient numbers of competitive proposals received?

Market interest was generated by WSA Co in the nine open tenders it has conducted and sufficient numbers of competitive proposals were received for the eight open tenders where adequate records were available for ANAO analysis. There has been limited public reporting on procurement activities, with only eight contracts reported on WSA Co's website as at June 2019. An improved approach was recently introduced, with the report expanding to cover 69 contracts and nine panel arrangements by November 2019.

3.22 AusTender is the Australian Government's procurement information and e-tendering system. WSA Co is not able to use the AusTender website to publicise tender opportunities, to conduct tenders or to publish procurement outcomes. Its use is restricted to entities covered by the CPRs (see paragraph 3.44). WSA Co must therefore use other means to inform the market and generate interest.

3.23 WSA Co publicised its open approaches to market through a variety of means, including by holding an industry information session, issuing media releases, advertising in media publications and on its website. WSA Co tender opportunities also appeared on other websites, such as the Industry Capability Network, Australian Tenders and the CAPA—Centre for Aviation websites. WSA Co's website was updated in August 2019, including improved functionality for vendors to register their interest for business opportunities across 17 categories of works.

Industry information session

3.24 On 5 December 2017, WSA Co held an industry information session in Western Sydney. WSA Co management had advised the Board that 'the purpose of the industry information session was to provide the market with advice about the upcoming procurements that WSA Co is proposing to issue in the coming months'. The Board noted 'the importance of managing this process carefully to ensure clear and unambiguous advice is provided to the industry to maximise preparedness to respond to upcoming procurements'. WSA Co publicised the event, including through newspaper advertising and an email alert.

3.25 According to the registration list, 659 people had registered in advance to attend the information session and a further 55 registered on the day. These spanned 418 organisations. WSA Co advice to its Board following the event was that 'approximately 600 representatives from the market were present ... from very large entities to small companies'.

3.26 Attendees received information about WSA Co's procurement processes and upcoming WSA Co tenders for:

- enabling works, including site investigations and early earthworks;
- main airport works packages; and
- professional services, including Project Management (Definition), Project Management (Delivery), technical services, independent certifier services and various other corporate, financial and communications services.

3.27 Following the session a slide presentation and a transcript of audience questions and answers were published on WSA Co's website. As was a list of 149 of the organisations that had attended the session and given permission for their details to be published.

Market response

3.28 WSA Co received a sufficient number of competitive proposals in response to its open approaches to market. Table 3.2 outlines the market response to eight of the nine open approaches completed by 30 June 2019. The records maintained on the 2017 open tender of geotechnical investigation services were inadequate for this purpose.

Table 3.2: Response to open approaches to market

Procurement	First stage (open)	Second stage
Delivery Partner	10 expressions of interest	4 invited and 4 tendered
Project Manager (Definition)	9 expressions of interest	3 invited and 3 tendered
Airport Planning	17 registrations of interest	9 registered and 4 tendered
Early Earthworks	33 registrations of interest	13 registered and 6 tendered
Visitor Centre	51 registrations of interest	5 registered and 3 tendered
Technical Services Panel: engineering services	33 registrations of interest	12 registered and 12 tendered
Technical Services Panel: quantity surveying	9 registrations of interest	7 registered and 6 tendered
Land Survey Services	13 tenderers	Not applicable as it was single stage tender

Source: ANAO analysis of WSA Co records.

3.29 For each of the eight open approaches outlined above, WSA Co negotiated and entered into an arrangement with its highest ranked tenderer/s.

Infrastructure market constraints

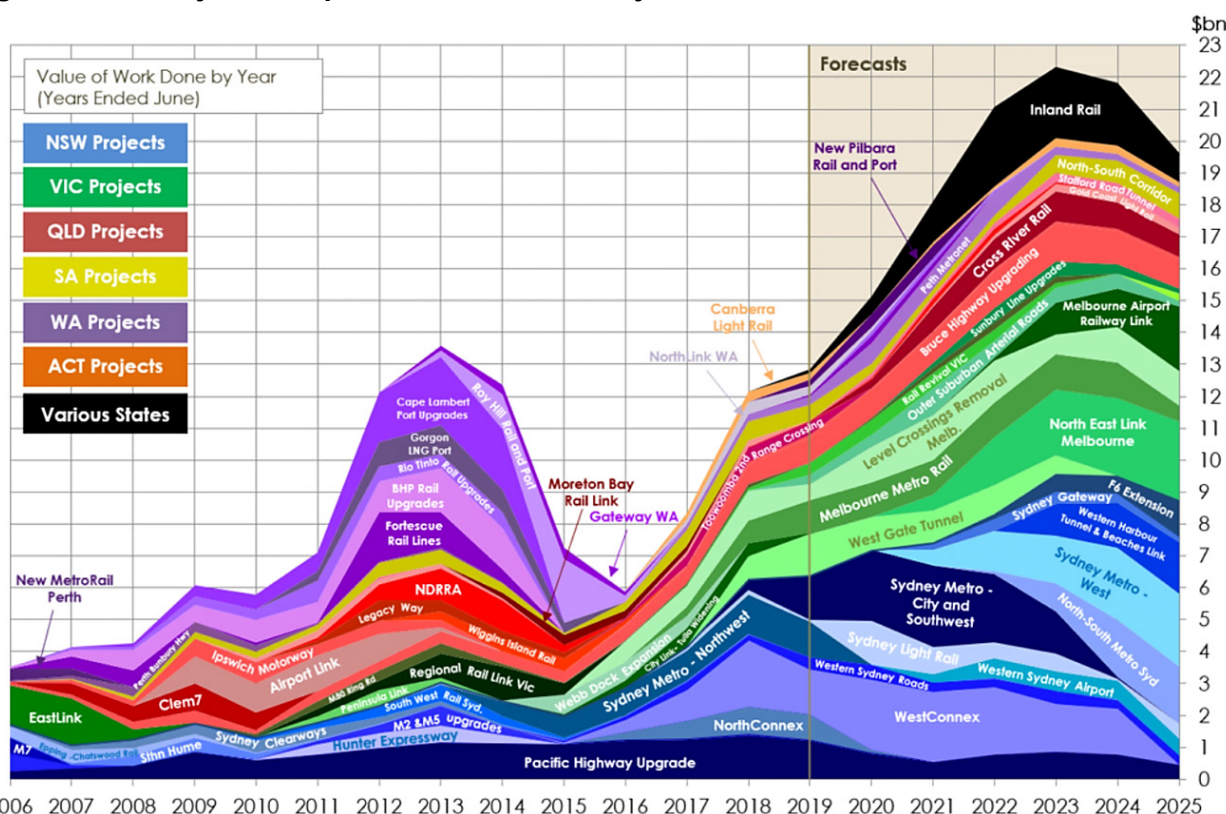
3.30 During the procurement planning stage, it is important to take into consideration the market's capacity to respond competitively when considering whether a procurement will deliver the best value for money. WSA Co considered the impact of other significant infrastructure projects on construction market capacity when developing its Procurement Plan for the delivery of the airport works. WSA Co noted in its 2018–19 Corporate Plan that:

The Australian infrastructure market is undergoing a period of heightened activity. Nonetheless, a project with a high-profile nature, such as Western Sydney Airport, should continue to generate strong interest from construction, other industries, and community perspectives. This effect was evident in the strong market responses to date for works and services already let and continues to be present in ongoing market feedback relating to upcoming construction packages for the Airport.¹⁹

19 See https://westernsydney.com.au/sites/default/files/2019-06/2018-19_WSA_Co_Corporate_Plan.pdf

3.31 Figure 3.1 provides an indication of an increase in market demand and of the major transport infrastructure projects scheduled for delivery in parallel with the airport.

Figure 3.1: Major Transport Infrastructure Projects — Australia



Source: Macromonitor, Australian Construction Outlook—Overview, 'Major Infrastructure Projects Australia—August 2019'

3.32 Achieving value for money is also assisted by appropriate engagement with industry to inform the selection of the procurement approach.²⁰ WSA Co undertook market engagement from January to May 2018 to inform its procurement strategy for the first and largest of the main airport works packages, being the Bulk Earthworks and Airside Civil works. A risk listed on its Risk Register at this time was that there would be only a single tender return due to buoyancy of the market. The market engagement indicated that there was unlikely to be a competitive procurement if kept as a single package, as its size may prevent lower tier parties or international contractors from competing.

3.33 Informed by market engagement and technical advice, and to enable greater market participation and competition, WSA Co decided to break the procurement into three smaller packages: Bulk Earthworks packages A and B and Airside Civil Works. The Expression of Interest stage for the Bulk Earthworks packages commenced in August 2018. WSA Co announced in November 2018 that it had shortlisted three organisations for the work. In September 2019, it announced the successful tenderer which would undertake both Bulk Earthworks packages under one contract.²¹

20 See Auditor-General Report No.45 2016–17 *Replacement Antarctic Vessel*.

21 The ANAO did not examine WSA Co's conduct of the bulk earthworks procurement as it was not concluded until September 2019.

Public reporting of contracts

3.34 The Australian Government's 2017 Statement of Expectations (at Appendix 2) included that, 'WSA Co should maintain a high level of transparency, to give confidence to stakeholders in the integrity of WSA Co's procurement processes'. The fundamental elements of accountability and transparency in procurement outlined in the CPRs include the public reporting of contracts and amendments valued above specified thresholds.

3.35 Department of Finance advice to WSA Co in December 2017 (which the Department of Infrastructure stated it agreed with) included:

we'd suggest that the company consider the level of reporting by Commonwealth Departments on AusTender to be a model level of transparency considered appropriate by Shareholder Ministers.

3.36 As at 30 June 2019, the details of eight contracts had been published on WSA Co's website (resulting from seven of the open tenders and one of the limited tenders). The published details were limited to the contract purpose, the contractor and the date of award. No actual or indicative contract value was published.

3.37 WSA Co's approach falls below the level of transparency envisaged in the CPRs. For example, if the reporting threshold of \$400,000 (GST inclusive) for prescribed corporate Commonwealth entities were applied, then the details of a further 37 contracts would be reported. The value of each contract and any subsequent variations would also be reported.

