

Procurement of Garrison Support and Welfare Services

Department of Home Affairs

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Canberra ACT

28 May 2020

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 the Department of Home Affairs. The report is titled *Procurement of Garrison Support and Welfare Services*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament.

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

Yours sincerely



Grant Hehir
Auditor-General

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

AUDITING FOR AUSTRALIA

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Contents

Summary and recommendations.....	7
Background	7
Conclusion	8
Supporting findings	9
Recommendations	11
Summary of entity response	11
Key messages from this audit for all Australian Government entities	13
Audit findings.....	15
1. Background	16
Introduction	16
Previous audit reports on offshore processing procurements and contracts	20
Commonwealth Procurement Framework	21
Rationale for undertaking the audit	24
Audit approach	24
2. Procurement of garrison support and welfare contracts	26
Did the department meet the CPR requirements for conducting limited tenders or direct engagement?	27
Did the department ensure that principles of probity were applied?	35
Did the department demonstrate the achievement of value for money in Nauru?	37
Did the department demonstrate the achievement of value for money in PNG?	40
Did the department conduct due diligence inquiries on potential contractors?	46
3. Contractor performance reporting and monitoring	48
Did contractors meet reporting requirements?	49
Did the department monitor contractor reports?	52
Were payments to contractors made in accordance with Letters of Intent?	56
4. Implementation of actions and recommendations from previous ANAO and JCPAA reports	59
Did the department implement the recommendations of Auditor-General Report No.16 2016–17?	59
Has the department implemented the recommendations of JCPAA Report 465: <i>Commonwealth Procurement</i> ?	65
Appendices	67
Appendix 1 Department of Home Affairs' response	68
Appendix 2 Relevant paragraphs of the Commonwealth Procurement Rules	71
Appendix 3 High risk, high value governance arrangements	73
Appendix 4 Contract Management Framework	75
Appendix 5 Garrison support and welfare contracts: performance measures	76
Appendix 6 Timeliness of reports by service providers to the department	80
Appendix 7 Key meetings between the contractors and the department	83
Appendix 8 Recommendations of Auditor-General Report No.16 2016–17 and JCPAA Report 465: <i>Commonwealth Procurement</i>	85



Audit snapshot

Auditor-General Report No.37 2019–20

Procurement of Garrison Support and Welfare Services



Why did we do this audit?

- ▶ The ANAO's two previous audit reports into the department's management of offshore garrison support and welfare contracts identified a range of shortcomings and deficiencies.
- ▶ Since 2017, the department has entered into contracts totalling in excess of \$1 billion; and it is timely to assess whether the department has improved its procurement and performance management processes.



Key facts

- ▶ In March 2014, the department contracted Broadspectrum (BRS) for the provision of garrison support and welfare services in both Nauru and PNG. This contract expired on 31 October 2017.
- ▶ In preparation for the cessation of the BRS contract, the department commenced processes to procure garrison support and welfare services for both Nauru and Manus Island and subsequently entered into contracts with Canstruct; JDA; NKW; and Paladin.



What did we find?

- ▶ The Department of Home Affairs' management of the procurement of garrison support and welfare services for offshore processing centres in Nauru and PNG was largely appropriate.
- ▶ Procurement activities were conducted largely in accordance with the CPRs.
- ▶ Contractor performance reporting and monitoring was partly adequate due to delays in the establishment of the associated contractual frameworks.
- ▶ The department has substantially implemented the recommendations of previous ANAO and Parliamentary reports.



What did we recommend?

- ▶ The Auditor-General made two recommendations to the department of Home Affairs regarding documentation of decisions in limited tender procurements and interim performance reporting while contract negotiations are being finalised.
- ▶ The Department agreed to the recommendations.

\$7.1 billion

has been the total cost of regional processing arrangements in Nauru and PNG.

72%

decrease in the asylum seeker population in Nauru from 1233 in August 2014 to 345 in October 2017.

49%

decrease in the asylum seeker population in PNG from 1353 in January 2014 to 690 in October 2017.

Summary and recommendations

Background

1. In 2012, the Australian Government established Regional Processing Centres (RPCs)¹ in the Republic of Nauru (Nauru) and Papua New Guinea (PNG). The centres were established through Memoranda of Understanding (MOUs) between the Australian Government and the Nauruan² and PNG governments³ respectively. Under both agreements, the Australian Government was to bear all costs incurred under the MOUs.
2. Since 2012, the Department of Home Affairs⁴ (the department) has been responsible for the procurement of garrison support and welfare services functions for the RPCs and the establishment and ongoing management of associated contractual arrangements. Garrison support includes security, cleaning and catering services. Welfare services include individualised care to maintain health and well-being, such as recreational and educational activities.
3. In March 2014, the department contracted Broadspectrum (Australia) Pty Ltd⁵ (BRS) for the provision of garrison support and welfare services in both Nauru and PNG. This contract expired on 31 October 2017. In preparation for the cessation of the BRS contract, the department commenced processes to procure garrison support and welfare services for both Nauru and Manus Island and subsequently entered into four contracts with Canstruct International Pty Ltd; JDA Wokman Ltd; NKW Holdings Ltd; and Paladin.⁶
4. The department's estimate of the total cost of regional processing arrangements in Nauru and Papua New Guinea, since establishment, is \$7085.14 million.

Rationale for undertaking the audit

5. On 19 February 2019 and 18 March 2019, the Auditor-General received correspondence from the Hon Shayne Neumann MP, Shadow Minister for Immigration and Border Protection, requesting 'an urgent audit into the circumstances surrounding the Department of Home Affairs' procurement of garrison support and welfare services in Papua New Guinea.'⁷
6. Implementation of the Australian Government's policies on offshore detention of refugees and asylum seekers over the last ten years has cost billions of dollars. The operation of

-
- 1 Regional Processing Centres are also sometimes referred to as Offshore Processing Centres (OPCs). For consistency, the term Regional Processing Centre or RPC will be used throughout this report.
 - 2 Department of Foreign Affairs and Trade, *Nauru* [Internet], available from <https://www.dfat.gov.au/geo/nauru/Pages/nauru.aspx> [accessed 17 January 2020].
 - 3 Department of Foreign Affairs and Trade, *Papua New Guinea* [Internet], available from <https://www.dfat.gov.au/geo/papua-new-guinea/Pages/papua-new-guinea.aspx> [accessed 17 January 2020].
 - 4 Formerly the Department of Immigration and Border Protection.
 - 5 Transfield Services (Australia) Pty Ltd changed its name to Broadspectrum (Australia) Pty Ltd in November 2015. For consistency, the ANAO will use Broadspectrum or BRS throughout the report. In 2016, Broadspectrum became a subsidiary to Spanish company Ferrovial.
 - 6 Paladin comprises Paladin Solutions PNG Ltd and Paladin Holdings PTE Ltd.
 - 7 Australian National Audit Office, *Procurement of garrison support and welfare services in Papua New Guinea* (request for audit) [Internet], available from <https://www.anao.gov.au/work/request/procurement-garrison-support-and-welfare-services-papua-new-guinea> [accessed 17 January 2020].

RPCs have been a subject of substantial Parliamentary and public interest. The ANAO's two previous audit reports⁸ into the department's management of offshore garrison support and welfare contracts identified a range of shortcomings and deficiencies. Since the tabling of the audit reports, the department has entered into further contracts totalling in excess of \$1 billion; and it is timely to assess whether the department has improved its procurement and performance management processes.

Audit objective and criteria

7. The audit objective was to assess whether the Department of Home Affairs has appropriately managed the procurement of garrison support and welfare services for offshore processing centres in Nauru and PNG (Manus Island).

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

- procurements were conducted in accordance with the Commonwealth Procurement Rules and value for money principles;
- contractor performance is adequately reported and monitored; and
- the department has implemented recommendations and actions arising from previous Joint Committee of Public Accounts and Audit (JCPAA) and ANAO reports on the procurement of garrison support and welfare services.

Conclusion

9. The Department of Home Affairs' management of the procurement of garrison support and welfare services for offshore processing centres in Nauru and PNG was largely appropriate.

10. Procurement activities for the provision of garrison support and welfare services on Manus Island and Nauru were largely undertaken in accordance with the CPRs. The department utilised provisions of the CPRs to allow for an exemption from requirements for the use of open tender procurements on Manus Island and Nauru. The department did not document its reasons for requesting quotations from Paladin, JDA and NKW as required by the CPRs. The department demonstrated the achievement of value for money for the Nauru procurement, but for Manus Island it did not appropriately benchmark costs for similar services, and the effectiveness of negotiations with providers was unclear due to the department's substantial expansion of the services required during the negotiation process. A probity management framework was established but it was not effectively applied in all instances.

11. Contractor performance reporting and monitoring was partly adequate. There were no performance monitoring or reporting requirements for an average of more than eight months during the time that the respective contractors operated under Letters of Intent prior to the signing of contracts. Once established, contracts contained detailed management plans and reporting frameworks which were appropriately applied by the department in most instances to

8 Auditor-General Report No.16 2016–17 [*Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services*](#), 13 September 2016.

Auditor-General Report No.32 2016–17 [*Offshore Processing Centres in Nauru and Papua New Guinea — Contract Management of Garrison Support and Welfare Services*](#), 16 January 2017.

monitor contractor performance. Payments to contractors during the contract negotiation period were not supported by Letters of Intent in all instances.

12. The department has substantially implemented the recommendations of Auditor-General Report No.16 2016–17 and JCPAA *Report 465: Commonwealth Procurement* by developing training programs to address skill and capability gaps and by implementing a wide range of procurement and contract management guidance and instructional material. The department has significantly improved its record keeping practices and has reported to the JCPAA on its implementation of the ANAO's recommendations.

Supporting findings

13. For Manus Island, the accountable authority of the department took action under paragraph 2.6 of the CPRs on the basis of human health and security to exempt the procurement process from the open competition requirements. The department was aware of 11 providers that could have potentially offered some or all elements of the required garrison support and welfare services but it did not document its reasons for requesting quotations from the three selected providers.

14. The department used paragraph 10.3 of the CPRs to conduct a limited tender for Nauru. However, the department had almost 18 months' notice in May 2016 of BRS' intention not to continue or extend its contract from October 2017. Whilst the Nauruan government imposed a new layer of decision making and approval processes over regional processing service delivery contracts in August 2017, it is not clear why the department could not have secured a replacement supplier using a more competitive procurement method over this period.

15. Risk management plans were established and largely implemented for all four procurements, but planning should have specifically addressed fraud and corruption risks in the given environments.

16. The department developed a probity management framework, but it was not effectively applied in all instances. Key declaration and acknowledgement forms were not completed by all applicable personnel.

17. The department demonstrated the achievement of value for money for the Nauru procurement. Costs under the most recent contract for services, and various scenarios based on population trends and service assumptions, were used to effectively benchmark tenderer costs. Negotiations resulted in the inclusion of additional services with a modified pricing impact.

18. The department did not demonstrate the achievement of value for money for the PNG procurements. Although the department had limited options for comparing tenderer costs, most of the benchmarks it used were not appropriate. Negotiations with NKW achieved significant savings, noting that the initial tendered costs had been assessed as not representing value for money. The effectiveness of negotiation for Paladin was unclear as savings achieved for some items were offset by increases to others, the addition of a mobilisation payment and the department's substantial expansion of the services required during the negotiation process.

19. The department's due diligence inquiries were limited to financial strength assessments of all four tenderers. The financial risk for each was assessed as moderate to high.

20. Once contract management plans and performance management frameworks were established, the four contractors met all associated reporting requirements in a timely manner. However, reporting requirements did not apply while contractors were operating under Letters of Intent. As a result, contractors were not required to submit performance reports for an average of more than eight months after they first began providing services.

21. The department established a largely fit-for-purpose framework for monitoring contractor performance reporting. Contractors completed self-assessments on a monthly basis against agreed performance metrics, which were then validated through a process of review against supporting evidence and third party data. For Nauru, the permanent presence of departmental officials enabled ongoing verification of performance, whilst for Manus Island, site visits were intended to occur monthly but did not occur in all instances. Reports to the delegate contained trend analysis and highlighted any emerging issues and corrective action required. Feedback was provided to each contractor on a monthly basis and included notification of any penalties to be applied for performance failures where applicable under the contract. The department was not able to provide any rationale as to why it did not establish abatement and PIN clauses consistently across the four contracts.

22. Payments to Canstruct and Paladin were made in accordance with the relevant Letters of Intent (LOIs), but the department did not enforce the conditions of payment for Canstruct. Not all payments to JDA were supported by an LOI or applicable agreement. Payments to NKW were made above the LOI approved limit. Other payments were made to NKW outside the LOI without a contract.

23. The department has undertaken a body of work aimed at addressing recommendations arising from the respective previous ANAO reports on procurement and contract management activities for the offshore processing centres. Specifically:

- there is a suite of procurement-focused training programs tailored to workplace requirements;
- a procurement-specific page on the department's intranet contains a wide range of guidance and instructional material; and
- evidence from the fieldwork conducted for this audit indicates the department has significantly improved its record keeping practices and that staff now use the TRIM electronic data and records management system.

24. The department complied with the recommendation of the Joint Committee of Public Accounts and Audit (JCPAA) by providing the JCPAA with a report in March 2018 on its implementation of the ANAO's recommendations.

Recommendations

Recommendation no.1
Paragraph 2.23 The Department of Home Affairs develop policy guidance to ensure that, where a limited tender procurement is undertaken, decisions in relation to the providers to receive requests for quotation are accurately and concisely documented.

Department of Home Affairs response: *Agreed.*

Recommendation no.2
Paragraph 3.11 The Department of Home Affairs develop policy guidance to ensure that, where Letters of Intent are issued to contractors pending the finalisation of contracts, interim performance reports are prepared when an assessment of key contract risks and deliverables suggests it would be prudent to do so.

Department of Home Affairs response: *Agreed.*

Summary of entity response

The Department of Home Affairs (the Department) welcomes the ANAO's conclusions that the management of the procurement of garrison support and welfare services for offshore Regional Processing Centres (RPCs) in Nauru and Papua New Guinea (PNG) was largely appropriate, and that the Department has substantially implemented the recommendations of previous ANAO and parliamentary reports.

The management of offshore RPCs is highly complex, dynamic and involves working in collaboration with host governments in Nauru and PNG. Unlike onshore procurements, offshore procurement timeframes are impacted by bilateral government considerations, and the sovereignty of the host nation must be respected.