3.38 WSA Co advised the ANAO in August 2019 that:

WSA Co currently does not have a formal policy in place to provide a framework for the public reporting of contracts and amendments. WSA currently publishes the status and successful suppliers for major works packages as we consider these packages represent significant progression of the project. WSA does not currently publish the results of Corporate Procurement. However, WSA is transparent and notifies all suppliers of the successful supplier when each contract has been awarded. All suppliers are provided the opportunity to seek feedback on their submissions.

... the reason WSA does not publish the results of all of our procurements is to ensure that WSA maintains a strong commercial position during the tendering and negotiation of procurements to maximise our ability to achieve value for money.

We are currently in the process of consulting with internal stakeholders to develop a framework for the publishing of corporate procurements on our website, whilst maintaining our commercial position and ensuring WSA protects supplier's commercially sensitive information.

3.39 In September 2019 the WSA Co Board approved a revised procurement framework that, among other things, documented and enhanced the company's approach to the public reporting of its contracts. Recorded reasons for the approach adopted included 'to maintain the core probity principles of accountability, transparency, management of conflict of interest and honesty within the procurement process' while still ensuring 'supplier's commercially sensitive information is protected'. As at mid-November 2019, WSA Co's enhanced public report contained the details of 69 contracts valued over \$400,000 and of nine procurement panel arrangements.²²

22 The contract details are published on WSA Co's website at <https://westernsydney.com.au/opportunities/contractors/awarded-tenders>.

Limitations of AusTender

3.40 AusTender is managed by the Department of Finance. The AusTender website states that it ‘provides centralised publication of Australian Government business opportunities, annual procurement plans and contracts awarded’. The website does not mention that this excludes GBE business opportunities. Similarly, the Department of Finance guidance to businesses on ‘identifying opportunities to sell to government’ states that ‘You will find all open approaches to the market advertised online through AusTender’ and that ‘Generally speaking, all Government requirements valued above \$80,000 are advertised publicly via AusTender’. The listed exemptions do not include opportunities to sell to GBEs and the links to websites that may be useful ‘for businesses considering selling to the Australian Government’ do not include links to the business opportunity pages of GBE websites.

3.41 WSA Co and other GBEs are also not allowed to use AusTender to report their procurement results. Reporting is therefore spread across GBE websites and the extent and nature of information reported is inconsistent.

3.42 GBEs are Commonwealth entities and the procurement of goods and services is a substantial activity for GBEs to achieve their objectives. The value and number of contracts they award are not reported on AusTender and so are not included in the data generated from AusTender — data that is considered authoritative and is widely used. The Department of Finance, for example, uses AusTender data to produce its ‘Statistics on Australian Government Procurement Contracts’ and so GBE procurement contracts are not represented in this publication.

3.43 Lack of access to AusTender also means that purchases made by GBEs under panel arrangements established by other Australian Government entities are not reported on AusTender. Other entities are required to report contracts formed under a panel arrangement against the relevant Standing Offer Notice on AusTender. This requirement was introduced in response to an Auditor-General recommendation designed to improve the transparency of Australian Government procurement and to enable analysis of the supply of property and services under panel arrangements. The recommendation was agreed by the Department of Finance and was supported by the Joint Committee of Public Accounts and Audit.²³

3.44 In September 2019, Finance advised the ANAO that ‘AusTender exists to facilitate reporting for those entities required to comply with the CPRs’. The department indicated to the ANAO that extending the coverage of AusTender to enable reporting by entities not required to comply with the CPRs would have resource implications for it and present other challenges and risks, including in relation to Free Trade Agreements.

23 Auditor-General Report No.31 2011–12 *Establishment and Use of Procurement Panels*, recommendation no. 2, paragraphs 5.12 to 5.19. Joint Committee of Public Accounts and Audit *Report 431: Review of Auditor-General's Reports Nos. 24 to 32 (2011–12)*, 23 August 2012, paragraph 3.102.

Recommendation no.2

3.45 The Department of Finance require Government Business Enterprises to use the AusTender website to publicise procurement activities and report on procurement results.

Department of Finance response: *Noted.*

3.46 *GBE Boards have ultimate responsibility for the performance of each GBE and they are expected to oversee the development of business strategies and day to day management policies, including procurement. Subjecting GBEs to the mandatory business rules of AusTender would limit the ability of GBEs to operate commercially, flexibly and in competition with other businesses. A change, as described in this recommendation would require a policy decision of Government.*

Was competition encouraged and competitive tension maintained?

Competition was encouraged and competitive tension maintained for the majority of procurements conducted where a market existed. An area where competition was lacking related to the frequency with which contract variations significantly increased the total value of the engagement.

3.47 A competitive market was available in respect of 147 of the contracts awarded by WSA Co, which had a total value of \$445.3 million on signing.²⁴ For the purpose of this analysis, a 'competitive market' has more than one supplier that can reasonably be approached to compete for the work, including a panel arrangement containing more than one supplier.

3.48 WSA Co established the majority of these 147 contracts by using an approach that generated competition between potential suppliers. Specifically, WSA Co used a competitive approach to establish 90 of these contracts (61 per cent by number) which totalled \$407.3 million on signing (91 per cent by value).²⁵ Seven were by open tender and the other 83 by inviting more than one supplier to bid for the work (on average, WSA Co invited four suppliers).

3.49 Within the 57 contracts let following an approach to a single supplier, there were some opportunities not taken for WSA Co to have applied competitive pressure by inviting multiple suppliers to compete for the work. In particular, to have sought quotes from multiple panel members (see further at paragraph 3.76). These 57 contracts totalled \$38.0 million at signing stage.

Maintaining competitive tension

3.50 Maintaining competitive tension through to contract signing can help drive value. WSA Co maintained competitive tension in its open tenders by continuing negotiations with at least two tenderers up to contract award stage. Further, while the Delivery Partner and Project Manager

24 A further 36 contracts valued at \$105.8 million on signing were awarded where there was only one supplier in the market, where only one firm could supply the services due to an absence of competition for technical reasons or under a whole of government panel arrangement established with a single supplier. There were also six contracts totalling \$12.6 million on signing that had been procured by the Department of Infrastructure and later novated to WSA Co.

25 For the purpose of this analysis, inviting a single supplier to quote under a multi-supplier panel arrangement established by open tender is defined as a non-competitive approach because it does not generate competition at the individual purchase level.

(Definition) contracts were ultimately awarded to the same supplier, WSA Co procured them separately in order to encourage competition. Specifically, WSA Co identified that:

While Delivery Partner and Project Manager (Definition) services could theoretically be drawn together and provided by one contractor, it was considered important to maximise competition and allow smaller entities to bid for the narrower role of the Project Manager (Definition).

Varying contracts

3.51 Contract variations pose particular risk to maximising value for money where they are negotiated in a non-competitive environment with an incumbent supplier. Of the 189 contracts examined by the ANAO, 57 contracts had been varied (30 per cent). The individual variations totalled 199 in number and \$35.0 million in value.

3.52 Of the top five contracts in terms of percentage increase, four had been established by direct source and one by competitive limited tender. These five contracts were subsequently varied by between 255 per cent and 940 per cent of their initial contract value, increasing them in aggregate from \$5.6 million to \$23.0 million. The contracts were established in 2017–18 prior to WSA Co introducing limitations on contracts variations in November 2018 (see paragraph 2.41). Four of the five contracts were for advisory services and are among those examined at paragraphs 3.68 to 3.73.

Pre-agreeing additional works

3.53 In seven of the procurements examined by the ANAO, WSA Co pre-agreed additional works should it wish to take up the option at a later stage. The related procurement records indicate that WSA Co understands how to use competitive tension to its advantage. For example, the successful suppliers in two of the open tender processes had provided a number of technical options within their tenders. Following evaluation of those options, the evaluation panels recommended a sub-set be included as pre-agreed variations within the respective contracts. The evaluation panels explained that,

As a pre-agreed variation, WSA Co will have the option of directing the contractor to undertake the Option works at the pre-agreed price (i.e. the price provided by [the supplier] under competitive tension during the evaluation process).

What was the basis for the use of limited approaches to market in 2017–18 for advisor and consultancy services?

During WSA Co's establishment phase, the terms of the Project Deed created an environment that was not conducive to maximising value for money through open and competitive procurement. Particular pressure stemmed from an unnecessary requirement that WSA Co enter into \$300 million worth of design and construction contracts within 12 months of the new company being registered. This pressure was reflected in WSA Co using methods involving little to no competition to engage technical advisors and other consultants in 2017–18. Frequent and poorly documented contract variations significantly increased the total value of these engagements.

From mid-2018, technical and corporate advice was procured from panel arrangements that had been established by open tender. This was beneficial. The ANAO identified some room for further improvement.

3.54 The June 2002 agreement for the Australian Government's sale of Sydney (Kingsford Smith) Airport granted the purchaser a 30 year right of first refusal over the development and operation of a second Sydney airport, if the Australian Government decided one was needed.²⁶

3.55 In 2014, the Australian Government commenced the right of first refusal process by issuing a notice to consult. Consultations with the purchaser were held and, in December 2016, the Australian Government issued a notice of intention to the purchaser which included a Project Deed. In May 2017, the purchaser declined the opportunity to build and operate the second airport, which led to the Australian Government forming WSA Co to undertake the project.

3.56 The right of first refusal allowed the Australian Government to offer the opportunity to another party following the purchaser declining, provided that the terms when taken as a whole were not materially more advantageous than those offered to the purchaser in the notice of intention. The right of first refusal required that the Australian Government provide details of the material terms to the purchaser and gave the purchaser the opportunity to dispute whether the terms were consistent with the right of first refusal requirements. Accordingly, a material terms notice was issued after the purchaser declined. The purchaser confirmed in July 2017 that it did not have any objection to the material terms notice. WSA was incorporated in August 2017 and entered into a Project Deed with the Commonwealth in October 2017.

Requirements of the Project Deed with WSA Co

3.57 The Project Deed offered to WSA Co contained eight milestones that the company must achieve. The first three of these milestones were due for completion during the period covered by this audit and are outlined in Table 3.3.

Table 3.3: First three of the eight milestones under the Project Deed

Milestone number	Milestone	Completion date
1	Receipt by the Commonwealth of Initial Layout in accordance with clause 6.2(a) [being the Company's proposed layout of the Airport Site]	90 Business Days after the Commencement Date [of 5 October 2017]
2	The Company has entered into Contracts for the carrying out of the D&C Activities with expenditure of at least \$300,000,000 in the aggregate (excluding Excluded Expenditure) of which at least \$250,000,000 is Enabling Activities Expenditure, and those Contracts must be executed by all parties and the relevant Contractors must be permitted under those Contracts to commence the relevant activities	31 July 2018
3	The Company has in the aggregate expended a minimum of \$100,000,000 on the D&C Activities (excluding Excluded Expenditure) of which at least \$50,000,000 must be Enabling Activities Expenditure	24 December 2018

Note: Milestones 4 to 7 were expenditure targets. Milestone 8 required operational readiness by 24 December 2026.
Source: Western Sydney Airport Project Deed between the Commonwealth of Australia and WSA Co Limited.

²⁶ Auditor-General Report No.43 2002–03 *The Sale of Sydney (Kingsford Smith) Airport*, pp. 21–22 and 54.

3.58 The descriptions of the milestones were the same as those in the Project Deed offered to the long-established operator of Sydney (Kingsford Smith) Airport but the completion dates for milestones 2 and 3 were calculated differently. For example, milestone 2 as offered to the operator of Sydney (Kingsford Smith) Airport was due the last day of the 19th calendar month after the Deed's 'reference month' of December 2016, which would notionally have made it due 31 July 2018. Instead of a period of 19 months, the Project Deed offered to WSA Co had the 31 July 2018 date hard keyed. This meant that, for WSA Co, milestone 2 was due for completion only 14 months after its Deed's 'reference month' of May 2017. May 2017 was three months prior to the company's creation meaning that, in effect, WSA Co was being given only 11 months to meet this milestone. Infrastructure's records recognised that the approach taken resulted in terms that were more likely to be interpreted as materially disadvantageous to WSA Co.²⁷

3.59 Milestone 2 required substantial procurement activity by an entity in its start-up phase. According to ANAO examination, the related records did not demonstrate that requiring WSA Co to complete milestone 2 by 31 July 2018 was necessary to meet the 'not materially more advantageous' provision of the sale agreement. Other options were likely available that would still meet this provision but would involve less onflow risk to WSA Co's delivery of the project. The Department of Infrastructure advised the ANAO in September 2019 that:

Whether or not this requirement was necessary was a judgment that involved consideration of a number of factors. The Department considers that the decision to apply this milestone for WSA was necessary and part of a broader approach to overarching compliance with the [right of first refusal] requirements.

3.60 The Department of Infrastructure had earlier advised the ANAO in June 2019 that the selection of the early milestones in the Project Deed were informed by advice of November 2016 procured from its business advisor 'on what activities could be undertaken early in the delivery of the Airport to ensure the continued progress of the Airport, allowing appropriate time for the conduct of transparent procurement processes focussed on value for money'. Further, that the business advisor 'identified a series of works, known as 'Enabling Activities', and developed associated programs and cash-flows for each'.

3.61 The assumptions underpinning the business advisor's advice included that, if the purchaser was to decline, it would do so at the end of the offer consideration period in April 2017 and that the scoping and preparatory works for the enabling activities could commence immediately thereafter. The advice stated that 'no time contingency allowances have been included in the programming of the works', such as 'no allowance for any legal delays which could inhibit the commencement of enabling activities scoping and preparatory works'. Another assumption made was that, for the scoping and design of works packages, the entity would leverage the existing Department of Infrastructure panel arrangements 'which may allow for reduced procurement timeframes'.

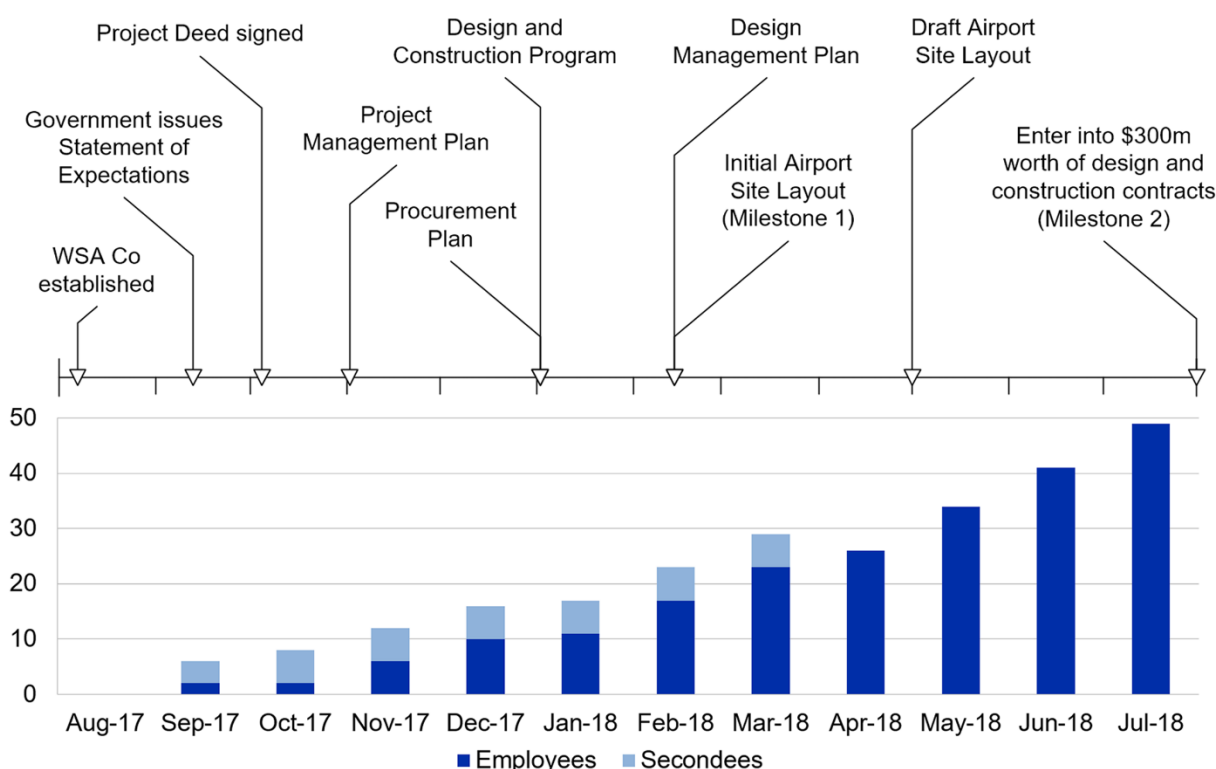
3.62 The above assumptions did not hold. The purchaser declined the offer in May 2017, WSA Co was established August 2017 (at which time it had no staff) and the Project Deed setting out the requirements was signed in October 2017. WSA Co could not use the Department of Infrastructure

27 The Department of Infrastructure recognised in April 2017 that the effect of its approach was affording WSA Co less time than would have been afforded to the purchaser, and that this was more likely to be interpreted as materially disadvantageous to WSA Co under the Right of First Refusal.

panel for the advisory services it needed to scope the works because the panel arrangement did not have a GBE access clause.

3.63 In addition to meeting the milestones, the Project Deed required that a series of project plans be delivered. The first of these was due 'no later than 20 business days' after Project Deed commencement for delivery by an entity that was two months old. WSA Co had two staff by the due date, one of whom was an independent contractor. Staffing was supplemented by secondees from the Department of Infrastructure between September 2017 and March 2018. To help place the Project Deed requirements in the context of WSA Co's growing capacity, Figure 3.2 presents WSA Co's headcount by month from its establishment to milestone 2 being due.

Figure 3.2: WSA Co headcount by month from August 2017 to July 2018 relative to key events and requirements



Source: ANAO analysis of WSA Co records. Headcount excludes the Board of Directors.

Procurement of technical advisors and other consultants in 2017

3.64 During the first months of the company's establishment, the Board approved proposals to direct source technical advisors and project management services. The recorded rationale for direct sourcing related to an urgent need to meet Project Deed deliverables with limited in-house resources. The rationale for the direct sourcing of technical advisor services from four firms that were previously engaged by the Department of Infrastructure for comparable services included:

The CPRs stipulates that an open tender is expected unless there is an appropriate reason to adopt another procurement process.

In this case a direct source for this initial period is appropriate due to the urgency for procuring the services and potential for significant risk to the development of the airport in accordance with

the Project Deed without these services being provided by these advisors. Failing to have these advisors in place as quickly as possible would likely result in breach of the Project Deed and potential delay in delivery of the airport.

3.65 The rationale for direct sourcing a firm with 'demonstrated experience on large scale aviation developments' to project manage the technical advisors included:

As WSA Co does not currently have a full suite of employees it does not have the in-house capacity to manage these technical advisors and develop the scopes of work ... Noting the need to progress certain deliverables (such as the provision of an initial Airport Site Layout) within one month of execution of the Project Deed there is little scope for a broader procurement.

3.66 To procure corporate advisors, WSA Co approached three firms for quotes and obtained Board approval in October 2017 to engage two of these firms. The reason given for the limited approach to market included:

The CPRs favour an open tender process however in limited circumstances more limited processes can be undertaken where there are appropriate justifications (Division 2, 10.3 of the CPRs). In this case WSA Co could rely upon the following condition: "Where, for reasons of extreme urgency brought about by events unforeseen by the agency, the goods and services could not be obtained in time under open tender or prequalified tender." (CPRs, 10.3 (b)). Noting the need to put in place financial and audit processes immediately to avoid WSA Co not meeting its governance and statutory obligations which would cause greater risk to WSA Co and the project.

3.67 Achieving Project Deed requirements in a tight timeframe with few staff, while also establishing governance arrangements and meeting legislative requirements, was not conducive to WSA Co maximising value for money in procurement. There was insufficient time to run open tenders for the advisors and other consultancy firms. WSA Co adopted a benchmarking approach and the records indicate that the agreed rates were fair and reasonable.