For Nauru, the Department was working with the Government of Nauru on timing and also had to work in line with the requirements of the Government of Nauru and Nauruan legislation. This was reflected in the introduction of the Nauru RPC Corporation Act 2017, which requires the Nauru RPC Corporation and the Nauru Cabinet to approve regional processing service delivery contracts. This requirement impacted the available timeline and the Department was not the sole authority managing the timeline.

For PNG, on 5 July 2017, advice was received from the PNG Government that PNG was not in a position to continue with any contract negotiations for current or new contracts they were undertaking. This provided the Department with limited time to procure services to support the health and welfare of transferees in Manus Island and Port Moresby. The previous provider was due to cease operations on 31 October 2017 and transition-out due to commence on approximately 1 August 2017, the PNG Government was due to have their contractors in place by this time to transition into the new contract. Failure to engage new service providers would have resulted in no services to support the health and welfare of approximately 850 transferees on the closure of the Manus RPC.

In these circumstances, the Department welcomes the ANAO finding that the Department demonstrated the achievement of value for money for the Nauru procurement, that benchmarks used by the Department were appropriate and negotiation processes effective. In relation to the PNG procurements, the Department is of the view that negotiation processes were appropriate,

in light of the changed sovereign nation's operating model, the significantly restricted timeframe and the constantly changing operating environment.

The Department is committed to working within the parameters established under the Commonwealth Procurement Rules (CPRs) to procure services to support activities at our offshore RPCs and we note the ANAO's finding that procurement activities for the provision of garrison support and welfare services on Manus Island and Nauru were largely undertaken in accordance with the CPRs.

As part of the procurement process, a probity management framework was developed for these procurements requiring each departmental officer involved in the procurements to complete a conflict of interest declaration at the outset of the procurement and declare any further real or perceived conflicts of interest that eventuate during the procurement process. From the Department's point of view, it is not unusual practice for a departmental officer to have multiple roles during a procurement process, both over the term of the procurement and concurrently, and we note the ANAO's observation regarding officers' ongoing obligations in terms of declaring real and perceived conflicts of interest.

The Department recognises that performance management is a vital element of successful contract management and notes the ANAO's conclusion that once contract management plans and performance management frameworks were established, contractors met all associated reporting requirements in a timely manner, and the Department established a largely fit-for-purpose framework for monitoring contractor performance.

The Department agrees with the two recommendations made by the ANAO in this report and has undertaken to implement them as a priority.

Key messages from this audit for all Australian Government entities

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

Procurement

- In order to ensure that they meet the intent of the Commonwealth Procurement Rules to allow competitive procurement processes, entities should commence planning of complex procurements early in the process to minimise the reliance on exemption clauses. Where decisions are made to conduct a limited tender, entities must clearly document why particular providers are selected to receive requests for quotation.
- Where price or scope of bids is well outside expectations, or there is a wide variation between tenders, this may indicate misunderstandings in industry about requirements. It is prudent in this situation to review scope and price expectations before progressing negotiations with a tenderer.
- Where interim arrangements such as Letters of Intent are utilised, entities should ensure that appropriate monitoring and reporting mechanisms are utilised.
- Where significant price increases occur during negotiations, there should be consideration of value and benefits gained for the additional cost proposed against the scope requirements of the project and transparent reporting of the price increase justification to decision makers.
- The alignment of training programs with procurement complexity is a useful method for enabling supervisors to determine whether their staff possess appropriate skills and qualifications.

Audit findings

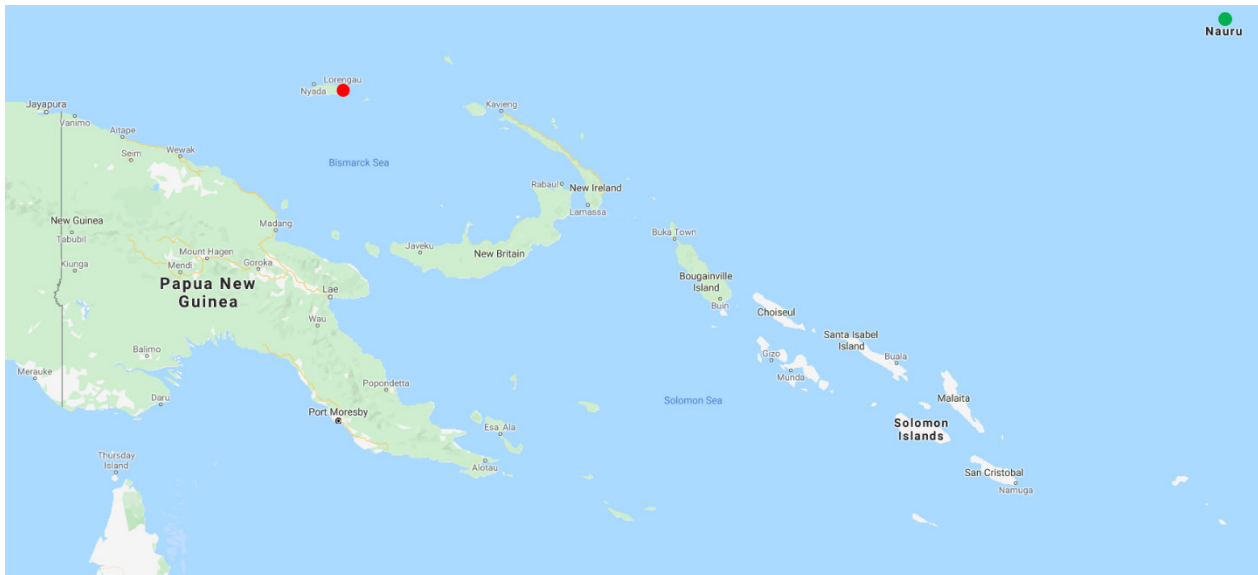
1. Background

Introduction

1.1 In 2012, the Australian government established Regional Processing Centres (RPCs)⁹ in the Republic of Nauru (Nauru) and Papua New Guinea (PNG), with the agreement of both the Nauruan and PNG Governments.

1.2 Figure 1.1 shows the location of Manus Island and Nauru respectively.

Figure 1.1: Location of Nauru and Papua New Guinea



Key: ● Manus Island

● Nauru

Source: Google Maps.

1.3 Initially, the RPC on Nauru was located at a single site. Following a riot and fire at the Nauru site in July 2013, RPC activities there were distributed across three sites.¹⁰

1.4 In PNG, the Manus Island Regional Processing Centre (MIRPC) was established in September 2012 at the Lombrum Naval base. Following the closure of the MIRPC in October 2017 (see paragraph 1.10), arrangements on Manus Island were distributed across three sites:

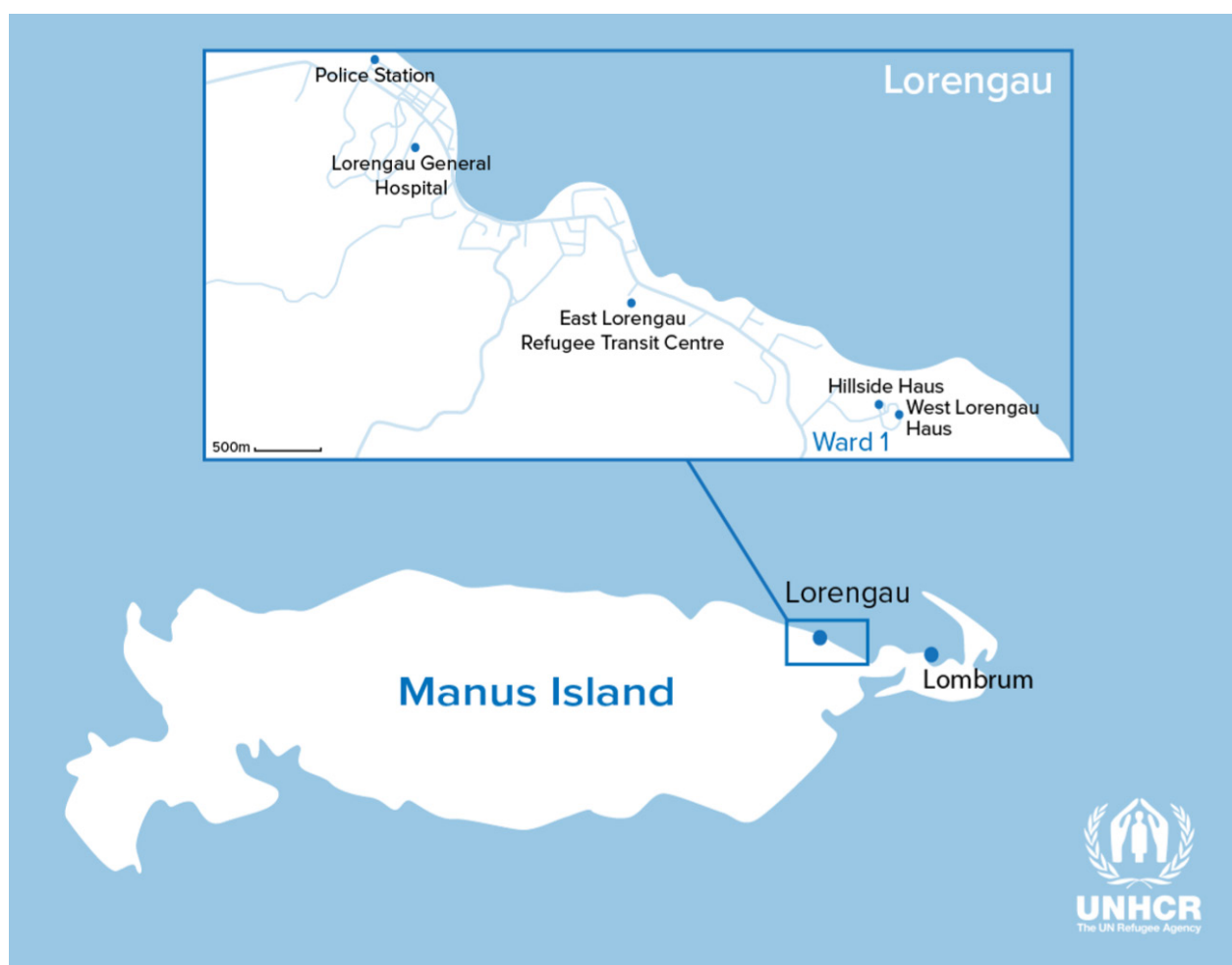
- East Lorengau Refugee Transit Centre (ELRTC)¹¹;
- West Lorengau Haus; and
- Hillside Haus.

Figure 1.2 shows the location of these facilities on Manus Island.

9 Regional Processing Centres (RPCs) are also sometimes referred to as Offshore Processing Centres (OPCs). For consistency, the term Regional Processing Centre (RPC) will be used throughout this report.

10 Known as RPC1, RPC2 and RPC3 — see Table 1.2.

11 The ELRTC was established in late 2014 with refugees first taking up residence in January 2015.

Figure 1.2: Manus Island

Source: UNHCR website.

1.5 The centres were established under Memoranda of Understanding (MOUs) between the Australian Government and the Nauruan¹² and PNG governments¹³ respectively. Under both agreements, the Australian Government was to bear all costs incurred under the MOUs.

1.6 Transfers of asylum seekers to Nauru commenced on 14 September 2012 and to Manus Island on 21 November 2012.

1.7 Since 2012, the Department of Home Affairs¹⁴ (the department) has been responsible for the procurement of garrison support and welfare services functions for the RPCs and the establishment and ongoing management of associated contractual arrangements. Garrison support

12 This MOU superseded a *Memorandum of Understanding between the Republic of Nauru and the Commonwealth of Australia, relating to the Transfer and Assessment of Persons in Nauru, and Related Issues*, signed on 29 August 2012.

13 The agreements were broadly similar and provided that persons 'who have travelled irregularly to Australia by sea' would be transferred to PNG and Nauru and those who were determined to be refugees would be permitted to settle there. The MOUs stated that 'the government of Australia will bear all costs incurred under this MOU'.

14 Formerly the Department of Immigration and Border Protection.

includes security, cleaning and catering services. Welfare services includes individualised care to maintain health and well-being, such as recreational and educational activities.

1.8 The department advised that the total cost of regional processing arrangements in Nauru and PNG since establishment are as shown in Table 1.1.

Table 1.1: Cost of regional processing arrangements by financial year — 2012–13 to 2018–19

Financial year	Nauru (\$m)	PNG (Manus Island) (\$m)	Total (\$m)
2012–13	282.90	75.87	358.77
2013–14	684.38	622.56	1306.94
2014–15	541.09	772.11	1313.20
2015–16	614.57	524.34	1138.91
2016–17	538.26	452.11	990.37
2017–18	521.77	515.88	1037.65
2018–19	511.63	427.67	939.30
Total	3694.60	3390.54	7085.14

Source: ANAO analysis of departmental documentation.

Recent history of contractual arrangements for garrison support and welfare

1.9 In March 2014, the department contracted Broadspectrum (Australia) Pty Ltd¹⁵ (BRS) for the provision of garrison support and welfare services in both Nauru and PNG.

1.10 On 26 April 2016, the Supreme Court of PNG ruled that detention of asylum seekers was unconstitutional. On the following day, the PNG Government announced its intention to close the centre.

1.11 In May 2016, BRS advised that it would not participate in any further tenders or contracts to supply garrison support and welfare services to the Australian Government. It agreed to extend its existing contract until the end of October 2017.¹⁶

1.12 Between November 2016 and March 2017, the department commenced negotiations with the PNG Government in relation to the new policy arrangements, with the intention of PNG assuming independent management of arrangements for existing asylum seekers from October 2017. To support this transition, the department was assisting the PNG Immigration and Citizenship Authority (ICA)¹⁷ to procure associated services (refer paragraph 2.6).

15 Transfield Services (Australia) Pty Ltd changed its name to Broadspectrum (Australia) Pty Ltd in November 2015. For consistency, the ANAO will use Broadspectrum or BRS throughout the report. In 2016, Broadspectrum became a subsidiary to Spanish company Ferrovial.

16 BRS' original contract ran from March 2014 to February 2017 and was then extended to October 2017. The contract included garrison support and welfare services in both Nauru and Manus Island. The total value reported on AusTender was \$2.586 billion.

17 Formerly the PNG Immigration and Citizenship Service Authority (ICSA).

1.13 On 5 July 2017, at a meeting of senior officials, ICA informed the department that, due to the forthcoming general election, the PNG State Solicitor had directed that officials not enter into any service contracts that would continue beyond 31 October 2017 before the formation of an elected government.