Subsequent variations to the contracts

3.68 The direct sourcing approach was presented to the Board as being a short-term solution. The initial proposal was to engage the four technical advisory firms and the project management firm to 31 October 2017, with competitive processes to be run for the longer-term work. Services commenced under 'letters of intent' while contracts were negotiated. In October 2017, the Board gave approval for the five firms to be contracted to 31 December 2017.

3.69 Similarly, the period of engagement proposed to the Board for the two corporate advisory firms was to 31 December 2017 (except for a strategic tax services component, which was to extend to the end of the financial year).

3.70 The contracts entered with the seven firms were subsequently varied to extend beyond December 2017. Variations involving a significant increase in value constituted procurement by direct source approach. Across the seven advisory services contracts:

- 52 contract variations were entered;
- the total value nearly tripled, increasing from the \$10.1 million at contract execution to be \$30.1 million; and
- expiry dates were ultimately extended to June 2018 for three contracts, August 2018 for one contract, December 2018 for one contract and October 2020 for one contract.

3.71 For one of the technical advisor contracts that expired 30 June 2018, a new contract was entered for the period July to December 2018. The procurement justification included:

This procurement is single source due to the nature of the scope of services being performed and the requirement for continuity of specialist personnel who are already familiar with, and performing the work. This eliminates transition costs and ensures the schedule dates for these activities are met.

3.72 Approval to vary the new contract was formalised on 20 December 2018. The approval was retrospective, covering 40 changes that had been agreed during the contract's six-month term. The contract end date remained as 31 December 2018 while the total value more than doubled, increasing from \$1.6 million to be \$3.8 million.

3.73 Overall, the contract variation processes were not consistent with sound procurement and financial management practices. Record keeping was poor and it was common for variations to be formalised after services commenced. While this often resulted in value for money not being demonstrably achieved at the individual procurement level, it was evident that procurement decision-making at this time considered the need to achieve value for money from the major procurements (for example, the technical advice informed the Early Earthworks tender) and to meet the Project Deed requirements. WSA Co delivered the project plans, and achieved the three milestones, that fell due under the Project Deed during the scope of this audit.

Advisory services panels

3.74 In mid-2018, WSA Co established a technical advisory services panel by open approach to market, which comprised four engineering services suppliers and three quantity surveyor suppliers. In late 2018, WSA Co joined the Department of Home Affairs' Consultancy and Business Services panel as a purchaser.

3.75 These panels gave WSA Co ready access to a pool of technical and corporate advisors with established rates, terms and conditions. This helped WSA Co address some of the issues experienced in 2017–18 with its procurement of such advisors. The ANAO identified some room for further improvement through its examination of the 23 service orders that WSA Co had finalised under these panels during the scope of this audit.

Encouraging competition

3.76 WSA Co had issued requests for proposals to all relevant panel suppliers for 13 of its procurements (totalling \$5.3 million on signing). That WSA Co directly approached individual suppliers for the other 10 procurements (totalling \$5.9 million on signing) indicates opportunity for increasing competition, particularly given panel arrangements enable multiple quotes to be efficiently obtained. While the panels had been set up by open tender, value for money must also be established for each purchase made and generating competition between suppliers for each individual engagement from the panel helps to achieve this.

3.77 In September 2019 WSA Co revised its 'minimum requirements for procurement' to require competition for all panel purchases over \$10,000.

Services commencing prior to contract execution

3.78 The Deed (a Master Services Agreement) entered into with each supplier on establishment of the panel recorded the terms on which the supplier would submit proposals and, if successful,

perform the services under separate service orders formed pursuant to the Deed. That is, a contract is not formed until a service order is executed. Problems can arise when suppliers are instructed to commence prior to a contract being signed, such as if there is a dispute about what was agreed. In 15 of the 23 service orders, the signing date fell after the services commencement date by a week or more (the average was 35 days after). For four of these procurements, there was also evidence of the suppliers having incurred costs in advance of WSA Co sending them the requests for proposals.

Internal audit findings

3.79 The findings of a November 2018 internal audit report on procurement made particular reference to the procurement of technical and corporate advisory services. The report stated that 'Whilst, the method of procurement and the consultants used were Board approved it is evident that the business does not correctly scope requirements at the outset given the number of variations processed'. It contained a 'high' rated finding on contract variations. In explaining the importance of this finding, the report outlined:

Failure to adequately scope projects at the outset of contracts and formally measure and monitor achievement of procurement objectives jeopardises the value proposition of the procurement process and involvement of the Procurement team in the process. This may result in lost opportunities to realise savings or benefits.

3.80 The detailed findings included a focus on the contract variations WSA Co entered with one of the technical advisory firms and with one of the corporate advisory firms. Issues identified with both included the significantly high number of variations and an 'Overall lack of documentation of procurement process and contract variation forms'.

3.81 The internal audit report's focus on two of the advisory firms is consistent with ANAO analysis of their dominance in 2017–18. Of the 31 procurements with 11 advisory firms the ANAO examined (being the eight contracts and the 23 service orders), two of the 11 firms accounted for:

- 14 of the 31 procurements (45 per cent);
- \$14.6 million of the total \$22.8 million value at engagement (64 per cent); and
- \$29.4 million of the total \$46.0 million value following contract variation (64 per cent).

3.82 WSA Co commissioned a follow-up internal audit with the scope including a further assessment of the transactions associated with these two firms. Related observations in the February 2019 follow-up report included,

Within the [WSA Co] Infrastructure Team there is an attitude of disregard to WSA Co procurement policy and the lack of importance for compliance is prevalent in relation to [the two firms] procurements. The Infrastructure team regard the achievement of operational outcomes and meeting of milestones as the first and foremost priority ...

WSA Co staff particularly members of the Infrastructure team are focused and have a strong view on ensuring timelines and set deadlines are achieved. While this is commendable there is a need to balance the procurement principles of value for money and documentation to demonstrate impartial and fair decision making for procurements are not retrospective activity to justify a position already held. Variations and requests for budget allocation and transfers should be forward looking and not for expenses already incurred.

3.83 Actions taken by WSA Co in response to the internal audit report findings included educating suppliers as to its procurement practices going forward. For example, the Chief Executive Officer spoke with the two firms and WSA Co wrote to all its active suppliers of goods and services advising:

We wish to formally remind you of our strict Procurement Policy which requires a valid written contract, service order or purchase order (Agreement) with WSA before any work or actions are commenced. As a supplier of goods and / or services to WSA, should these be undertaken without an executed Agreement, payment of respective invoices may be disputed.

If the goods and / or services have already been provided to WSA, and you have not signed an Agreement you must contact WSA General Manager of Procurement ...

Was the evaluation and shortlisting of proposals appropriate, transparent and consistent with the approach to market?

For the majority of high-value procurements, the evaluation and shortlisting of proposals was appropriate, transparent and consistent with the approach to market. Beyond this, the degree of consistency was mixed. Common shortcomings included the evaluation criteria not being listed in the request documentation or being inconsistent with those then applied, or insufficient records being maintained. The likelihood of these shortcomings being repeated was reduced in 2019 with the introduction of improved processes by WSA Co.

3.84 The request documentation WSA Co issues to potential suppliers should include the evaluation criteria to be considered in assessing proposals and, if applicable, the relative importance of those criteria. This is to enable the proper identification, assessment and comparison of proposals on a fair, common and appropriately transparent basis.²⁸ Transparency also involves maintaining accurate and concise information on the process that was followed for each procurement to enable appropriate scrutiny.

Open tenders

3.85 There were nine open tender processes completed by 30 June 2019, of which two were single-stage and seven were multi-stage procurements.

Two single-stage procurements

3.86 In October 2017, WSA Co issued requests for tender to the open market for geotechnical investigation services and for land survey services. The request documentation and tender evaluation plans had been drafted by the Department of Infrastructure so as 'to assist WSA Co's rapid transition to implementing the immediate deliverables required under the Project Deed'.²⁹ The tender evaluation committees were comprised of a secondee from the Department of Infrastructure and staff from two consultancy firms.

28 This rationale is as outlined in the Commonwealth Procurement Rules. Note that, for entities required to comply with the Rules, the evaluation criteria must be clearly stated in the request documentation and if the entity modifies the evaluation criteria during the course of a procurement then it must transmit all modifications to the potential suppliers.

29 In September 2019, the Department of Infrastructure advised the ANAO that it had commenced the preparation of this procurement documentation as part of its contingency planning in the event that the purchaser of the Sydney (Kingsford Smith) Airport declined the offer in the Notice of Intention.

3.87 WSA Co's procurement record keeping was poor in 2017. There was insufficient information maintained on file to demonstrate that the evaluation and shortlisting of tenders was appropriate and consistent with the approach to market.

Seven multi-stage procurements

3.88 The first stage of two of the multi-stage procurements—being for the Delivery Partner and the Project Manager (Definition)—was an open approach to market for expressions of interest. The objective was to shortlist potential suppliers for invitation to tender in the subsequent stage. For both procurements:

- the request documentation clearly set out the process for evaluating expressions of interest, which involved a conformance check, mandatory selection criteria and comparative evaluation criteria;
- an expression of interest evaluation plan was produced;
- all expressions of interest received by the advertised closing date were evaluated in a manner consistent with the approach to market and evaluation plan, and the results were recorded; and
- the three or four highest ranked suppliers were shortlisted and were registered to access the request for tender documentation from the WSA Co Data Room.

3.89 The first stage of each of the other five multi-stage procurements was an open approach to market inviting registrations of interest. Respondents assessed as satisfying the minimum requirements for participation were to be registered to access the request for tender documentation. For all five procurements:

- the request documentation clearly set out the minimum requirements potential suppliers had to satisfy;³⁰
- a registration of interest evaluation plan was produced;
- all registrations of interest received by the advertised closing date were checked against the minimum requirements in accordance with the evaluation plan, and the results were recorded; and
- all potential suppliers recorded as having satisfied the minimum requirements were then registered.

3.90 For the second stage of all seven multi-stage procurements, the request for tender documentation clearly outlined the evaluation criteria and these were consistent with the criteria in the evaluation plans and used in the evaluation processes. The tender evaluation process and results were recorded in detail, provided to the decision-makers and maintained on file.

3.91 An external probity advisor engaged by WSA Co monitored and advised on probity compliance during the seven open tender processes. According to the probity report submitted for

30 The minimum requirements differed depended on the nature of the procurement. Examples include: execution of a Confidentiality and Disclaimer Deed Poll; demonstrated annual revenue of greater than \$10 million for the most recent financial year; demonstrated current Professional Indemnity Insurance coverage of at least \$20 million; and demonstrated certification of ISO 9001 Quality Management Systems or equivalent.

each process, the advisor 'did not identify anything to suggest that the evaluation was inconsistent with the methodology communicated to the market'.

Shortlisting during the tender stage

3.92 A shortlisting approach was adopted during the evaluation of the Early Earthworks tenders. The two tenders that scored most highly against the non-price evaluation criteria were shortlisted and a detailed rationale for excluding each of the other four tenders was recorded. The evaluation report stated that 'clarifications and negotiations with both [shortlisted tenderers] were undertaken in order to resolve outstanding issues, finalise contractual documents and achieve contract award within the required project timeframes'. As part of this process, WSA Co re-issued the construction drawings to shortlisted tenderers and asked them to advise any impacts on pricing resulting from the changes made since the request documentation had been issued. The shortlisting approach was consistent with the request documentation, which advised that WSA Co may require additional information or clarifications from, or may commence negotiations with, one or more tenderers at any time during the evaluation process.

Limited tenders

3.93 For a sample of 50 procurements, the ANAO examined whether the criteria and associated weightings (if any) WSA Co applied in the evaluation process were consistent with the approach to market. The sample was randomly selected from a pool of 95 procurements conducted by limited tender (including under a panel arrangement) for purchases valued above \$50,000 where a competitive market was available. This is the financial threshold over which WSA Co's Procurement Policy required that a request for quote (or similar) be issued to suppliers and that the evaluation findings be recorded in a 'recommendation for award' document.

3.94 For 22 of the 50 procurements tested (44 per cent), the criteria and weightings WSA Co applied in the evaluation process were consistent with those advised to potential suppliers in the approach to market. Of the other 28 procurements in the sample, there were:

- 12 procurements (24 per cent) with some inconsistency evident, primarily inconsistency in the weightings assigned to each criterion and two instances where WSA Co had decided not to advise potential suppliers of the criteria and weightings; and
- 16 with insufficient information on file to demonstrate consistency (32 per cent).

3.95 The identified inconsistencies across criteria tended to be variations on the common theme of evaluating potential suppliers' skills and experience, understanding of the scope of works, capacity and pricing. This reduced the potential consequences of the inconsistencies and indicated that the likely cause was poor process, such as populating a template document (at times in hindsight) without updating the evaluation criteria to match the approach to market.

3.96 The ANAO did not observe the use or introduction of inappropriate evaluation criteria in the limited or open tender processes examined. For example, criteria that are irrelevant, that unfairly discriminate, that unnecessarily limit competition or that impose costs on potential suppliers that is not commensurate with the scale, scope and risk of the procurement.

Improved processes

3.97 At the beginning of 2019 WSA Co implemented a procurement platform (see further at paragraphs 2.47 to 2.49). This initiative, and the related workflow and training, should help reduce

the likelihood of inconsistent or inappropriate evaluation criteria being applied and improve record keeping. Of particular relevance:

- the system contains standardised evaluation criteria that were developed by WSA Co, with weightings then entered by staff based on the priorities of each procurement;
- for higher-value procurements, where an evaluation plan is to be developed, the workflow mandates General Manager Procurement review and approval of the evaluation criteria to ensure appropriateness and compliance;
- evaluators enter their scores and comments against each non-price criterion for each tender into the system;
- the system calculates the scores against the non-price and the price criteria based on the criterion weightings, the formula selected for calculating the price criterion and the pricing information entered;³¹ and
- key records and approvals are maintained in the system for each procurement.

3.98 During the conduct of this audit, the ANAO suggested that the company take steps to assure itself that the procedures and system it now has in place have treated the risk of the evaluation process being inconsistent with the advice to the market. WSA Co advised the ANAO in September 2019 that it is developing a 'procurement assurance framework' and that its Board had 'deemed that additional procurement internal audits are to be conducted on an ongoing basis'. Assurance should be achievable via these mechanisms.

Was probity maintained and were conflicts of interest managed?

Probity was maintained and conflicts of interest were managed.

3.99 The Australian Government's Statement of Expectations issued in September 2017 included that the airport be delivered in a way that 'promotes public confidence in the probity and integrity of WSA Co's procurement and other processes'. The Western Sydney Airport Project Deed signed in October 2017 stated that 'The company must ensure that all Procurement Processes for Major Works Contracts are conducted ... having due regard to appropriate standards of probity, ethics and fairness ...'

Probity advisor

3.100 Shortly after its establishment, WSA Co engaged a probity advisor via direct source as an interim measure. The Board agreed in October 2017 that long-term probity services be procured through a limited approach to market. WSA Co identified the incumbent supplier and one other firm as being 'focused probity firms with relevant large scale construction experience that would be able to deliver the required services' and invited them to tender. The result was a change in supplier, with the successful tenderer being contracted to December 2019 (with an option to extend) to provide 'support for all of the procurement activities that WSA Co will undertake over the Contract

31 In addition to the evaluators' scores and comments being maintained in the system, an 'evaluation submission criteria report' can be generated. The ANAO observed instances of this report being attached to the recommendation for award document, which aids transparency and informed decision-making.

Term'. Across the two firms, WSA Co's probity expenses from its establishment to 30 June 2019 totalled \$523,740.

3.101 Probity was a strength of the seven open tenders conducted in 2018, as outlined below. This was not just due to a probity advisor being fully involved, but importantly was due to WSA Co giving them authority and being responsive to their advice.

At the individual procurement level

3.102 WSA Co's minimum requirements included a probity plan for competitive procurements over \$5 million. Probity plans were prepared for the seven open tender processes conducted for procurements over this threshold. The stated purpose of these plans was 'to provide probity and process guidance to all those involved in the ... procurement' and 'standards of practice and behaviour for [procurement] personnel as well as assigning responsibilities to individuals with specific roles in ensuring established probity standards are met'.

3.103 The probity services included overseeing the seven open tender processes to help ensure they were conducted in a manner consistent with good probity practice. In each case, the probity report concluded that the tender evaluation process 'was conducted in a manner which did not breach the general principles of probity'.

3.104 Learnings for procurement identified by the probity advisor and communicated to WSA Co management included:

In relation to the significant procurements (EE, DP, Definition), the procurement processes are to date being undertaken appropriately. Our only observation relates to the risk of introducing additional criteria in evaluation plans, which creates the risk that RFT evaluation criteria is inconsistent with market facing RFT documentation. This effectively becomes additional criteria for bidders, which is not known to them and creates a probity risk in relation to fairness and transparency.

We have observed this practice when reviewing the draft evaluation plans for the EE and DP. Although, the review mechanism (extensive consultation) deployed by WSA Co has mitigated this risk because the additional criteria has been identified and removed prior to finalising evaluation documentation.

3.105 The shortcomings in the recording of evaluation criteria identified by ANAO and outlined at paragraphs 3.93 to 3.95 bring probity risk. This was the primary area of probity concern identified during the ANAO's examination of the limited tenders.

At the company level

3.106 Activities undertaken at the company level that contributed to the understanding and maintenance of probity included:

- regular dissemination of a probity factsheet to all WSA staff and key contractors;
- delivery of seven training sessions on probity and ethics and the maintenance of a register of training attendance, with over 165 attendees from WSA Co and its key contractors; and
- completion of probity awareness declaration forms by staff and key contractors to declare, among other things, receipt of probity awareness training and materials, and agreement

to abide by and implement those provisions in the discharge of duties to WSA Co, to notify WSA Co of any probity issues and to declare any conflicts of interest.

Management of conflicts of interest

3.107 Evidence of WSA Co's implementation of its conflict of interest management process include:

- Register of Directors' Interests, particularly the register current at 12 June 2018 at the time the Board was considering WSA Co's recommendation in respect of the Early Earthworks, Delivery Partner and Project Manager (Definition) tender stages; and
- maintenance of a probity register, which includes matters raised in conflict of interest declarations and any action then taken.

4. Obtaining value for money

Areas examined

The ANAO examined whether value for money outcomes were demonstrably obtained from the approaches to market.

Conclusion

Value for money outcomes were, in large part, demonstrated. Key to this was the adoption of selection processes that considered financial and non-financial costs and benefits, and WSA Co choosing candidates that had been assessed as best meeting the relevant evaluation criteria. Where value for money outcomes had not been demonstrated, for the highest value contract this was primarily the result of insufficient analysis being presented and for the remainder this was the result of poor record keeping practices.

4.1 The Australian Government has committed up to \$5.3 billion in equity through WSA Co to build the new airport. The associated Project Deed stated that 'The company must ensure that all Procurement Processes for Major Works Contracts are conducted ... with a core principle being to achieve a value for money outcome...' The Australian Government's Statement of Expectations for WSA Co (at Appendix 2) included that:

Taxpayers are making a substantial investment in WSA Co ... We expect that the Company will be diligent in its operations to minimise the Government's equity investment. ...

WSA Co should ensure that the Western Sydney Airport is delivered in a way which:

- is an efficient, effective, transparent and ethical use of public resources; ...
- achieves value for money for the Commonwealth ...³²

4.2 The ANAO examined 100 of the procurements WSA Co had completed by 30 June 2019 to assess whether the records demonstrated:

- that the financial and non-financial costs and benefits of each proposal had been adequately considered;
- that selected proposals were expected to fulfil all requirements at an acceptable level of risk and cost; and
- how value for money was considered and achieved.