1.14 On 31 July 2017, the department obtained approval from the Minister to procure garrison support and welfare services for both Nauru and Manus Island in order to allow the continuation of these services after 31 October 2017. The department subsequently entered into four contracts¹⁸ as listed in Table 1.2.

Table 1.2: Contracts for garrison support and welfare services

Service provider	Services provided	Contract period	Contract value (\$m)
Canstruct International Pty Ltd (Canstruct)	Garrison and Welfare Services Nauru (<i>RPC 1, 2, 3</i>)	28 September 2017 to 30 June 2020	1122.0 ^a
JDA Wokman Ltd (JDA)	Settlement Services (<i>ELRTC, Hillside Haus, West Lorengau Haus</i>)	4 December 2017 to 30 June 2020	77.0
NKW Holdings Ltd (NKW)	Site Management Services (<i>Hillside Haus, West Lorengau Haus</i>)	21 September 2018 to 30 November 2019	136.0
Paladin ^b	Garrison Services (<i>ELRTC and additional sites</i>)	21 September 2017 to 30 November 2019	532.0
Total			1867.0

Note a: The figure of \$1,122 million is from departmental documentation. The figure recorded on AusTender is \$1,116 million, a difference of \$6 million.

Note b: Paladin comprises Paladin Solutions PNG Ltd and Paladin Holdings PTE Ltd. Paladin Solutions PNG Ltd initially provided garrison services at the ELRTC, under a Letter of Intent, between September 2017 and February 2018. Paladin Solutions PTE Ltd provided garrison services upon contract execution on 28 February 2018. For the purposes of this audit, the Paladin contracts are considered as one procurement.

Source: ANAO analysis of departmental documentation.

¹⁸ Prior to the execution of the contracts, the department and the service providers operated under Letters of Intent (LOI). The LOIs established a legal basis for garrison support and welfare services to be undertaken through a draft contract, prior to the final contract being executed by the department and the relevant parties.

Previous audit reports on offshore processing procurements and contracts

1.15 The ANAO conducted two performance audits in 2016–17 for the procurement and contract management of garrison support and welfare services.¹⁹ These audits assessed whether the department had appropriately:

- managed the procurement of garrison support and welfare services at offshore processing centres in Nauru and PNG (Manus Island);
- established and managed the contracts for garrison support and welfare services at offshore processing centres in Nauru and PNG (Manus Island); and
- met the requirements of the Commonwealth Procurement Rules, including consideration and achievement of value for money (for both procurement and contract management).

1.16 The audits found, respectively, that the department's management of procurement activity and management of contracts for garrison support and welfare services at the RPCs had 'fallen well short' of effective practice.²⁰ The audits made a total of five recommendations.

Other relevant performance audit reports

1.17 Prior to the 2016–17 audits, the ANAO had conducted five audits²¹ since 2004 that focused on the department's management of detention centre contracts. Each of these audits identified shortcomings in the department's contract management and procurement activities of detention services.

Joint Committee of Public Accounts and Audit

1.18 Auditor-General Report No.16 2016–17 was one of three ANAO reports²² selected for an inquiry into Commonwealth Procurement by the Joint Committee of Public Accounts and Audit (JCPAA) in October 2016. In September 2017, the JCPAA published *Report 465: Commonwealth Procurement*. The JCPAA made two recommendations²³, which are discussed further in Chapter 4.

19 Auditor-General Report No.16 2016–17 [Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services](#) (tabled 13 September 2016 — referred to in this report as Auditor-General Report No.16 2016–17); and Auditor-General Report No.32 2016–17 [Offshore Processing Centres in Nauru and Papua New Guinea — Contract Management of Garrison Support and Welfare Services](#) (tabled 16 January 2017 — referred to in this report as Auditor-General Report No.32 2016–17).

20 Auditor-General Report No.16 2016–17 [Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services](#), 13 September 2016, and Auditor-General Report No.32 2016–17 [Offshore Processing Centres in Nauru and Papua New Guinea — Contract Management of Garrison Support and Welfare Services](#), 16 January 2017.

21 Auditor-General Report No.54 2003–04 *Performance Audit Management of the Detention Centre Contracts—Part A*; Auditor-General Report No.1 2005–06 *Management of the Detention Centre Contracts—Part B*; Auditor-General Report No.32 2005–06 *Management of the Tender Process for the Detention Services Contract*; Auditor-General Report No.21 2012–13 *Individual Management Services Provided to People in Immigration*; and Auditor-General Report No.13 2016–17 *Delivery of Health Services in Onshore Immigration Detention*.

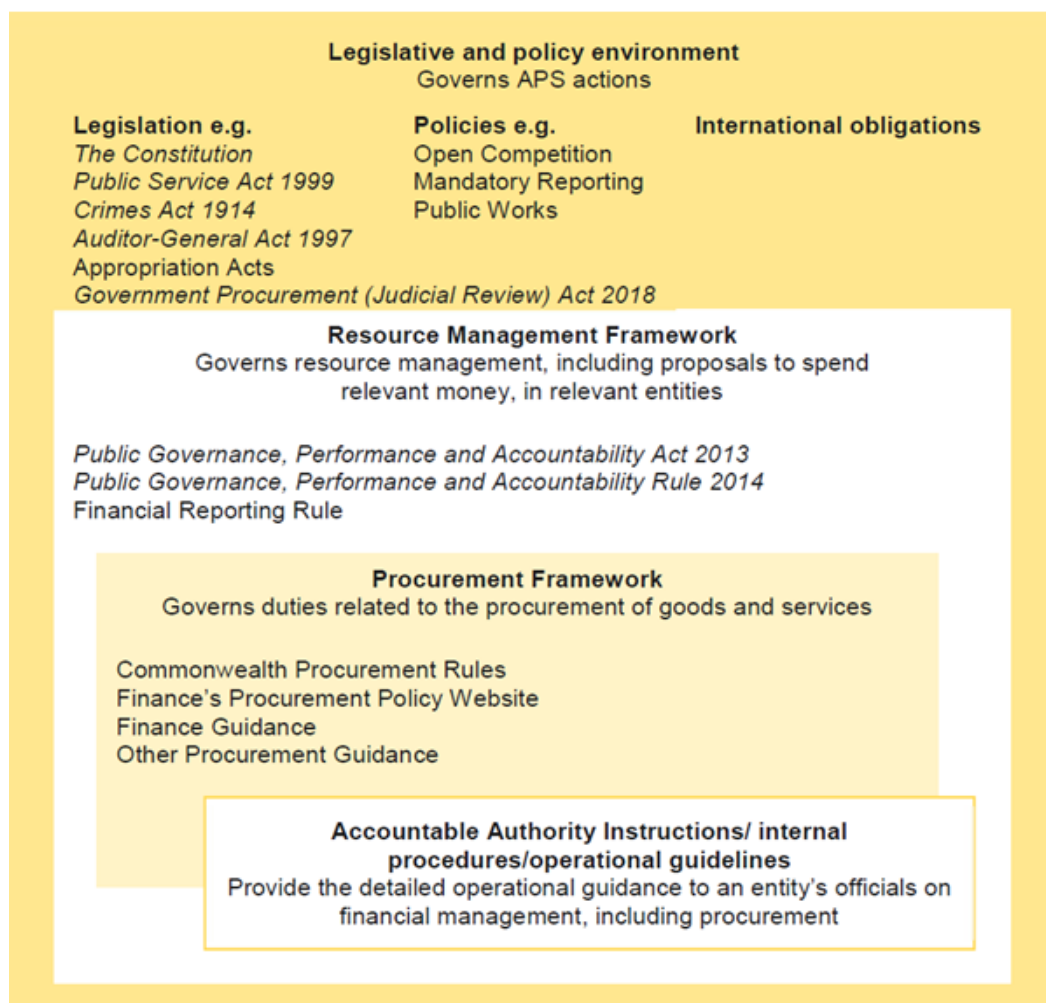
22 The others were Auditor-General Report No.1 2016–17, *Procurement of the International Centre for Complex Project Management to Assist on the OneSKY Australia Program* and Auditor-General Report No.13 2016–17, *Delivery of Health Services in Onshore Immigration Detention*.

23 One recommendation was for the department; the other for the Australian National Audit Office (ANAO).

Commonwealth Procurement Framework

1.19 Figure 1.3 summarises the core elements of the Commonwealth procurement framework. Key aspects of the framework which are relevant to this audit are discussed in paragraphs 1.21 to 1.33.

Figure 1.3: The Commonwealth Procurement framework



Source: Commonwealth Procurement Rules 2017, Department of Finance.

Public Governance, Performance and Accountability Act 2013

1.20 The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) came into force on 1 July 2013. Section 15 of the Act requires entities to promote the proper use²⁴ and management of public resources for which the authority is responsible.

1.21 Under section 23 of the PGPA Act, the accountable authorities of non-corporate Commonwealth entities have power to enter, vary or administer an arrangement, and approve commitments of relevant money, on behalf of the Commonwealth.

²⁴ Proper use refers to the effective, efficient, economic and ethical use of public resources.

Commonwealth Procurement Rules

1.22 The Commonwealth Procurement Rules (CPRs) are issued by the Minister for Finance under subsection 105B(1) of the PGPA Act.

1.23 The CPRs govern how entities buy goods and services. The CPRs state:

Procurement encompasses the whole process of acquiring *goods* and services. It begins when a need has been identified and a decision has been made on the procurement requirement. *Procurement* continues through the processes of risk assessment, seeking and evaluating alternative solutions, the awarding of a *contract*, the delivery of and payment of *goods* and services and, where relevant, the ongoing management of the *contract* and consideration of disposal of *goods*.²⁵

1.24 A core principle of the CPRs is achieving value for money. The CPRs provide that officials must be satisfied, after reasonable enquiries, that a procurement achieves a value for money outcome. Value for money is determined by: encouraging competition and being non-discriminatory; using public resources in an efficient, effective, economical and ethical manner; facilitating accountable and transparent decision-making; appropriate engagement with risk; and being commensurate with the scale and scope of the business requirement.

1.25 The CPRs consist of two divisions:

- Division 1 — rules applying to all procurements regardless of value. Officials must comply with the rules of Division 1 when conducting procurements; and
- Division 2 — additional rules that apply to all procurements valued at or above the relevant procurement threshold (unless exempted under Appendix A of the CPRs).

The department's procurement of garrison support and welfare services

1.26 The department conducted procurement activity for the garrison support and welfare services engagements using two key elements of the CPRs.

- For Nauru, Canstruct was issued with a Request for Quotation (RFQ) under paragraph 10.3, which allows for the conduct of procurement through limited tender in certain circumstances.
- For Manus Island, RFQs were issued for separate services at specific sites to JDA, NKW and Paladin under paragraph 2.6, which allows an accountable authority to apply 'special measures' determined to be necessary:

for the maintenance or restoration of international peace and security, to protect human health, for the protection of essential security interests, or to protect national treasures of artistic, historic or archaeological value.

1.27 On 10 August 2017, the Secretary of the department, as the accountable authority, exercised his authority to invoke paragraph 2.6 in relation to the Manus Island procurements 'for the protection of essential security interests and human health'.

1.28 The provisions of paragraphs 2.6 and 10.3 are set out in full in Appendix 2.

²⁵ Department of Finance, *Commonwealth Procurement Rules: Achieving value for money*, 1 March 2017, page 6. The CPRs are revised periodically. The CPRs that apply to this audit are the March 2017 version which were in force at the time.

Accountable Authority Instructions

1.29 In addition to the requirements of the CPRs, section 20A of the PGPA Act authorises accountable authorities to give instructions, known as Accountable Authority Instructions (AAIs), to assist officials to understand their duties and responsibilities under the PGPA Act. AAIs are legally binding and may contain links to relevant legislative requirements, guidance material, authorisations and other instructions.

1.30 Paragraph 3.81 of the department's AAIs requires that the Chief Financial Officer (CFO) authorise the use of limited tender for procurement at or above the relevant procurement threshold, as described in paragraph 10.3 of the CPRs.

Other relevant internal documentation

1.31 To meet the department's undertakings in response to Auditor-General Report No.16 2016–17, on 12 March 2017, the department mandated additional governance arrangements for high risk, high value procurements. The governance arrangements for procurements allocated high risk, high value status is shown at Appendix 3.

1.32 The key additional governance arrangements for procurements classified as high risk, high value include:

- high risk, high value status is allocated by the CFO, Chief Risk Officer (CRO) and General Counsel (GC)²⁶;
- financial delegation sits at the deputy secretary or deputy commissioner level;
- oversight of the procurement by a steering committee of Senior Executive Service members, including the CFO and CRO;
- written endorsement from the CFO and GC to the delegate at four mandatory gateways²⁷ to provide the delegate with confirmation that each stage of the procurement complies with the department's AAIs, financial guidelines and legal principle and practice;
- mandatory documentation requirements for all high risk, high value procurements;
- Procurement and Contracts Branch (PCB) coordinates all high risk, high value processes and also reports quarterly to the Capability Planning and Resource Committee; and
- potential audits are identified by the PCB²⁸ in consultation with the relevant business area'.²⁹

26 A single procurement may have two high risk high value status determinations. The first determination is before the procurement process begins (Gateway 1); the second is before the contract is executed (Gateway 4). Where a procurement is allocated a high risk high value status before Gateway 4, additional governance arrangements apply to the management of the contract.

27 The four gateways are: Gateway 1 approval minute (prior to procurement plan approval); Gateway 2 tendering minute (prior to request for tender approval); Gateway 3 evaluation minute (prior to tender evaluation approval); and Gateway 4 contract minute (prior to the draft contract approval).

28 The PCB is responsible for coordination of all high risk high value processes, and reports quarterly to the Capability Planning and Resource Committee.

29 The two key criterion are risk and a monetary threshold of \$50 million or more. However, high-risk procurements under the monetary threshold also may be selected.

Rationale for undertaking the audit

1.33 On 19 February 2019 and 18 March 2019, the Auditor-General received correspondence from the Hon Shayne Neumann MP, Shadow Minister for Immigration and Border Protection, requesting ‘an urgent audit into the circumstances surrounding the Department of Home Affairs’ procurement of garrison support and welfare services in Papua New Guinea.’³⁰

1.34 Implementation of the Australian Government’s policies on offshore detention of refugees and asylum seekers over the last ten years has cost billions of dollars. The operation of RPCs have been a subject of substantial Parliamentary and public interest. The ANAO’s two previous audit reports into the department’s management of offshore garrison support and welfare contracts identified a range of shortcomings and deficiencies. Since the tabling of the audit reports, the department has entered into further contracts totalling in excess of \$1 billion; and it is timely to assess whether the department has improved its procurement and performance management processes.