4.3 The six novated contracts were excluded from examination as the procurements had been conducted, and the suppliers initially engaged, by the Department of Infrastructure. The sample size therefore equated to 55 per cent of the 183 contracts WSA Co had procured by 30 June 2019. The records of the decisions to vary contracts were not included in the examination. Audit findings relevant to the value for money of contract variations are at paragraphs 3.51 to 3.52 and 3.68 to 3.73.

32 Shareholder Ministers of WSA Co, 'Statement of Expectations for WSA Co Limited', 13 September 2017.

Were financial and non-financial costs and benefits adequately considered?

Financial and non-financial costs and benefits were adequately considered for 80 per cent of the procurements tested.

4.4 Achieving value for money requires the consideration of the financial and non-financial costs and benefits associated with procurement. These may include:

- the quality of the goods and services;
- fitness for purpose of the proposal;
- the potential supplier's relevant experience and performance history;
- flexibility of the proposal (including innovation and adaptability over the lifecycle of the procurement);
- environmental sustainability of the proposed goods and services (such as energy efficiency, environmental impact and use of recycled products); and
- whole-of-life costs.³³

4.5 WSA Co's standard evaluation criteria encompass financial and non-financial considerations.

4.6 The ANAO examined whether the procurement records indicated that financial and non-financial costs and benefits were adequately considered. The ANAO factored in the scale, scope and risk of the procurement when considering adequacy.

4.7 For 80 per cent of the procurements tested, the records demonstrated that financial and non-financial costs and benefits were adequately considered. Factors considered by WSA Co included:

- compliance with mandatory requirements such as insurance cover;
- the respondent's experience, financial capacity, the proposed delivery approach/technical solution and the quality of the team;
- the estimated risk-adjusted cost to WSA Co, assessment of the likely cost under various scenarios and sensitivities, as well as the appropriateness of assumptions underlying tender responses; and
- the size of any contingency or other anticipated costs that should be budgeted for.

4.8 For seven per cent of the procurements tested, the extent of the documented considerations were not commensurate with the scale of the procurement (these ranged from \$75,000 to \$5.1 million)—six of these seven procurements involved evaluating a single proposal. For the remaining 13 per cent, insufficient information was maintained on file to enable reliable examination.

³³ As outlined at paragraph 4.5 of the *Commonwealth Procurement Rules*, 20 April 2019. Examples of whole-of-life cost considerations are outlined at paragraph 4.6 of those Rules.

Were selected proposals expected to fulfil all requirements at an acceptable level of risk and cost?

For the majority of procurements tested, the records demonstrated that WSA Co expected the selected proposals to fulfil all requirements at an acceptable level of risk and cost. The records of the highest value procurement did not adequately demonstrate the basis on which it was concluded that the successful tenderer would fulfil all requirements at an acceptable level of risk and cost.

4.9 The ANAO examined WSA Co's procurements in terms of whether the records demonstrated that the selected proposals were expected to fulfil all requirements at a level of risk and cost acceptable to WSA Co. The ANAO factored the scale, scope and risk of the procurement into its examination.

4.10 For 81 per cent of the 100 procurements tested, the records adequately demonstrated that risks and cost were acceptable to WSA Co. The evidence indicates that WSA Co was not a passive price-taker but rather an entity seeking to negotiate on price and on the allocation of risk. There was evidence of such negotiations being informed by analysis, benchmarking and expert advice. This provided value for money benefits on individual procurements. It can also be expected to assist the company deliver the airport project within the pre-determined \$5.3 billion envelope.

4.11 For six per cent of the procurements examined, the extent of the considerations recorded were not commensurate with the scale of the procurement. In particular, the price awarded in four of the procurements was substantially above the budgeted amount and the records did not explain why the price was considered acceptable. In two of the procurements, the records indicated the proposal had not been evaluated. For the other 13 procurements in the sample, insufficient information was maintained on file to enable reliable examination.

Examples of good practice

4.12 The Early Earthworks open tender was a good example of procurement records demonstrating that the risk and cost were acceptable to the company. For that procurement:

- the assessment scores awarded by the evaluation panel indicated that the selected proposal was expected to fulfil the non-price criteria to at least an acceptable level as well as achieving a 'pass' against the mandatory 'tender requirements' criterion and the mandatory 'financial capacity' criterion;
- a consultant was engaged to review the proposed construction methodology for the Early Earthworks that had been put forward by the selected tenderer, concluding that there was no reason to believe that the scope of works could not be constructed as proposed;
- evaluation of the price criterion was informed by a Price Review Team, which undertook a review of tenderers' price schedules and undertook 'price sensitivity and scenario analysis and ... the calculation of adjustments to the cost of each tender to derive a risk and opportunity adjusted cost to WSA Co', among other things. The selected proposal was

identified as having the lowest estimated total contract sum of the two shortlisted tenderers³⁴ under the base case scenario and all other tested sensitivities;

- a report was produced setting out the contract departures proposed by all tenderers for the Early Earthworks package and the results of the initial assessment of the associated risks. It also set out the outcomes of discussions with the preferred tenderer on those departures; and
- a contingency amount was budgeted on the basis of the risk profile and quantity surveyor advice.

4.13 Another risk that was transparently addressed by WSA Co related to one firm undertaking both the Project Manager (Definition) and Delivery Partner roles. Separate but aligned procurement processes had been undertaken, with the same supplier identified by the evaluation team for each procurement as being the preferred tenderer. WSA Co considered the advantages and disadvantages of appointing one entity to both roles, including the option of delivering the Project Manager (Definition) services in-house using a primarily contracted workforce. It was concluded that the risks of in-house delivery outweighed the benefits. Strategies to mitigate the risks associated with having a single provider were outlined to the Board for its approval and these involved structural (such as separate contracts), physical and WSA Co organisational separation.

Identified shortcomings

4.14 The Delivery Partner procurement was, at the time of ANAO audit work, the highest value contract WSA Co had awarded. The records of this procurement did not adequately demonstrate the basis on which it was concluded the successful tenderer would fulfil all requirements at an acceptable level of risk and cost. Key shortcomings involved:

- the assessment of each respondent to the Expression of Interest assumed considerably lower fees were involved than was the case. That is 'the assessment of financial capacity has been undertaken in the context of the estimated annual Delivery Partner Service Fees (DPSF) of approximately \$10 million as provided by WSA Co';
- while the procurement records demonstrated the successful bid was considered the best bid relative to its competitors, the records do not provide insight into why it was an acceptable price to pay for the services. In particular, the successful bid³⁵ greatly exceeded any recorded estimate by WSA Co for the Delivery Partner services (which varied over time from \$10 million per annum to \$120 million in total to \$190 million). WSA advised the ANAO in June 2019 that:

The estimates provided at the time of the approach to the market were based on traditional Project Management services rather than Delivery Partner models. There has only been a limited number of Delivery Partner structures adopted world-wide, and prior to WSA only 2 in Australia.

34 The selected proposal had the second lowest estimated contract sum of the six tenderers against the base case scenario (the tenderer with the lowest estimated contract sum had not been shortlisted). Four of the six tenderers were not shortlisted on the basis of risk, specifically 'the technical and commercial risks associated with these Tenderers were of such significance that it was unlikely that they could be overcome via negotiation.'

35 The value of the delivery partner cost cap proposed in each of the four tenders varied considerably, ranging from \$217 million to \$486 million. The successful tenderer had offered the lowest price, which following clarification meetings had increased to a proposed cost cap of \$227.98 million.

The Delivery Partner model is highly dependent upon the particulars of the infrastructure project and noting that a greenfield airport has not been built in Australia for many decades it was difficult to estimate the costs for such a model. WSA recognised that for this reason an Open Tender was essential, as this is the only way of genuinely understanding the likely cost of any service. WSA received [12] EOIs³⁶ and shortlisted to 4 as part of the RFT demonstrating a sound approach to market that delivered strong competitive tension.

- no attention was given in the evaluation and approval records to the \$25 million incentive component offered by WSA Co (see further at paragraphs 4.20 to 4.22); and
- the Board was not advised whether the risks associated with departures from the draft contract had been reduced to an acceptable level. A report was provided by the legal advisor summarising and commenting on, for each tenderer, the level of contractual departures proposed and associated risks. Strategies identified and implemented to reduce risks, such as through negotiation with the tenderer, were outlined. The negotiations and resolutions then undertaken in relation to these contract departures were documented. Absent were any post-treatment risk ratings.

4.15 In advice to the ANAO in September 2019, WSA Co acknowledged the shortcomings relating to documenting the justification for incentive payments and the residual risks associated with contract departures. WSA Co advised it has adopted these as areas for improvement.

Was documentation maintained on how value for money was considered and achieved (including appropriate use of benchmarking data)?

For most procurements, adequate documentation was maintained on how value for money was considered and achieved. Practices were more robust for the competitive procurements than those that involved direct sourcing. WSA Co did not document why a \$25 million incentive payment it offered to the market as part of the Delivery Partner payment regime represented value for money.

4.16 The records adequately demonstrated how value for money was considered and achieved for 77 of the 100 procurements examined in detail by the ANAO. For the majority of these, the recorded basis of selection was that ‘Responses were evaluated against the criteria detailed to determine the best value for money outcome for WSA Co Limited’ or a similar statement. For competitive procurement, this statement was typically supported by the selected tenderer being the highest ranked against the criteria. For these procurements, benchmarking by WSA Co was undertaken by comparative analysis of the pricing proposed by the competing tenderers. On occasion WSA Co also used other benchmarks. For example, when establishing its legal services panel by limited tender, WSA Co benchmarked the rates offered against those on the Whole of Government legal services panel.

4.17 Benchmarking is particularly valuable in non-competitive procurements, as it is more challenging to establish that a single bid is a reasonable market price and represents value for money. WSA Co used benchmarking in some of its non-competitive procurements, including when direct sourcing technical advisors during the company’s establishment phase in late 2017.

36 Note that WSA Co received 10 EOIs, not 12 EOIs, in its Delivery Partner procurement.

4.18 The records of ten procurements examined did not adequately address value for money. Seven of these were non-competitive procurements. For example:

- the record of the 'analysis of response' for a \$2.5 million purchase was limited to '[Supplier's] response met all requirement at the lowest price'. Given it was the only price offered, this record provides insufficient justification;
- the records of a \$150,000 purchase from under a panel arrangement did not include an evaluation against the criteria set out in the request documentation for the recorded reason 'there is no other tenderer to evaluate against'. The benefits of evaluating proposals extend beyond ranking them. While it is recognised that panel suppliers have been pre-assessed, recommendations to award contracts should still be accompanied by an evaluation of the proposal against the specified criteria to demonstrate that the only proposal under consideration met those criteria so as to assist to demonstrate that value for money was obtained; and
- a procurement of engineering services in early 2019³⁷ involved a price (\$5.05 million) that was 26 per cent over the \$4 million budgeted being justified on the basis that 'Variation to the requisition occurred due to added scope upon award'.³⁸ While the supplier's capability and rates had already been evaluated during the establishment of the panel, the records were insufficient to demonstrate how the value for money of the \$4.22 million lump sum fee component in particular (84 per cent of the \$5.05 million) was considered and achieved.

4.19 For 13 per cent of the procurements in the sample, insufficient information was maintained on file to enable reliable examination.

Delivery Partner incentive payment regime

4.20 One of the three competitive procurements assessed as not adequately addressing value for money was the engagement of a Delivery Partner, specifically the incentive payment component. WSA Co informed potential tenderers in an April 2018 Request for Tender that the Delivery Partner contract would provide for incentive payments of up to \$25 million. There was no analysis documented that explained why an incentive needed to be offered, or how the amount was arrived at (through benchmarking or otherwise). A \$25 million pool represented a significant (21 per cent) proportion of the then estimated cost of the Delivery Partner services, being \$120 million according to WSA Co's advice to the Department of Infrastructure of April 2018.

4.21 The entitlement to any incentive payment was to be based on the satisfaction of Key Result Area requirements and may be reduced by the occurrence of modifiers which arise out of, or in connection with, the Delivery Partner services or other works undertaken to complete the airport project. The incentive payment regime, as set out in the Request for Tender and subsequent contract, is at Table 4.1.

37 WSA Co issued a request for proposal to a single supplier out of the four suppliers on its engineering services panel.

38 This same justification was recorded for another procurement of engineering services, with the recommended award being 27 per cent above its \$1.9 million budget.

Table 4.1: Incentive payment regime for the Delivery Partner services

Key Result Area	Key Result Area requirement	Incentive payment
Time	The Terminal Building Works achieves construction commencement by 31 May 2022.	\$6 million
	All Works Packages achieve completion by 10 October 2025.	\$4 million
	The Western Sydney Airport achieves Operational Readiness by 24 December 2026.	\$5 million
Cost	The total cost of delivering the Western Sydney Airport is less than \$5.3 billion.	\$10 million
Maximum entitlement to incentive payments		\$25 million

Source: WSA Co records.

4.22 WSA Co did not maintain a record of the basis on which the incentive payment amounts were set and were considered value for money. WSA Co advised the ANAO in June 2019 that:

During the time of the procurement of these services WSA's direct workforce was approximately 20 staff members. Consequently, decisions were often made during meetings as all relevant parties could be present. In relation to the establishment of the \$25 million incentive payment pool, this was discussed with the then GM Procurement and EGM Airport Infrastructure. The structure was then confirmed as part of the RFT drafting that was provided to the Board of Directors for approval prior to release.

The rationale for the incentive pool being established at \$25 million was tied to the schedule of four milestones being [those at Table 4.1].

Consequently the amounts established were relative to the importance to the overall project of meeting the above targets. Additionally as there are abatements that apply to the incentive pools the quantum was required to be sufficient to align the behaviour of the Delivery Partner notwithstanding the application of abatements.

Area for improvement

4.23 In advice to the ANAO in September 2019, WSA Co acknowledged that documentation in achieving value for money was an area for improvement. Actions already taken included associated improvements to its 'Request for Award' templates for initial engagements and for contract variations.

Did WSA Co fulfil its requirement to notify Shareholder Ministers of its procurement activities?

WSA Co notified Shareholder Ministers of its procurement activities over the \$50 million threshold as required but not in accordance with the 10 business days required.

4.24 Requirements for WSA Co to notify Shareholder Ministers of its procurement activities include:

The directors of a wholly-owned Commonwealth company must do the following:

- keep the responsible Minister informed of the activities of the company and any subsidiaries of the company; ...³⁹

WSA Co must **notify** the Shareholder Ministers (and Shareholder Departments) of any proposed decision, event or activity which involves:

- the release of a tender (or similar approach to market) where the resulting contract will have a total cost or value of greater than \$50 million;
- entering into a contract with a total cost or value of greater than \$50 million, and whether or not that contract contains a right of termination described in clause 3.7 of the WSA Co Equity Subscription Agreement ...⁴⁰

Any notification or request for approval required ... should be accompanied by all relevant information and must be given in adequate time for consideration (being not less than 10 business days) before the relevant decision is to be made or the relevant issue, activity or event is publicised in any way.⁴¹

4.25 Three of the procurements (Relocation of Energy Assets, Early Earthworks and the Delivery Partner) were to result in a contract greater than \$50 million and so WSA Co was to notify the Shareholder Ministers of the proposed release of these tenders and proposed contracts no less than 10 business days in advance.

4.26 In respect of the Relocation of Energy Assets procurement, WSA Co notified the Commonwealth Shareholder Ministers on 25 October 2017 'that WSA Co entered into a tripartite agreement with TransGrid and the Commonwealth for the relocation of the transmission line that currently transects the north-western corner of the Western Sydney Airport site on 18 October'.

4.27 WSA Co notified the Commonwealth Shareholder Ministers of the proposed approach for the procurement of Early Earthworks on 30 November 2017. Notification of the proposed approach for the Delivery Partner and Project Manager (Definition) services occurred 21 December 2017.

4.28 WSA notified the Commonwealth Shareholder Ministers on 25 June 2018 that WSA Co's Board 'resolved that WSA Co should enter into contracts as soon as possible for the following two packages: Early Earthworks; and Delivery Partner'. The letter of notification outlined the termination rights, as required, and noted:

I assure Ministers that all of these open tender procurement processes have been conducted in accordance with best practice probity principles and achieving value for money. The procurement processes were competitive and WSA Co had strong interest from the market for these procurements.

4.29 A response was received from the Shareholder Ministers on 27 June 2018, prior to the contracts being executed on 29 June 2018. No issues were raised beyond asking that WSA Co be 'cognisant of the requirement that adequate time for consideration (being not less than 10 business days) is provided for any notification or request for approval required under the [Commercial Freedoms Framework] ...'

39 Section 19(1)(a) of the *Public Governance, Performance and Accountability Act 2013*.

40 Clause 16 of Initial WSA Co Limited Commercial Freedoms Framework.

41 Clause 13 of Initial WSA Co Limited Commercial Freedoms Framework.

4.30 Although the Project Manager (Definition) procurement was to result in a contract valued below the \$50 million threshold, the response of 27 June 2018 from the Shareholder Ministers stated, ‘...we understand that WSA Co is still finalising the evaluation of the Project Manager (Definition) tenders and anticipate that you will write to us shortly on this matter.’

4.31 WSA Co notified the Shareholder Ministers on 27 June 2018 that it had selected a preferred tenderer for the Project Manager (Definition) role and it outlined the termination rights under the proposed contract. The notification letter also advised that;

Consistent with the Statement of Expectations, I assure Ministers that this open tender procurement process has been conducted in accordance with best practice probity principles and achieving value for money ...

The contract award sum for the Project Manager (Definition) is capped ... so that WSA Co will only be charged for work that actually occurs. In accordance with prudent financial management, should the scope of works increase WSA Co has also budgeted appropriate contingency.



Grant Hehir
Auditor-General

Canberra ACT
4 December 2019

Appendices

Appendix 1 Entity responses



20 November 2019

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

Dear Mr Hehir,

ANAO Audit Report on Western Sydney Airport (WSA) Procurement Activities

Thank you for the opportunity to comment on the Australian National Audit Office's report on the procurement activities of WSA, provided under section 19 of the *Auditor-General Act 1997*.

WSA acknowledges the positive findings in relation to the commercial approach and governance of procurement activities undertaken by WSA since incorporation in August 2017. WSA Board and Management are committed to continuous improvement and whilst noting no recommendations for WSA, the report highlights opportunities in record keeping and transparency of procurement outcomes, which have all been addressed.

Overall WSA finds the report to be a generally fair and accurate representation of the start-up phase of the company. Notwithstanding this, we make the following observations:

1. WSA acknowledges a small number of internal records were signed but not dated, and whilst this is indeed not best practice, the intention was not to be misleading, noting the records were not backdated.

A Board initiated review of all procurement activities was completed between November 2018 and January 2019 in which all unsigned and/or undated documents were registered and where possible signatures were obtained retrospectively for posterity to indicate that the record had been reviewed.

2. In February 2019, a follow-up internal audit requested by the Board identified an attitude of disregard by the WSA Infrastructure team towards procurement policies. WSA would like to reiterate all recommendations were actioned and controls have been put in place to reduce the likelihood of a reoccurrence.
3. Whilst there were procurements conducted prior to a formal procurement Policy being in place, WSA strived to ensure all activities delivered value for money, through the use of panels and benchmarking.



WSA appreciates the opportunity to provide a response to the ANAO audit and will promptly respond to any questions arising.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Paul O'Sullivan'.

Paul O'Sullivan
Chair

A handwritten signature in blue ink, appearing to read 'Graham Millett'.

Graham Millett
Chief Executive Officer



Australian Government
Department of Finance

Rosemary Huxtable PSM
Secretary

Our Ref: EC19-000933

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

Dear Mr Hehir

I refer to the Australian National Audit Office's correspondence dated 23 October 2019 providing the proposed Section 19 Audit Report, *Western Sydney Airport Procurement Activities* (the Report) and seeking a response from the Department of Finance (Finance).

Thank you for the opportunity to respond to the matters raised in the proposed report. Finance welcomes the conclusion that WSA Co Limited's (WSA Co's) procurement framework and procurement activities are largely achieving value for money.