Audit approach

Audit objective, criteria and scope

1.35 The audit objective was to assess whether the Department of Home Affairs has appropriately managed the procurement of garrison support and welfare services for offshore processing centres in Nauru and PNG (Manus Island).

1.36 To form a conclusion against the audit objective, the following high-level criteria were adopted:

- procurements were conducted in accordance with the CPRs and value for money principles;
- contractor performance is adequately reported and monitored; and
- the department has implemented recommendations and actions arising from previous JCPAA and ANAO reports on the procurement of garrison support and welfare services.

1.37 The audit scope for the selected procurements and contracts entered into by the department, and its predecessor agencies, were based on the following:

- procurements involving the provision of garrison support and welfare services at RPCs; and
- procurements which were material³¹ and have been undertaken following the tabling of the two ANAO performance audit reports in 2016–17.³²

1.38 On this basis, four³³ procurements were identified and are shown above at Table 1.2.

30 Australian National Audit Office, *Procurement of garrison support and welfare services in Papua New Guinea* (request for audit) [Internet], available from <https://www.anao.gov.au/work/request/procurement-garrison-support-and-welfare-services-papua-new-guinea> [accessed 17 January 2020].

31 For these purposes, procurements that are greater than \$1 million in value.

32 Auditor-General Report No.16 2016–17 and Auditor-General Report No.32 2016–17.

33 In this report, Paladin Solutions PNG Ltd and Paladin Holdings PTE Ltd are regarded as one procurement and referred to as Paladin unless otherwise specified.

1.39 Auditor-General Report No.32 2016–17 identified deficiencies in the department’s contract management practices, particularly around contract reporting and management. Consequently, while this report is principally concerned with the department’s management of the procurement process, it also examines contract reporting and management arrangements for each of the contracts.

1.40 Finally, the report examines whether the department implemented the recommendations from Auditor-General Report No.16 2016–17 and the JCPAA’s recommendations in *Report 465: Commonwealth Procurement*.

Audit methodology

1.41 The audit methodology included:

- examination and analysis of departmental records;
- interviews with relevant departmental staff;
- interviews with relevant non-departmental stakeholders; and
- sworn testimony under oath obtained using the powers provided by section 32 of the *Auditor-General Act 1997*.

1.42 The audit was conducted in accordance with the ANAO Auditing Standards at a cost to the ANAO of approximately \$900,000.

1.43 The team members for this audit were Julian Mallett, Amanda Ronald, Robyn Clark, Renee Hall, Shane Armstrong, Mary Huang and Paul Bryant.

2. Procurement of garrison support and welfare contracts

Areas examined

This chapter examines whether procurement activity for the provision of garrison support and welfare services on Manus Island and Nauru was conducted in accordance with the Commonwealth Procurement Rules (CPRs) and value for money principles.

Conclusion

Procurement activities for the provision of garrison support and welfare services on Manus Island and Nauru were largely undertaken in accordance with the CPRs. The department utilised provisions of the CPRs to allow for an exemption from requirements for the use of open tender procurements on Manus Island and Nauru. The department did not document its reasons for requesting quotations from Paladin, JDA and NKW as required by the CPRs. The department demonstrated the achievement of value for money for the Nauru procurement, but for Manus Island it did not appropriately benchmark costs for similar services, and the effectiveness of negotiations with providers was unclear due to the department's substantial expansion of the services required during the negotiation process. A probity management framework was established but it was not effectively applied in all instances.

Areas for improvement

The ANAO has made one recommendation regarding the documentation of decisions on the providers to receive a request for quotation in limited tender processes.

2.1 Paragraph 4.4 of the CPRs states that 'officials responsible for a procurement must be satisfied, after reasonable enquiries, that the procurement achieves a value for money outcome'. The CPRs state that competition is a key element of the procurement framework and, generally, an open and competitive tender process helps entities to achieve a value for money outcome. However, as noted in Chapter 1, the CPRs recognise that there can be circumstances (such as urgency) which militate against conducting a full open tender process.

2.2 As outlined in Chapter 1, the department used limited tender³⁴ processes to conduct the four procurements for garrison support and welfare services on Manus Island and Nauru. This chapter examines whether the department met the CPR requirements for using this procurement method, together with the identification of potential providers, demonstration of value for money, management of probity and the conduct of due diligence in relation to the Manus Island and Nauru procurements.

34 The CPRs define a limited tender to include an approach to a single potential supplier.

Did the department meet the CPR requirements for conducting limited tenders or direct engagement?

For Manus Island, the accountable authority of the department took action under paragraph 2.6 of the CPRs on the basis of human health and security to exempt the procurement process from the open competition requirements. The department was aware of 11 providers that could have potentially offered some or all elements of the required garrison support and welfare services but it did not document its reasons for requesting quotations from the three selected providers.

The department used paragraph 10.3 of the CPRs to conduct a limited tender for Nauru. However, the department had almost 18 months' notice in May 2016 of BRS' intention not to continue or extend its contract from October 2017. Whilst the Nauruan government imposed a new layer of decision making and approval processes over regional processing service delivery contracts in August 2017, it is not clear why the department could not have secured a replacement supplier using a more competitive procurement method over this period.

Risk management plans were established and largely implemented for all four procurements, but planning should have specifically addressed fraud and corruption risks in the given environments.

Manus Island

2.3 As outlined at paragraph 1.11, BRS, the incumbent garrison support and welfare services provider, advised in May 2016 that it would not participate in any further tenders or contracts for the supply of garrison support and welfare services to the Australian Government. It agreed to extend its existing contract until 31 October 2017.

2.4 It was agreed between the Australian and PNG governments that the latter would assume independent management of the delivery of services to existing asylum seekers from October 2017.

2.5 To that end, in June 2017 ICA issued 'Requests for Offer' (RFOs) to a number of potential service providers inviting them to tender for various aspects of garrison support and welfare services.

- Paladin — an Australian registered company who had been providing security at the East Lorengau Transit Centre (ELRTC) since late 2013, initially under Decmil during the planning/construction phase and then under Wilson Security during the BRS contract.
- TSI — a PNG provider who provided security under Wilson Security during the BRS contract.
- Loda — a PNG provider who provided security under Wilson Security during the BRS contract.
- C5 Crisis Management — an Australian registered provider of security training and consulting services who had previously provided services to ICA.
- Spic-n-span — a PNG provider who provided laundry services under the BRS contract.

2.6 The department was assisting ICA in the procurement process through departmental officers who had been embedded through the Strongim Gavman Program.³⁵ The department also engaged KPMG to provide procurement advice to ICA.

2.7 During the procurement process, an election was called in PNG. The department's records state that at a meeting on 5 July 2017 between ICA and departmental senior officers, the PNG State Solicitor advised that he had directed PNG officials not to enter into new contracts until after the election.

2.8 On 7 July 2017, the department's First Assistant Secretary, Detention Services Division emailed the department's Deputy Commissioner (Support):

It is proposed that DSD will take over all procurement processes, which were previously the responsibility of PNG ICSA. This will result in the Commonwealth having contracts with potential end dates beyond the 31 October 2017.

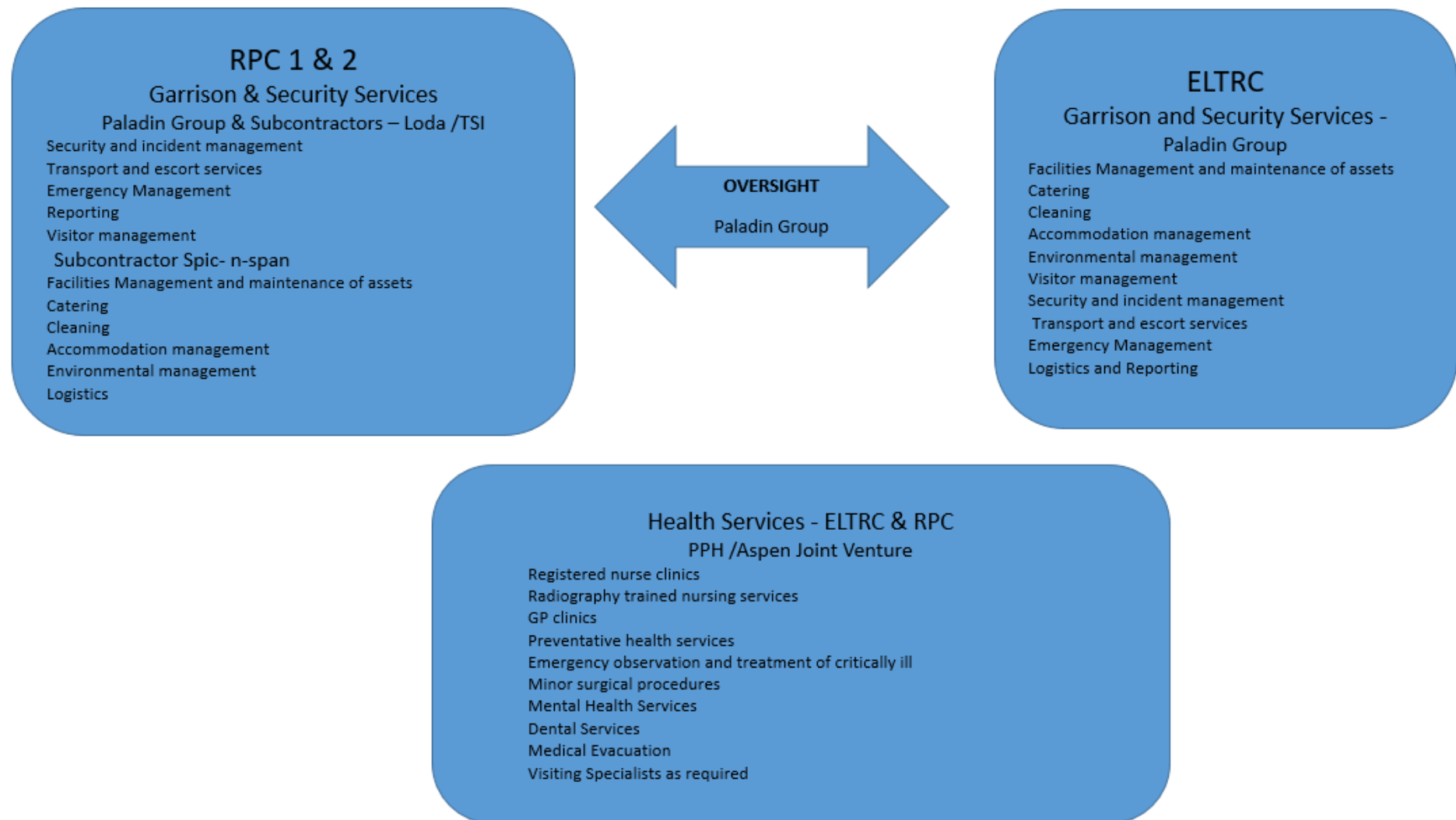
It is proposed that Paladin Group Ltd (Paladin) will be engaged to provide Garrison and Security Services and oversight at both sites. They will subcontract services to a number of local providers – including security providers TSI and Loda, Spic-n-span. In effect they will replace BRS.

These services will be the essential services required to promote the self-agency and safety of Residents and ensure the protection of assets for the Department.

2.9 Attached to the First Assistant Secretary, Detention Services Division's email was 'a visual of how this would work' (see Figure 2.1).

35 The Strongim Gavman Program, led by the Australian Department of Foreign Affairs, is a whole-of-government engagement programme involving Australian Government agencies in providing capacity development assistance and advice to counterpart Papua New Guinea Government agencies.

Figure 2.1: Proposed garrison support and welfare contracts — Manus Island



Note: Procurement activity associated with health services is not considered within the definition of 'garrison support and welfare services', and was therefore not considered within the scope of this audit.

Source: Department of Home Affairs.

Selection of a procurement method

2.10 On 12 July 2017, the department submitted a brief requesting approval from the Minister to procure garrison support and welfare services for both Nauru and Manus Island in order to allow the continuation of these services after 31 October 2017. Approval was subsequently provided on 31 July 2017.

2.11 On 28 July 2017, the First Assistant Secretary, Detention Services Division emailed the Deputy Commissioner (Support) attaching a document outlining three options for the procurement process, including a brief description of the risks, mitigations and benefits of each option. The document noted that the BRS garrison support and welfare contract would end on 31 October 2017 and that '[t]he Department has a limited timeframe to put in place contracts and transition a service provider to support Regional Processing in PNG.' The procurement options presented in this context were:

- Option 1: Using the provisions of paragraph 2.6 of the CPRs;
- Option 2: The limited tender provisions of paragraph 10.3 of the CPRs; and
- Option 3: The 'exemption' provisions of the CPRs relating to procurements outside Australia (known as exemption 8).³⁶

2.12 On 31 July 2017, the First Assistant Secretary, Detention Services Division emailed a number of his staff stating:

I spoke with DCS on this today – she is minded to go for the first option 2.6.

Can we start constructing the approach around 2.6 – and mention the other options (and why we didn't go with them).

2.13 The email from the First Assistant Secretary, Detention Services Division did not include any explanation of, or reason for, the Deputy Commissioner's (Support) preference. There was no other document that demonstrated how or why this approach was pursued.

2.14 On 10 August 2017, the Secretary, as the department's accountable authority, approved the use of the paragraph 2.6 'special measures' provisions of the CPRs. Notwithstanding the First Assistant Secretary, Detention Services Division's direction that the minute to the Secretary should refer to 'the other options (and why we didn't go with them)', there is no reference to these in the minute, and no reference to why the department chose to use paragraph 2.6 of the CPRs rather than the other options shown at paragraph 2.11.

2.15 Paragraph 2.6 of the CPRs permits accountable authorities to determine 'special measures' for reasons including the protection of 'essential security interests' and 'to protect human health'. The minute requesting the Secretary's approval stated:

The MRPC Procurements will result in contracts that will secure essential services (security and accommodation) and critical infrastructure (minor works, sewerage, water, power) and health care. Without contracted service providers in place providing these services there is a high risk to

36 These provisions relate to 'the procurement of goods and services (including construction) outside Australian territory, for consumption outside Australian territory'. Department of Finance guidance suggests that this exemption is principally intended to be used by Australian embassies and consulates overseas. While it was one of the options, the department did not pursue or explore its use further.

human health and the maintenance of peace and security at the Manus Regional Processing Centre and other relevant Sites.

In addition, the reasons that were provided to the Secretary to justify the use of paragraph 2.6 were:

- The complex operating environment in Papua New Guinea, which requires the engagement of particular service providers with the right service capability, experience and risk appetite, with short lead times.
- Procurement processes that are flexible to respond to the changes in either the operating environment, service delivery requirements or the impact of external factors, that allows contracts to be established and implemented quickly.

2.16 The Secretary's decision to invoke paragraph 2.6 in the terms that he did removed the requirement for the department to comply with the rules relating to encouraging competition (which are contained in Part 5 of the CPRs) and the requirement to comply with Division 2 (which imposes additional requirements). The minute noted that the department would still comply with the rules relating to:

- Value for money (CPRs Part 4);
- Efficient, effective, economical and ethical procurement (CPRs Part 6);
- Accountability and transparency in procurement (CPRs Part 7); and
- Procurement risk (CPRs Part 8).

2.17 While the minute to the Secretary broadly described the procurement process that would be followed, it did not provide information on who were preferred providers and why they were preferred.

Selection of providers for Manus Island

2.18 In addition to the providers referred to in the First Assistant Secretary, Detention Services Division's proposed model for garrison support and welfare services at Figure 2.1 (Paladin, Loda, TSI, and Spic-n-Span), the department was also aware of other providers. Specifically:

- the 28 July 2017 email (referred to at paragraph 2.10) outlining options for a procurement process also included a diagram which referred to JDA Wokman Ltd (JDA)³⁷ and 'Host';
- as noted at paragraph 2.5, one of the companies to which ICA had issued an RFO during its procurement process was C5 Crisis Management; and
- in August 2016 and December 2016, the department had conducted a 'market sounding' exercise intended to identify and gauge interest in the provision of garrison support and welfare services on Manus Island and Nauru. As part of this process, Serco, Decmil and

37 JDA was subcontracted by ICA to provide settlement support services at the ELRTC.

Canstruct³⁸ had expressed interest in tendering for the supply of services, albeit with qualification.³⁹

2.19 Another provider which ultimately became part of consideration in the procurement process was NKW Holdings Ltd (NKW). In May 2017, due to the decommissioning of the MIRPC (refer paragraph 1.4), the department was seeking accommodation on Manus Island to supplement the ELRTC. It became aware that NKW held a lease on land which had some existing barracks style accommodation, with the potential for further similar accommodation to be constructed. The department entered into a Letter of Intent on 8 September 2017 to refurbish the existing accommodation⁴⁰ and to construct new accommodation.⁴¹

2.20 There were 11 providers⁴² of which the department was aware that could offer some or all elements of the required garrison support and welfare services. However, the department issued RFQs to only three potential providers. Paragraph 7.2 of the CPRs states that officials must accurately and concisely document 'relevant decisions and the basis of those decisions'.⁴³ The department did not document why Paladin, NKW and JDA were the only providers selected to receive RFQs.

2.21 Aside from the department's expressed preference for a particular contracting model, at the time of issuing the RFQs, the department's records included information on the following factors which may have influenced the decision as to which companies should be asked to quote:

- the performance, experience and track record of providers;
- the ability of providers to attract, retain and manage a workforce of largely local Manus Island residents; and
- the views of ICA, since novation of the management of contracts to ICA was likely.

2.22 In January 2020, the ANAO took evidence under oath from the First Assistant Secretary, Detention Services Division, under s.32 of the *Auditor-General Act 1997*, about whether there was ever any pressure brought to bear by the PNG government or officials to appoint one or all of Paladin, NKW or JDA. He replied:

Absolutely not. These were decisions that were made by the Commonwealth and officials in the Commonwealth. The delegations all sit within the Commonwealth, the decision-making, the evaluation, value for money, all of that, which you've got all of that documentation, all sat with Commonwealth officers and in the Department. So the PNG Government, either through its

38 Serco, Decmil and Canstruct had been tenderers for a process the department initiated in 2015 for garrison support and welfare services on Manus Island and Nauru. This process was cancelled by the department in July 2016. The circumstances are described in Auditor-General Report No.16 2016–17 *Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services*, September 2016.

39 Serco indicated that it would be interested 'subject to the Department amending its terms and conditions'. Decmil expressed interest in the opportunity, subject to obtaining further information regarding the procurement process and associated service requirements. Canstruct said that they would be interested in 'any future opportunity' (Canstruct was ultimately awarded the Nauru contract). None of the three companies categorically stated that they were not interested.

40 Then known as Camp 70 and later as Hillside Haus.

41 Then known as Camp 300 and later as West Lorengau Haus.

42 Paladin, Loda, TSI, Spic-n-Span, JDA, C5, Serco, Decmil, NKW, Host and Canstruct.

43 Department of Finance, *Commonwealth Procurement Rules: Achieving value for money*, 1 March 2017, paragraph 7.2(e).

ministers, politicians or officials, had no part in our decision-making. It was all within the Commonwealth. Now, the policy context that we were operating in, they had some views around that and we were mindful of that, but they did not get directly involved in any of the procurement processes. It was all done by Commonwealth officials here in Australia.

Recommendation no.1

2.23 The Department of Home Affairs develop policy guidance to ensure that, where a limited tender procurement is undertaken, decisions in relation to the providers to receive requests for quotation are accurately and concisely documented.

Department of Home Affairs response: *Agreed.*

2.24 *The Department will develop policy guidance and update internal procurement procedures to meet this recommendation with a particular focus on highly sensitive, high value, and/or complex procurements.*

Nauru

2.25 As noted at paragraph 2.3, in May 2016, BRS announced that it would not participate in any further tenders or contracts to supply garrison support and welfare services for the Australian Government, but agreed to extend its contract until 31 October 2017.

2.26 Following 'market soundings' in August and December 2016 which demonstrated that there was some interest in the market in participating in a procurement process, in January 2017, the department commenced preparations for an open tender process to replace BRS. However, the department stated that this process did not proceed due to concerns that it could prejudice discussions that were underway with the Government of Nauru.

2.27 In February 2017, BRS approached the department with a proposal that it novate its existing contract to Canstruct.⁴⁴ The department held discussions with BRS and Canstruct in May 2017, but decided against this proposed course of action.

2.28 On 20 June 2017, the department's Assistant Secretary, Services Management obtained approval from the CFO to conduct a procurement by limited tender to replace BRS using the provisions of paragraph 10.3(a)(i) of the CPRs, which permit a limited tender⁴⁵ in circumstances where a previous approach to market did not result in a submission that represented value for money.

2.29 The provisions of paragraph 10.3 are shown in Appendix 2. In order to justify using paragraph 10.3(a)(i), the department needed to be able to show that in the earlier response to market, 'no submissions that represented value for money were received'.

2.30 In 2015, the department had commenced a process for the procurement of garrison support and welfare services in both Manus Island and Nauru, which was cancelled in July 2016 (the 2016

44 Canstruct was already operating on Nauru as the Managing Contractor for construction of the RPC (this contract had been let by the department in December 2014).

45 The CPRs define a limited tender to include an approach to a single potential supplier.

limited tender process).⁴⁶ The process was cancelled because two participating tenderers (BRS and Serco) withdrew: BRS withdrew after its takeover by Ferrovial; and Serco withdrew because of a disagreement with the department over a number of terms and conditions in the draft contract. On this basis, there were no submissions that represented value for money.⁴⁷

2.31 On 29 June 2017, a detailed minute to the Deputy Commissioner (Support) outlined the various options (including risks and benefits) and sought agreement to proceed with a limited tender under paragraph 10.3(a)(i) by way of an RFQ to Canstruct. By this time, with only four months to go before BRS ceased providing services, a number of the 'options' presented to the Deputy Commissioner (such as conducting an open market procurement) were unrealistic.

2.32 On 1 August 2017, the Nauruan Government certified the *Nauru (RPC) Corporation Act 2017*. A brief to the Minister on 5 December 2017 stated:

On 1 August 2017, the Department was informed of the Nauru (RPC) Corporation Act 2017 when it was introduced into the Nauruan Parliament. This Act enabled the Corporation to administer, manage and facilitate commercial operations associated with regional processing.

The introduction of the Act meant that the Department could not continue the procurement process for a period of time immediately following this introduction, thereby delaying the process. The Department worked with the Government of Nauru to understand the intent and implications of the legislation. The Government of Nauru subsequently amended the legislation on 14 August 2017.

The amended Act now requires the Department to seek endorsement from the Nauruan Cabinet for any contract for the provision of Garrison and Welfare services at the Regional Processing Centre or Settlement sites in Nauru. The Department has complied with this requirement.

2.33 The department satisfied the requirements of paragraph 10.3(a)(i), however it had adequate time to plan for the procurement of garrison and welfare support services in Nauru in a manner which could have allowed a more competitive approach to the market. Notwithstanding the introduction of the *Nauru (RPC) Corporation Act 2017*, the department had 14 months between May 2016 — when BRS formally advised the department that it would cease operations on 31 October 2017 — and the certification of this legislation in August 2017, to explore a range of possible procurement options and suppliers.⁴⁸

46 Initially, six companies responded to the tender. Of the six, BRS and Serco were invited to submit amended tenders. The circumstances are described in Auditor-General Report No.16 2016–17 [*Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services*](#), September 2016.

47 A separate sub-clause in paragraph 10.3(a) (paragraph 10.3(a)(iii)) of the 2017 CPRs conditions its use on the basis that the limited tender being proposed 'does not substantially modify the essential requirements of the procurement'. The 2019 reissue of the CPRs has varied paragraph 10.3(a) such that this clause now relates to the whole of paragraph 10.3(a). In other words, because the 'requirements of the procurement' being proposed in June 2017 was substantially different from the 2016 process, it is likely that the proposal that was put to the CFO in June 2017 would not be capable of being approved now.

48 The department stated that it 'was working with the Government of Nauru on timing and also had to work in line with the requirements of the Government of Nauru and Nauruan legislation which is specific to contracts that will operate in Nauru but are engaged by external authorities (such as the Government of Australia). These requirements, as previously mentioned, impact the available timelines and the department is not the sole authority managing those timelines.'

Procurement risk

2.34 The CPRs require that when conducting a procurement, entities must establish processes for the identification, analysis, allocation and treatment of risk. The department created a Risk Management Strategy and Plan for each of the four procurements.⁴⁹ Three of the four plans had a risk assessment template⁵⁰ which identified risks such as:

- services are not in place by 31 October 2017;
- lack of sufficient funds;
- inability to sign a contract with the service provider; and
- service provider unable to obtain necessary visas to deliver services.

2.35 In February 2019, the department conducted an internal audit of the Paladin procurement process. Among other findings, this audit noted that ‘the nature of the operating environment in PNG heightens the potential for fraud and corruption procurement risks’ and considered that such risks should have been identified and documented. The ANAO agrees that these risks should have been recorded. In responding to the internal audit’s finding, the department stated:

During the procurement process, no issues were identified in relation to fraud, corruption and/or collusion. [Property and Major Contracts Division] followed all procurement processes including conducting a risk assessment in relation to the procurement in compliance with the CPRs. Should issues have been identified, the procurement process would have explicitly addressed these concerns, and mitigations would have been put into place before any arrangement was entered into.

2.36 The purpose of a risk assessment is to anticipate and identify risks before they arise rather than to deal with them once they have.

Did the department ensure that principles of probity were applied?

The department developed a probity management framework but it was not effectively applied in all instances. Key declaration and acknowledgement forms were not completed by all applicable personnel.

2.37 Ethical behaviour is a key CPR principle. The 2017 CPRs stated:

Ethical relates to honesty, integrity, probity, diligence, fairness and consistency. Ethical behaviour identifies and manages conflicts of interests, and does not make improper use of an individual’s position.⁵¹

2.38 Department of Finance guidance⁵² states that external probity specialists should be appointed where justified by the nature of the procurement. The department engaged external

49 Canstruct: 1 June 2017; Paladin: 14 August 2017; JDA: 30 August 2017; NKW: 8 October 2017.

50 The Plan for NKW did not include a template identifying risks.

51 Department of Finance, *Commonwealth Procurement Rules: Achieving value for money*, 1 March 2017, paragraph 6.5.

52 Department of Finance, *Ethics and Probity in Procurement* [Internet], available from <https://www.finance.gov.au/government/procurement/buying-australian-government/ethics-probity-procurement> [accessed 19 December 2019].

probity advisors for all four procurements.⁵³ The engagement of probity advisors was commensurate with the scale, scope and risk of these procurements.

2.39 The Probity Advisors prepared probity plans for delegate approval and prepared and delivered probity briefings to all staff involved in the procurement process. The probity plans for each procurement required all relevant staff to sign a conflict of interest declaration form at the commencement of the procurement, and review and update as necessary at key stages in the process. Staff were also required to acknowledge that they had read and understood the probity requirements by signing a probity acknowledgement form.

2.40 While probity planning was adequate, there were failures in execution. An internal audit report on the three PNG procurements⁵⁴ conducted in August 2018 found that:

- the register of conflict of interest declaration and probity acknowledgement forms for the three procurements had not been maintained or completed;
- five key staff involved in the procurements had not completed either of the required forms; and
- 38 staff involved with the procurement had not completed a probity acknowledgement form.

2.41 The report recommended that the department update the conflict of interest and probity register to record and validate the completion of all relevant forms for all staff, including addressing any gaps. The department accepted the recommendation.

2.42 The ANAO's examination of email traffic showed that the Director, Services Procurement engaged with JDA and NKW before and after their RFQs were lodged:

- prior to the lodgement of NKW's RFQ, the Director, Services Procurement asked NKW whether it required 'any further assistance with the RFQ response'; and
- the Director, Services Procurement met in Canberra with a representative of JDA after its RFQ was lodged, but before the assessment of the RFQ took place.

2.43 Subsequently, the same officer chaired the pricing assessment and technical evaluation teams for the procurement processes which recommended that JDA and NKW be awarded contracts. There was no evidence that details of these interactions and discussions — including what 'assistance' may have been given to NKW — were recorded as required by the Probity Plans for the procurements. To that extent, there may have been a breach of probity.

2.44 KPMG was engaged by the department as Commercial and Financial Advisors for the PNG procurements and also provided assistance to ICA during the conduct of its procurement processes for garrison services. One of the KPMG advisors was a key point of contact between ICA and the department. On 4 July 2017, after the department had preliminary discussions about approaching Paladin, a KPMG employee contacted Paladin on behalf of the department to discuss surge security required at the ELRTC. Along with its active involvement in conducting the procurements, KPMG was also engaged to conduct the department's financial strength assessments for all four procurements.