Government Business Enterprises (GBEs) operate in commercial environments and are required to achieve commercial rates of return for the Commonwealth. The separate legal identity of GBEs reflects their commercial focus and their operation at arm's length from the general government sector.

Finance agrees with recommendation 1, and will consider initiatives to support GBEs' use of coordinated and cooperative procurements, while noting participation in coordinated or cooperative procurement arrangements is at the discretion of GBEs.

Finance notes recommendation 2. GBEs operate flexibly and at arm's length from the Government. Conduct of procurement activities, including mechanisms for advertising, publishing and reporting results, is a matter for individual GBEs taking into account value for money considerations. Reporting requirements that restrict GBEs' commerciality and independence would require a policy decision of Government.

Finance's response to the Report's Recommendation 1 is:

Agreed. Finance will provide further assistance to GBEs to identify panel opportunities. Future panel guidance being developed by Finance will also have regard to GBE participation.

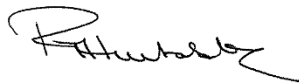
One Canberra Avenue, Forrest ACT 2603 • Telephone 02 6215 3445
Internet www.finance.gov.au

Finance's response to the Report's Recommendation 2 is:

Noted. GBE Boards have ultimate responsibility for the performance of each GBE and they are expected to oversee the development of business strategies and day to day management policies, including procurement. Subjecting GBEs to the mandatory business rules of AusTender would limit the ability of GBEs to operate commercially, flexibly and in competition with other businesses. A change, as described in this recommendation would require a policy decision of Government.

Finance will continue to support the adoption and implementation of best practice governance, risk management and procurement for all Commonwealth entities, including GBEs, and intends to review the *Commonwealth Government Business Enterprises – Governance and Oversight Guidelines* in 2020.

Yours sincerely



Rosemary Huxtable
Secretary

17 November 2019



Australian Government
Department of Infrastructure, Transport,
Cities and Regional Development

Secretary
Simon Atkinson

PDR ID: EC19-001042

Mr Grant Hehir
Auditor-General
Australian National Audit Office
GPO BOX 707
CANBERRA ACT 2601

Dear Mr Hehir

Auditor-General Proposed Audit Report on Western Sydney Airport Procurement Activities

Thank you for providing the Department of Infrastructure, Transport, Cities and Regional Development (the Department) with the opportunity to comment on the Australian National Audit Office's (ANAO's) proposed report on Western Sydney Airport Procurement Activities.

The Department acknowledges the ANAO's overall conclusions and welcomes the recommendations.

It should be noted that responsibility for the delivery of the Western Sydney International (Nancy-Bird Walton) Airport (the Airport) rests with WSA Co. WSA Co are required under the Project Deed to develop a number of Project Plans, including a Procurement Plan, to support this process. Through the Department's oversight role, the Department only reviews these plans for the purpose of ensuring that they meet the requirements of the Project Deed.

As part of the Right of First Refusal obligations from the 2002 sale of Sydney (Kingsford Smith) Airport, there was a Notice of Intention consideration period for Sydney Airport Corporation Limited (Sydney Airport) to consider the Commonwealth's offer to build and operate the Airport. During this period, the Department undertook contingency planning for either acceptance or decline of the offer. This planning included preparation of procurement documents, management plans and the mobilisation of Departmental resources to ensure that the Commonwealth was in a position to progress the project regardless of the outcome. The use or otherwise of the documents prepared by the Commonwealth was a decision made by WSA Co.

The Department notes that the ANAO has concluded that the requirement for 'WSA Co to enter into \$300 million worth of design and construction contracts within 12 months of [it] being registered' was an 'unnecessary' requirement. The Department is of the view that the milestones contained within the Project Deed were appropriate and part of a broader approach to overarching compliance with the Right of First Refusal obligations and to ensure that the Airport is completed within the Government's timeframe.

The Department's summary response for inclusion in the report is attached. Please contact Ms Kerry Vine-Camp, Executive Director Western Sydney Unit on (02) 6274 7664 if you would like to discuss this response.

I would like to thank the ANAO for the cooperation of the audit team and the professional manner in which the audit was conducted.

Yours sincerely

Simon Atkinson

19 November 2019

Appendix 2 Statement of Expectations for WSA Co Limited



Senator the Hon Mathias Cormann
Minister for Finance

The Hon Paul Fletcher MP
Minister for Urban Infrastructure

Mr Paul O'Sullivan
Chairman
WSA Co Limited
C/- Australian Government Solicitor
MLC Centre, Level 42
19-29 Martin Place
SYDNEY NSW 2000

Dear Mr O'Sullivan

STATEMENT OF EXPECTATIONS FOR WSA CO LIMITED

We are writing in our capacity as Shareholder Ministers of WSA Co Limited (WSA Co) to set out the Australian Government's expectations of WSA Co for construction of the Western Sydney Airport. This statement will be updated as required by the Government to reflect future policy decisions.

Policy Objectives

You will appreciate that the need for additional airport capacity in the Sydney Basin through the construction of the Western Sydney Airport is vital to the state and national economies. The Government has established WSA Co with a clear objective: to deliver an operational airport to permit services to commence not later than the end of 2026. This project is a unique opportunity to build national economic infrastructure with real and lasting benefits for Australia.

The new airport in Western Sydney will be a catalyst for jobs and economic growth in the region, creating around 28,000 direct and indirect jobs in the region by the early 2030s. Our strong expectation is that WSA Co, through the major construction contracts it will enter into, will create the maximum opportunities for local employment. It will be crucial that WSA Co works collaboratively with New South Wales agencies, local government and the wider community to realise the wider social and economic benefits for which the airport will be a catalyst. This should also include the Greater Sydney Commission and any future Government land development company established to activate the broader region surrounding the airport.

In demonstrating the Government's commitment to Western Sydney, we expect that the company will establish its offices in Liverpool and the majority of staff, including senior staff, will work from those offices or nearby in Western Sydney.

Parliament House, Canberra ACT 2600 Telephone: (02) 6277 7600 ~ Facsimile: (02) 6273 4110

22076420

We are also of the view that the design of the Western Sydney Airport should be such that Western Sydney residents will be justifiably proud of this facility and consider that it reflects the confidence and aspirations of Western Sydney. The design should support the policy objectives that this airport provides greater equality in accessing air services for business and leisure, and that this airport stimulates economic growth in Western Sydney.

To ensure construction of the new airport commences without delay, the Government has committed up to \$5.3 billion in equity through WSA Co to build the Western Sydney Airport.

Role and Responsibilities of WSA Co

WSA Co is a wholly-owned Commonwealth Company, and as such, it is expected that it will operate in a commercial manner, at arm's length from the Government. The Board of WSA Co has ultimate responsibility for the performance of the company. WSA Co is accountable to the Government as sole shareholder for its performance in relation to the delivery of the Western Sydney Airport.

WSA Co has flexibility and discretion in its operational and commercial decisions, within the parameters of the *Corporations Act 2001*, the *Public Governance, Performance and Accountability Act 2013*, associated subordinate legislation, the *Commonwealth Government Business Enterprise Governance and Oversight Guidelines* (GBE Guidelines) and the Government's policy objectives.

In addition, the Government and WSA Co will enter into a Project Deed. The Project Deed will set out the obligations of WSA Co to develop and operate the Western Sydney Airport. These obligations cannot be materially more advantageous than the terms proposed in the Government's Notice of Intention, which was declined by Southern Cross Airports Corporation (SCAC).

Equity Subscription

Taxpayers are making a substantial investment in WSA Co. The Equity Subscription Agreement sets out the terms on which the Commonwealth will subscribe for equity in WSA Co and the terms under which equity will be provided to WSA Co.

Given the obligations contained within the Project Deed, it is important that the Equity Subscription Agreement and the Project Deed are executed in quick succession. We expect that the Company will be diligent in its operations to minimise the Government's equity investment.

Procurement

Recognising the scale and national significance of Western Sydney Airport, and the substantial investment by the Commonwealth, WSA Co is to undertake the procurement of goods and services to a high standard, to achieve value for money, and ensure appropriate financial and probity controls are in place. WSA Co should maintain a high level of transparency, to give confidence to stakeholders in the integrity of WSA Co's procurement processes.

Reporting to the Government

The Government expects that WSA Co will prepare its first draft Corporate Plan and submit it for consideration not later than the second quarter of calendar year 2018. In preparing this Corporate Plan we expect WSA Co to work closely with Shareholder Departments, the Department of Finance and the Department of Infrastructure and Regional Development.

WSA Co will be required to submit quarterly progress reports to Shareholder Departments that provide an update on activities undertaken for the previous quarter, including financial performance, and will serve to provide Shareholder Ministers with an early warning of any potential risks or issues arising from the project. Once WSA Co has developed its Corporate Plan, the quarterly reports will report against the key performance indicators outlined in the Corporate Plan. The Shareholder Departments are able to assist you with developing a template to ensure the appropriate information is covered in the quarterly reports.

Project Delivery Objectives

In addition to the regulatory framework outlined above, WSA Co should ensure that the Western Sydney Airport is delivered in a way which:

- is an efficient, effective, transparent and ethical use of public resources;
- captures opportunities to innovate in the operation and design of the airport to the extent commercially and operationally feasible (including in relation to energy performance, to the use of information technology, and to environmental attributes);
- achieves value for money for the Commonwealth;
- demonstrates effective engagement with the Western Sydney community, including through the Forum on Western Sydney Airport (FOWSA);
- promotes public confidence in the probity and integrity of WSA Co's procurement and other processes;
- preserves the Government's options for future ownership and governance arrangements for WSA Co; and
- integrates with and leverages new and existing Government initiatives in the Western Sydney area, including those that might be delivered through the proposed Western Sydney Cities Deal.

The Government expects that WSA Co's Board and management will work cooperatively and collaboratively with Shareholder Departments to achieve the Government's objectives.

Finally, we would like to thank you and your fellow Directors for agreeing to serve on the Board of WSA Co. We wish you every success in delivering this exciting new project.

Kind regards

Mathias Cormann
Minister for Finance

Paul Fletcher
Minister for Urban Infrastructure