53 Sparke Helmore Lawyers for the Nauru procurement and Maddocks Lawyers for the three PNG procurements.

54 EY Memorandum Report, *Review of Offshore Contracts — Manus Island*, August 2018.

2.45 In the period immediately following the establishment of the first letter of intent on 21 September 2017, Paladin commenced a process of engaging required personnel to support the commencement of operations. Departmental records showed that on 5 December 2017, Paladin advised the department that it was encountering difficulties in obtaining visas for workers, but that these difficulties could be resolved 'via a payment from Paladin', which it had refused to make. The department advised Paladin on the need to ensure that all activities were conducted in a manner which was consistent with Australian law.

Did the department demonstrate the achievement of value for money in Nauru?

The department demonstrated the achievement of value for money for the Nauru procurement. Costs under the most recent contract for services, and various scenarios based on population trends and service assumptions, were used to effectively benchmark tenderer costs. Negotiations resulted in the inclusion of additional services with a modified pricing impact.

2.46 A core principle of the CPRs is the achievement of value for money.⁵⁵ Auditor-General Report No.48 2014–15 *Limited Tender Procurement*⁵⁶ noted that it is generally more difficult for entities conducting a limited tender to demonstrate value for money, but identified two activities that entities may undertake to increase the likelihood of achieving value for money in such situations: benchmarking costs for similar services procured previously; and negotiating strongly for discounted pricing or additional services rather than accepting initial quotes provided.⁵⁷

2.47 This section examines whether the department:

- effectively benchmarked costs for similar services; and/or
- negotiated to receive discounted pricing and/or additional services.

Benchmarking of proposed costs — Nauru

2.48 In July 2017, the department, in consultation with its external financial advisor (KPMG), developed a baseline using actual service costs under the most recent BRS contract (for the period 1 May 2016 to 30 April 2017), adjusted for service differences and inflation.⁵⁸

2.49 Using this baseline, three pricing benchmarks were then developed to account for different resident and refugee volumes and servicing assumptions (Table 2.1).

55 Department of Finance, *Commonwealth Procurement Rules: Achieving value for money*, 1 March 2017, paragraph 3.2.

56 Auditor-General Report No.48 2014–15 *Limited Tender Procurement*, June 2015, page 14, paragraph 4.

57 *ibid*, pp. 45–46.

58 Noting that the services proposed to be provided by Canstruct were broadly the same as previously provided by BRS.

Table 2.1: Benchmarks for Nauru procurement

Benchmark model	Benchmark value (\$m)	Cost based on Canstruct's RFQ response (\$m)
Baseline — BRS actual costs 1 May 2016 to 30 April 2017	346.5	N/A
Scenario 1 ^a	318.0	258.3
Scenario 2 ^b	301.7	242.5
Scenario 3 ^c	305.0	245.7

Note: All benchmark estimates excluded pass-through costs, and additional service requests as Canstruct was not required to provide an estimate of these costs in its RFQ response.

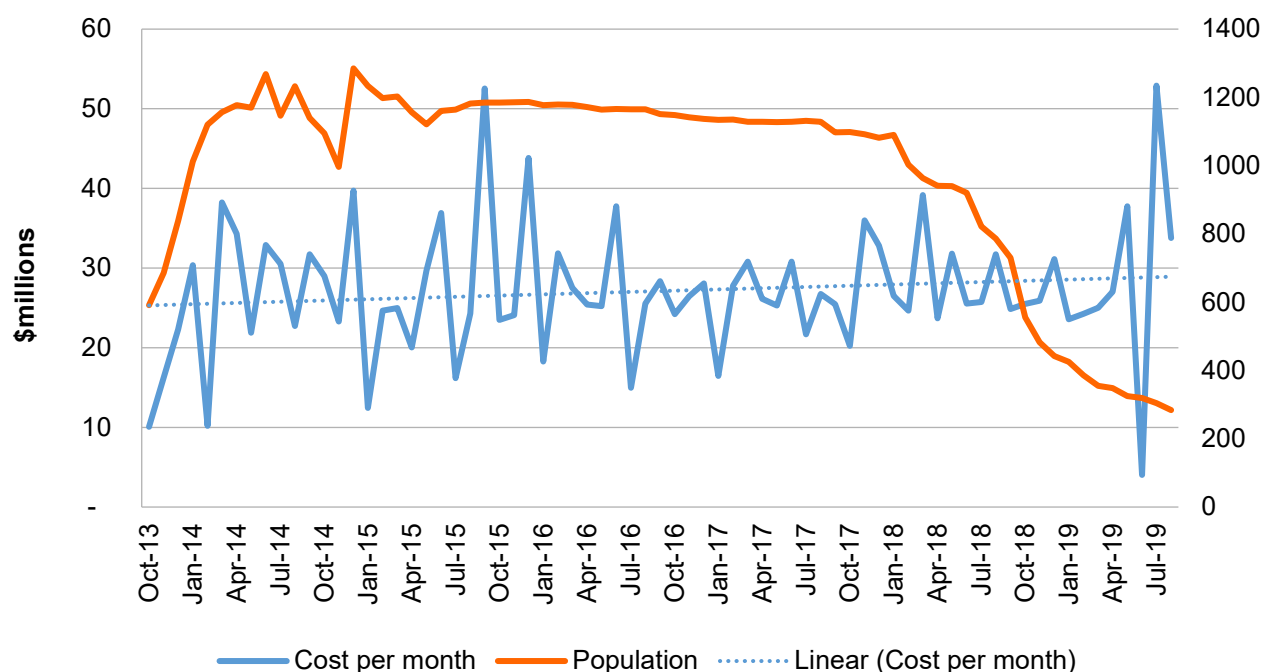
Note a: Scenario 1 — assumed April 2017 volumes of residents and refugees and associated cost bands would not change until 31 October 2018; and Level 1 Servicing Requirements for Settlement Support Services.⁵⁹

Note b: Scenario 2 — as per scenario 1, however with Settlement Support Services delivered in accordance with Level 2 Servicing Requirements.

Note c: Scenario 3 — as per scenario 1, except RPC Additional Family Services cost bands would gradually decline over the contract term. As at April 2017, the bands for RPC refugees was already at the lowest possible band.

Source: ANAO analysis of departmental documentation.

2.50 The three benchmarks used were based on previous trends and anticipated future scenarios. Figure 2.2 illustrates changes in population and service costs on Nauru from 2013 to 2019.

Figure 2.2: Changes in population and service costs on Nauru, 2013 to 2019

Source: ANAO analysis of departmental documentation.

59 Level 1 is all services specified in the statement of work; Level 2 provides for specific exceptions for adult refugees (single adults, English language training, development of education and training plans, and programs and activities relating to fitness, cultural and religious needs, and skills for resettlement). Therefore, Level 1 subsumes Level 2.

2.51 At the point in July 2017 when the department was undertaking its evaluation, the population at the Nauru RPC had decreased since mid-2014, however service costs had fluctuated. Since 2013 the service cost per month had gradually increased (as indicated by the trend line). However, departmental documentation noted:

The contract value is not expected to materially decrease if the number of refugees and non-refugees residing on Nauru declines. This is due to the fact that the fees for the bands between 0–200 and 201–400 are the same, reflecting the fixed cost of keeping baseline services operational on Nauru.⁶⁰

2.52 The department did not estimate the cost per person. This would have enabled the department to benchmark against the Mid-Year Economic and Fiscal Outlook 2015–16 (December 2015) estimate of \$573,111 per person per annum. While this estimate was prepared in the context of the budget preparation process, in a situation where there are limited relevant benchmarks, a cost per person could have been a potential indicator of value for money.⁶¹

2.53 Noting this, the benchmarks used by the department were appropriate given that BRS' actual costs in 2016–17 were based on the fee structure from its 2014 bid, which the ANAO had previously found to have been lower than historical costs for similar services at the Nauru RPC⁶² and the department applied the most recent resident and refugee volumes to develop a series of scenario benchmarks.

Impact of negotiations — Nauru

2.54 Following the assessment of Canstruct's submission, on 3 October 2017, the delegate agreed and endorsed the report's conclusion that Canstruct's RFQ response be considered value for money. Negotiation processes were completed in the same month.

2.55 Table 2.2 summarises departmental contract value estimates at key steps in the procurement process for garrison and welfare services in Nauru.

60 Strategic Procurement Plan and Spending Proposal Provision of Garrison and Welfare Services in Nauru, July 2017, p. 11.

61 On 26 February 2020, the department advised 'The Department has consistently advised that cost per person is not an appropriate calculation to use to summarise or benchmark the costs of offshore processing. This is due to the fact the costs are agreed and incurred based on existing memorandum of understanding arrangements and the fixed and variable nature of the contractual arrangements that underpin them. As an example, a number of the contracts have large fixed components. These costs do not vary due to size of cohort accommodated, remaining static notwithstanding there may be 1 relevant person or 100'.

62 Auditor-General Report No.16 2016–17 [*Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services*](#), pp. 11, 47, 57 and 81.

Table 2.2: Departmental contract value estimates at key steps in the Nauru procurement

Source	Value (\$m)
Department's estimated cost of services	332.0
Pre-negotiation cost based on Canstruct's RFQ response ^a	258.3
Negotiated outcome	260.2
Estimated overall contract value	385.0
Actual costs 2018–19	301.2

Note a: Based on volumes under benchmark model scenario 1 (Table 2.1).

Source: ANAO analysis of departmental documentation.

2.56 The basis of the estimated overall contract value (\$385 million) was not documented. The department was unable to explain the reason for the difference between the negotiated outcome of \$260.2 million and the estimated overall contract value.

2.57 While Canstruct's bid increased by \$1.9 million as a result of negotiations, the department assessed the negotiated outcome as continuing to represent value for money as it: was comparable to the expected cost of services (benchmark scenario 1); and incorporated into the scope of services a range of additional items in relation to transport, school lunches, infant care and asset maintenance with a modified pricing impact.

2.58 Notwithstanding approved contract estimates, the department's actual expenditure under the contract in 2018–19 was \$301.2 million.

Did the department demonstrate the achievement of value for money in PNG?

The department did not demonstrate the achievement of value for money for the PNG procurements. Although the department had limited options for comparing tenderer costs, most of the benchmarks it used were not appropriate. Negotiations with NKW achieved significant savings, noting that the initial tendered costs had been assessed as not representing value for money. The effectiveness of negotiation for Paladin was unclear as savings achieved for some items were offset by increases to others, the addition of a mobilisation payment and the department's substantial expansion of the services required during the negotiation process.

Benchmarking of proposed costs — PNG

2.59 The department identified four benchmarks, which were used to varying degrees in the JDA, NKW and Paladin procurements respectively, as summarised in Table 2.3.

Table 2.3: Value for money benchmarks for PNG procurements

#	Benchmark	JDA	NKW	Paladin ^a
1	Existing BRS contract rates for garrison support and welfare services on Manus Island	✓	✓	✓
2	RFT 28/14 open procurement tender responses	✓	✓	✓
3	Actual cost of settlement support services in Nauru	✓	N/A	N/A
4	Paladin's response to RFQ for garrison services at the ELRTC	N/A	✓	N/A

Note a: The Paladin pricing assessment team aggregated and averaged benchmarks one and two and applied an adjustment of 7.68 per cent for inflation to provide a single benchmark, referred to as the 'indicative comparable fee', and used this to assess Paladin's RFQ response.

Source: ANAO analysis of departmental documentation.

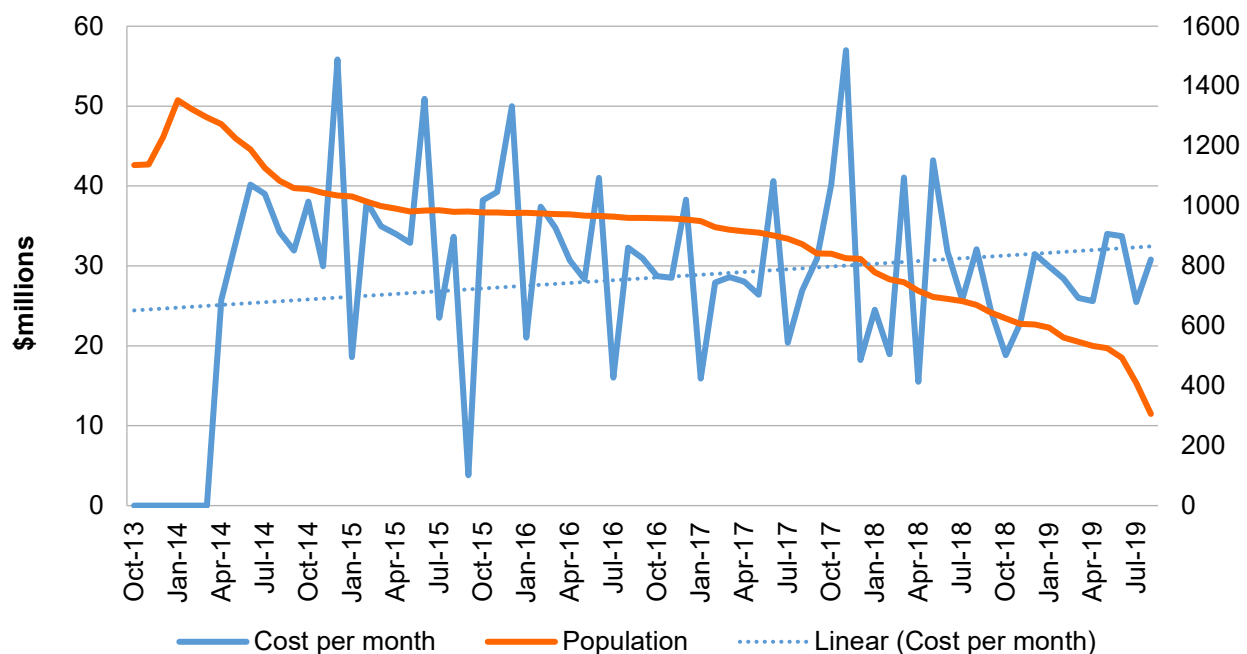
2.60 Benchmark #1 was a comparison to the existing contract rates for garrison support and welfare services being provided by BRS. Whilst this was relevant, the 2014 BRS bid on which these contract rates were based exceeded historical costs by between \$200 million and \$300 million; and '...require[d] the Commonwealth to pay a significant premium over and above the historical costs of services'.⁶³

2.61 Benchmark #2 was based on the daily fees quoted by four of the six respondents to the 2015 open market procurement (see paragraph 2.30). Whilst this benchmark was relevant given similarities in the scope of services tendered for, the 2015 procurement process was cancelled by the department on the grounds that it did not result 'in any submissions that represented value for money.'

2.62 The appropriateness of benchmarks #1 and #2 were further impacted by changes in population and service costs in PNG since 2014 (Figure 2.3). The PNG regional processing population decreased by almost 50 per cent between January 2014 and October 2017, from 1353 to 690.

63 Auditor-General Report No.16 2016–17 [Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services](#), 2016, p. 47.

Figure 2.3: Changes in population and service costs in PNG, 2013 to 2019



Source: ANAO analysis of departmental documentation.

2.63 While the population steadily decreased from early-2014 onwards, services costs have fluctuated significantly, peaking in October 2017, and the cost per month has gradually increased over the same period. Benchmark #3 was the actual cost of settlement support services being provided by Connect, a subcontractor to BRS in Nauru. This benchmark was applied only to the analysis of JDA's pricing given that its scope of services was limited to settlement support, and that it was the incumbent provider for these services on Manus Island. This benchmark was therefore appropriate.

2.64 Benchmark #4 was Paladin's response to the RFQ for the provision of garrison support and welfare services in August 2017. As NKW was tendering to provide similar services to Paladin at separate sites on Manus Island, this benchmark was applied only to the analysis of NKW's pricing. This benchmark was therefore appropriate.

2.65 For the procurement of garrison services specifically (Paladin), the department also benchmarked a proposed 40 per cent margin on services against the Earnings Before Interest Taxes Depreciation and Amortisation (EBITDA) margins of two similar organisations in the sector.⁶⁴ Departmental documentation stated that these benchmarks were used as there was 'no readily available information in respect of the contracts for services in regional processing countries'. However, the available record indicated that the department did not consider the following margin based benchmarks:

- the arrangement used by the department when RPCs were first established⁶⁵; and

⁶⁴ Transfield and Anitua.

⁶⁵ The Nauru options paper stated that the department used a cost plus arrangement when the regional processing centres were first established but did not further explain.

- the profit margin used for the Nauru procurement — the department estimated that Canstruct's profit margin would be between \$33 million and \$50 million based on a service industry average profit margin of between 10 per cent and 15 per cent.

2.66 Whilst the department benchmarked against the existing contract rates for garrison support and welfare services being provided by BRS (refer paragraph 2.59), it did not benchmark against BRS' actual costs for the provision of services on PNG (as it had for Nauru). While the department had changed the statement of requirement to include different sites and services, a comparison to actual costs would have presented a relevant benchmark, particularly given the limited options for comparing tenderer costs.

2.67 The department did not estimate the cost per person. This would have enabled the department to benchmark against the Mid-Year Economic and Fiscal Outlook 2015–16 (December 2015) estimate of \$573,111 per person per annum.

Impact of negotiations — PNG

2.68 The department conducted negotiations with each of the three tenderers. Table 2.4 compares BRS' actual costs in 2016–17 for garrison and welfare services in PNG with departmental contract value estimates at key steps in the negotiation process for the three PNG tenderers. It also includes the actual cost of these services for 2018–19.

Table 2.4: Contract value estimates/outcomes at key steps in the PNG procurement

Provider	\$ millions				
	2016–17 actual costs	Department's estimated cost of services ^a	Pre-negotiation cost based on RFQ response	Negotiated outcome	2018–19 actual expenditure
Broadspectrum PNG	342.3	N/A	N/A	N/A	N/A
JDA	N/A	30.0	18.3 ^b	20.1	20.9
NKW ^c	N/A	86.0	120.2	66.0	102.7
Paladin ^d	N/A	75.0	152.0	229.5	209.1
PNG total	342.3	191.0	290.5	315.6	332.7

Note a: Estimated cost of services from procurement spending proposals.

Note b: JDA had requested that all invoices be paid in PNG Kina (PGK). This would add 10 per cent for PNG goods and services tax to each invoice, increasing the RFQ response to \$20.1 million.

Note c: The contract between the department and NKW was executed on 21 September 2018. There was no contract with NKW to provide site management and related services before this.

Note d: The department expanded the scope of services after it issued the RFQ.

Source: ANAO analysis of departmental documentation.

2.69 The department only assessed value for money on an individual procurement basis. It did not evaluate value for money based on the combined estimated contract values. Whilst a number of factors had changed in relation to the nature of services required and in the operational

environment since the previous provider (BRS) were engaged⁶⁶, given BRS was responsible for all three combined services, an examination of the combined estimated contract values would have allowed a level of benchmarking.

JDA

2.70 The department concluded that the cost ‘was reasonable and less than expected’ and JDA’s response represented value for money. In relation to the lower than expected price, the department acknowledged that this may have reflected JDA not fully understanding some contract requirements, such as reporting.

2.71 On 20 December 2017, the delegate’s approval of negotiation outcomes was sought. The delegate directed the department enter into a Letter of Intent with JDA.⁶⁷

NKW

2.72 The department determined at the tender evaluation stage that NKW’s RFQ response was not value for money. It identified a number of matters for negotiation, including removing out of scope items, and seeking pricing reductions in three priority areas — the profit margin applied to staff rates, the personnel costings (assumed work days and hours), and removal of duplication in the overhead rate.

2.73 As a result of negotiations, the parties agreed to a revised contract value of \$65.9 million, representing an overall reduction of \$35.8 million (see Table 2.5).⁶⁸

Table 2.5: Negotiated pricing outcomes — NKW

Fee component	RFQ pricing response (\$m)	Negotiated price (\$m)	Difference (\$m)
1. Site management fee — Hillside Haus	13.2	12.5	0.7
2. Site management fee — West Lorengau Haus	21.4	12.2	9.2
3. Overhead Fee	50.8	31.1	19.7
4. Catering	11.8	5.6	6.2
5. Transition-in Fee	4.5	4.5	0
6. Total (excluding PNG Sales tax)	101.7	65.9	35.8

Source: ANAO analysis of departmental documentation.

66 The department stated that ‘the change in operational environment, the time frame afforded to undertake the procurement, the expanded total number of providers required to deliver the services due to the changed nature of delivery of services across a greater sprawl both geographically and in complexity (meaning the fixed price of administration increases and the operational costs changes), explains the difference in the comparisons of costs between the provider that operated in a controlled and centralised environment vs the new requirements.’

67 An internal email stated that the department was reluctant to commit to a contract that may not be able to be delivered as service providers were having difficulty delivering services due to a range of issues including visas.

68 The parties agreed to remove \$7.4m in property costs and \$11.1m in equipment costs from the fixed monthly site management fee and treated them instead as pass-through costs.

2.74 Notwithstanding the discounted pricing achieved by the department, total actual expenditure for site management services was \$102.7 million in 2018–19 which was slightly more than NKW's original pricing response.).

Paladin

2.75 While the department determined at the tender evaluation stage that Paladin's RFQ response represented value for money, it assessed the response as at the 'higher end of the range' when compared against agreed benchmarks (Table 2.3).⁶⁹ It also identified a number of matters for negotiation, including Paladin's proposed 40 per cent margin on services⁷⁰ and its organisational structure.⁷¹ It was identified that some concerns would be mitigated by Paladin's 'proposed efficiency measures and potential reduction in price following Transition-In (through an appropriate mechanism agreed during negotiations)'.

2.76 Following the completion of negotiations, the parties agreed to a revised contract value of \$229.5 million, representing an overall increase of \$77.4 million (see Table 2.6).

Table 2.6: Negotiated pricing outcomes — Paladin

Fee component	RFQ pricing response (\$m)	Negotiated price (\$m)	Difference (\$m)
Garrison and Security Services Fees	120.6	149.0	28.4
Overhead Fee	8.2	61.5	53.3
Transition-in Fee	23.2	18.9	(4.3)
Total	152.0	229.4	77.4

Source: ANAO analysis of departmental documentation.

2.77 Key outcomes of the negotiation process were that:

- the department increased the scope of services from that contained in the RFQ to include services at additional locations — West Lorengau Haus and Hillside Haus;
- in addition to the costs of these additional services, overhead fees increased as a result this change and additional categories of fixed costs were included, including some previously treated as pass-through costs;
- transition-in fees were reduced; and
- the proposed profit margin was reduced from 40 per cent to 22.5 per cent, noting that this outcome was still more than the service industry average profit margin of between 10 per cent and 15 per cent identified by the department during the Nauru procurement (paragraph 2.64).

69 The department assessed Paladin's: corporate overhead fee bid as below benchmarks one and two; transition-in fee and garrison and security service fee bids as above benchmarks one and two; and total contract cost as above the indicative prices of other organisations.

70 Paladin applied a 40 per cent margin across its baseline cost to mitigate any pricing risks arising from the short RFQ timeframes.

71 The department considered the number of general managers could be rationalised, unnecessary roles removed, and potential duplication minimised.

2.78 Paladin removed proposed efficiencies during negotiations. The department's negotiation log noted its intention to negotiate an efficiency measure for any contract extension.

2.79 During negotiations, the parties also agreed that the department would provide Paladin with working capital via a 'mobilisation fee', (which was not part of the department's RFQ documentation or Paladin's RFQ response), to address departmental concerns about Paladin's access to working capital. This fee was not reflected in the negotiation outcomes report, but was incorporated into the approved letter of intent for Paladin on 8 November 2017 to the value of \$13,985,991 (GST exclusive), to be paid in three instalments.

Did the department conduct due diligence inquiries on potential contractors?

The department's due diligence inquiries were limited to financial strength assessments of all four tenderers. The financial risk for each was assessed as moderate to high.

2.80 In a commercial context, the term 'due diligence' can encompass assessment of a potential provider's policies on issues such as quality control, recruitment and environmental compliance as well as financial viability. Whilst some of these elements were addressed as part of the tender evaluation process, the department concentrated on an examination of financial viability and commissioned KPMG to undertake a financial strength assessment on each of the four providers. Table 2.7 summarises the key points of the strength assessments for each provider.

Table 2.7: Summary of financial strength assessments

Item	Canstruct	Paladin	NKW	JDA
Financial statements on which the assessment was based	Audited	Unaudited	Unaudited	Unaudited
Cash sufficiency ratio previous three years ^a	6.59, 1.94, 7.64	1.0, -0.36, -2.12	0.06, 0.01, 0.04	1.38, 6.57, 3.30
Value of contract vs 2016 revenue	4.3 times	35 times	13.5 times	1.17 times
Overall Financial Risk assessment	Moderate to high	Moderate to high	Moderate to high	Moderate to high

Note a: Any result higher than 1 indicates that an entity is generating sufficient cash flow to maintain itself without acquiring additional debt or equity funding.

Source: Financial Strength Assessments for Canstruct; Paladin Solutions PNG Ltd; NKW; and JDA (Department of Home Affairs).

2.81 The department initially engaged each of the contractors under a Letter of Intent (LOI), which provided a basic framework for initial services to commence while contractual negotiations occur. In the case of Paladin, the LOI was signed with Paladin Solutions PNG Ltd, a PNG-registered company, but the final contract was signed with Paladin Holdings PTE Ltd, a Singaporean

company.⁷² The financial strength assessment was undertaken on Paladin Solutions PNG Ltd, which means that for the entity which held the actual contract, an assessment was not carried out.

2.82 Commenting on the financial strength assessment (for Paladin Solutions PNG Ltd), the department's CFO observed:

This contract represents a significant step up in size for Paladin which represents a high risk for the Commonwealth. The financial strength assessment raises a number of concerns; Paladin's largest recorded revenue is less than \$6 million AUD pa highlighting the significance of the upscale required to fulfil a \$152 million AUD contract; and the cash sufficiency ratios indicate that Paladin will be very reliant on access to capital to establish. The line of credit reported (\$2m) looks to be insufficient in the circumstances.

2.83 The department could not provide evidence on how, or if, the CFO's concerns were addressed.

72 The negotiation log records that there would be potential savings with respect to insurance, taxation and foreign exchange should the department contract with the Singapore entity.

3. Contractor performance reporting and monitoring

Areas examined

This chapter examines whether contractor performance is adequately reported and monitored. It firstly describes the overall performance reporting and monitoring arrangements which applied to the JDA Wokman, NKW Holdings, Paladin and Canstruct contracts (the four contractors). It then examines whether the four contractors complied with reporting requirements, before examining the department's processes for monitoring contractor performance reporting.

Conclusion

Contractor performance reporting and monitoring was partly adequate. There were no performance monitoring or reporting requirements for an average of more than eight months during the time that the respective contractors operated under Letters of Intent prior to the signing of contracts. Once established, contracts contained detailed management plans and reporting frameworks which were appropriately applied by the department in most instances to monitor contractor performance. Payments to contractors during the contract negotiation period were not supported by Letters of Intent in all instances.

Recommendation

The ANAO has made one recommendation in relation to interim reporting and identified an area for improvement in relation to controls for contract management and payment authorisation.

3.1 The department's contract management practices in relation to garrison support and welfare services contracts were the subject of Auditor-General Report No.32 2016–17 *Offshore Processing Centres in Nauru and Papua New Guinea — Contract Management of Garrison Support and Welfare Services*. The report concluded:

The department did not put in place effective mechanisms to manage the [G4S, Transfield and Salvation Army] contracts. Other than the contracts, there was no documentation of the means by which the contract objectives would be achieved. In the absence of a plan, assurance processes such as the inspection and audit of services delivered, has not occurred in a systematic way and risks were not effectively managed. In addition, the department has not maintained appropriate records of decisions and actions taken in the course of its contract management. As a consequence, the department has not been well placed to assess whether its service strategies were adequate or fully met government objectives.

The department developed a comprehensive and risk based performance framework for the contracts to help it assess provider performance. However, development of the framework was delayed and in applying the framework the department was not consistent in its treatment of different providers. Performance measurement under the framework relied heavily on self-assessments by providers and the department performed limited independent checks. Delays in the department's review of self-assessments and the provision of feedback on contractor performance eroded the link between actual performance and contract payments. ...⁷³

73 Auditor-General Report No.16 2016–17 [Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services](#), p. 8–9.

3.2 Given these previous findings, the ANAO focused in this audit on whether each contract had appropriate performance reporting and monitoring arrangements.

Did contractors meet reporting requirements?

Once contract management plans and performance management frameworks were established, the four contractors met all associated reporting requirements in a timely manner. However, reporting requirements did not apply while contractors were operating under Letters of Intent. As a result, contractors were not required to submit performance reports for an average of more than eight months after they first began providing services.

The department's contractor reporting processes

3.3 The department's 2017 Contract Management Manual states:

Performance management is a vital element of successful contract management. It must be undertaken at regular intervals throughout the life of the contract, and in accordance with any Service Level Agreement or Key Performance Indicators included in the contract.

3.4 The Contract Management Manual specifies a Contract Management Framework (see Appendix 4) which, in turn, requires the development of a Contract Management Plan⁷⁴ which must be 'commensurate with the value, complexity and perceived risk involved in the contract' and, among other elements, include:

- details of key performance indicators including key timeframes and deliverables;
- regular reviews of contract risk;
- arrangements for regular progress meetings;
- clear lines of authority and responsibility to ensure that key performance indicators are met; and
- timeframes and method of internal management review and evaluation.

Application of contractor reporting processes to the garrison support and welfare contracts

3.5 Consistent with the Contract Management Manual, a Contract Management Plan was established for each of the four contractors. A Performance Management Framework was also established for each contractor, (comprising a schedule to the contract) which specified the detailed performance measures which would constitute the basis for the department's assessment of the contractors' performance — these are set out at Appendix 5. However, reporting for each respective contractor under this framework did not commence until:

- the contract had been negotiated, agreed and signed; and
- the contract management plan was agreed and settled.

⁷⁴ The need for Contract Management Plans was identified in Auditor-General Report No.32 2016–17 [Offshore Processing Centres in Nauru and Papua New Guinea — Contract Management of Garrison Support and Welfare Services](#) and their introduction and implementation were the subject of Recommendation 2 of that report.

3.6 The department used Letters of Intent (LOIs) to cover the period between its decision to engage a contractor and the execution of a formal contract.⁷⁵ The use of LOIs provides a basic framework for initial services to commence while contractual negotiations occur. Longer than anticipated contract negotiations led to delays of varying length between when providers began providing services and their reporting obligations began.

3.7 Table 3.1 summarises the timeframes between the commencement of operations by a contractor under the first LOI, through to when they were required to produce their first performance report⁷⁶, and indicates that these periods averaged more than eight months.

Table 3.1: Dates of Letters of Intent, contracts and contract management plans

Event	Canstruct	JDA	NKW	Paladin
Letter of Intent 1	28/9/2017	29/12/2017	08/09/2017 ^a	21/9/2017
Letter of Intent 2	N/A	05/03/2018	N/A	09/11/2017
Letter of Intent 3	N/A	N/A	N/A	05/12/2017
Letter of Intent 4	N/A	N/A	N/A	07/02/2018
Contract execution	31/10/2017	09/03/2018	21/09/2018	28/02/2018
Contract management plan established	31/10/2017	03/08/2018	08/08/2018	01/11/2017
First monthly performance report required	01/03/2018	01/08/2018	01/11/2018	01/05/2018
No of days between LOI1 and first report required	154 ^b	215	419	222

Note a: The letter of intent for NKW Holdings related to the 'Camp 70 refurbishment and Camp 300 establishment works'; whilst the executed contract related to Site Management Services in PNG.

Note b: Although Canstruct was not required by the department to submit its first report until 1 March 2018, it did so on 9 December 2017, 72 days after the date of the LOI. In November and December 2017, Canstruct reported on 36 of the 40 performance measures which ultimately formed part of the formal PMF.

Source: ANAO analysis of departmental documentation.

3.8 Given that the relevant contractors commenced the provision of services upon the execution of the first LOI, and that three of these services⁷⁷ involved the exercise of responsibilities associated with the welfare of individuals, the absence of an initial reporting framework to cover the period during the LOI/contract negotiation process and the transition-in period meant that key risks associated with the performance of services were not effectively monitored.

75 With respect to NKW, the construction work was the subject of an LOI but no contract was signed. For NKW's site management services, there was no LOI but a contract was entered into.

76 The only reports that contractors were required to provide during the LOI/transition-in period were ad-hoc incident reports. Incidents are events which may involve some risk or actual physical threat or injury to persons or property. They are not part of the regular monthly reporting requirement.

77 The LOI for NKW related to the refurbishment and construction of accommodation (as opposed the delivery of services to individuals).

3.9 While the Contract Management Manual does not specifically deal with the issue of performance reporting during LOI periods, it does refer to reporting during transition-in periods. It states:

Special performance monitoring and reporting requirements may need to be established for the transition phases. These may be to ensure specific tasks related to the implementation of the new arrangements are properly performed and/or to ensure service delivery is running smoothly.

Early and frequent performance monitoring and reporting can assist in the prompt detection and resolution of any unforeseen problems.

3.10 Where LOIs are in place for extended periods, the department should develop interim or abbreviated reporting frameworks to allow the early identification of issues which may become more difficult to rectify later in the contract period.

Recommendation no.2

3.11 The Department of Home Affairs develop policy guidance to ensure that, where Letters of Intent are issued to contractors pending the finalisation of contracts, interim performance reports are prepared when an assessment of key contract risks and deliverables suggests it would be prudent to do so.

Department of Home Affairs response: *Agreed.*

3.12 *The Department will develop policy guidance, that interim performance management frameworks be developed when Letters of Intent are issued to contractors pending finalisation of contracts, in circumstances where a risk assessment including consideration of relevant timeframes, key transition risks of deliverables deems it to be necessary.*

Timeliness of contractor reports

3.13 The timeliness of contractors' reports was noted as an issue in Auditor-General Report No.32 2016–17. Some reports were provided by contractors several months later than required and, in some cases, not at all. The service providers in Report No.32 2016–17 are no longer contracted, and therefore this audit examined the timeliness of the four subsequently engaged providers in the submission of monthly performance reports (once the formal reporting requirements commenced).

3.14 The contracts for Canstruct and Paladin required monthly reports to be submitted to the department by the tenth business day of the following month. The JDA and NKW contracts did not contain an explicit deadline, however internal departmental work instructions refer to the same deadline and the audit has used ten days as a measure to assess the timeliness of all four contractors' reports. The result of this analysis is shown in Appendix 6.

3.15 The four contractors largely met the timeframe required of them, with only three of a total of 61 reports submitted late (and then only marginally so, except for one report which was 15 days late). This contrasts substantially with the performance of contractors in Auditor-General Report No.32 2016–17 where delays of up to two and a half months occurred.⁷⁸

⁷⁸ Auditor-General Report No.32 2016–17 [Offshore Processing Centres in Nauru and Papua New Guinea — Contract Management of Garrison Support and Welfare Services](#), paragraph 4.30, p.73.

Did the department monitor contractor reports?

The department established a largely fit-for-purpose framework for monitoring contractor performance reporting. Contractors completed self-assessments on a monthly basis against agreed performance metrics, which were then validated through a process of review against supporting evidence and third party data. For Nauru, the permanent presence of departmental officials enabled ongoing verification of performance, whilst for Manus Island, site visits were intended to occur monthly but did not occur in all instances. Reports to the delegate contained trend analysis and highlighted any emerging issues and corrective action required. Feedback was provided to each contractor on a monthly basis and included notification of any penalties to be applied for performance failures where applicable under the contract. The department was not able to provide any rationale as to why it did not establish abatement and PIN clauses consistently across the four contracts.

3.16 In Auditor-General Report No.32 2016–17, the ANAO observed:

Performance measurement relied on the service providers conducting self-assessments (individual service provider reports, known as ISPRs) and providing those assessments to DIBP on a monthly basis. The department did not establish minimum expectations regarding the reports or supporting documentation. In addition, DIBP did not consistently apply audit or other review processes to gain independent assurance over providers' self-assessments.

...

Self-assessment can be a useful and appropriate tool when supported by independent observations focusing on key risks and exposures.

3.17 As stated at paragraph 3.5, the department established clear expectations in relation to the content and frequency of performance reporting, however the framework relies on elements of contractor self-assessment. This section therefore examined the extent to which the department addressed the risks associated with such a framework.

The department's performance monitoring and review framework

3.18 In relation to performance monitoring and performance assessment, the Contract Management Manual states:

Systematic monitoring underpins performance assessment. Monitoring focuses on collecting and analysing information to provide assurance that progress is being made in line with agreed timeframes and towards providing the contract deliverables.

...

Information collected during the monitoring process is used to assess contractor performance. Feedback should be provided to the contractor in relation to good or poor performance, and any performance problems should be addressed promptly. In some cases, remedial action may need to be undertaken, while in other cases, more formal action for under-performance may need to be taken.

3.19 The department has 'in country' staff⁷⁹ in both PNG and Nauru. In Nauru, these staff are located within the RPCs, whereas in PNG, they are located in Port Moresby, although they planned

⁷⁹ The department advised that these are Australia-based staff on short-term deployments of up to 12 weeks.

to visit Manus Island monthly. The ANAO asked the department to comment on how it manages the risk of misleading or inaccurate self-assessment reporting by contractors. It responded:

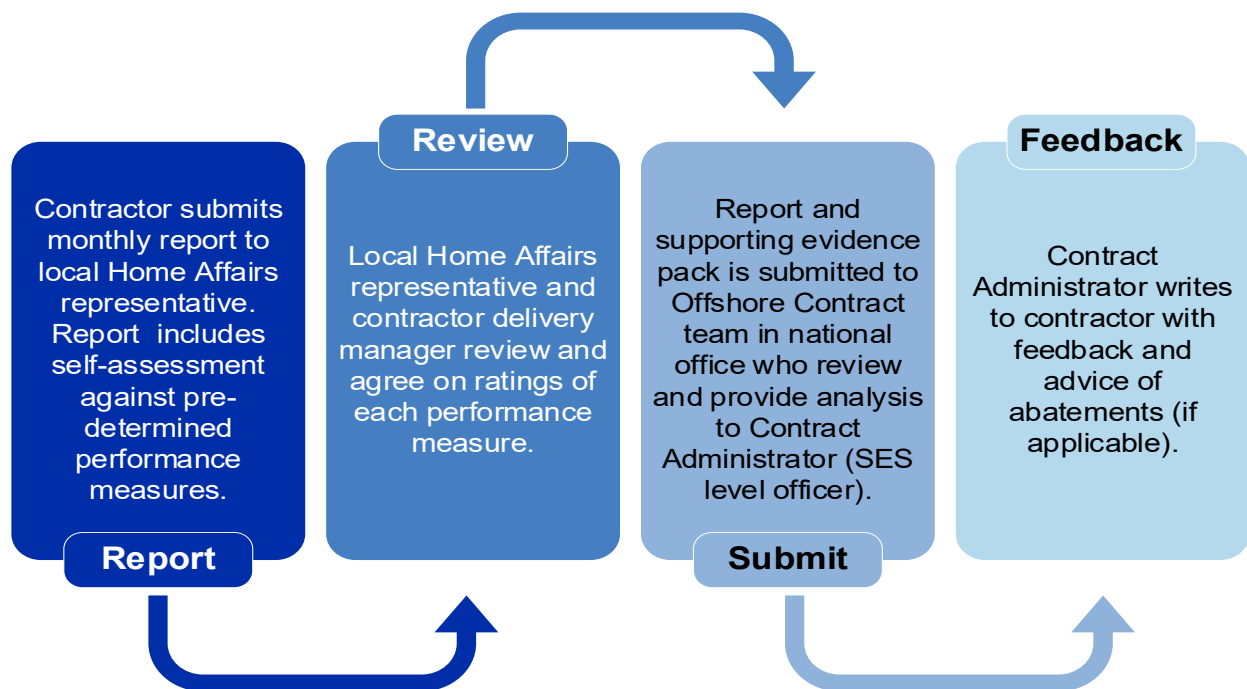
It is important to note that self-assessment reports are only the first step in a lengthy performance management process. The contract does not advise the Service Provider [SP] of the Department's additional processes. The Department has a specialised team of performance management officers who then take the self-assessment reports and scrutinise it in detail. Scrutiny will include matching other contract documents that were obtained during the reporting month against the self-assessment reports. For example – If an incident report was submitted during the month; details within that report would be cross checked against the self-assessment report. All complaints reporting by another Service Provider will be cross checked against the self-assessment report. The performance management team will request all supporting data of the self-assessment report and cross check accuracy including electronic date stamping. The performance management team will also initiate random audits. Another example would be where the Performance management team will use the minutes of all stakeholder meetings to cross check self-assessment. I.e. if the minutes stated that one SP brought up an issue of the bus being late; the performance management team will then cross check that Paladin had self-reported a failure for that specific date.

After the Performance management team have completed their scrutiny, additional scrutiny is then applied by the national office contract management team where the Performance management team may be asked to do further audit work before the delegate approves the final results.

For Nauru – the performance management team are also on the ground and observe performance.

3.20 The department's monitoring and review process for the four contractors is summarised at Figure 3.1.

Figure 3.1: Contractor reporting and departmental review process



Source: Adapted from departmental documentation.

3.21 This performance reporting process was largely followed in practice. In summary, there was evidence that:

- the in-country departmental officials liaised with the service providers to assess that performance reports were completed correctly on the agreed reporting template; that all applicable performance measures were reported against; cross checked reporting against incident reports, complaints, input from other contractors and associated data; and requested additional reporting evidence where required;
- Site visits were conducted by in-country departmental officials to verify self-assessment reporting on a sample basis — for Manus Island, the department established a schedule of monthly site visits to commence from December 2018, however site visits for ‘the specific purpose of performance management activity’⁸⁰ did not occur in all instances. For Nauru, the permanent presence of departmental officials enabled ongoing observation of performance;
- the in-country departmental officials and the department’s national office liaised to reconcile and confirm the initial assessment;
- officials informed the delegate of the service providers’ performance under the performance management framework and sought endorsement to advise the service provider of the reporting outcomes;
- where appropriate, the reports to the delegate contained trend analysis and highlighted any emerging issues and corrective action to be undertaken; and
- the department provided formal correspondence to the service providers detailing the outcomes of the monthly performance report.⁸¹

Meetings with contractors

3.22 The Contract Management Manual states:

Good communication is a key component of successful contract management and appropriate communication strategies and protocols must be established.

3.23 The Contract Management Plan for each contractor (on both Manus Island and Nauru) established a range of forums and meetings. The key meetings are listed in Appendix 7.

3.24 Evidence confirmed that these meetings were undertaken consistent with Contract Management Plans.

Abatements and performance improvement notices

3.25 In addition to regular reporting against pre-determined performance indicators, where a contractor has not met a performance indicator (referred to by the department as a ‘performance

80 The department established a schedule of monthly site visits to commence from December 2018 but advised that monthly visits did not occur in all instances. Evidence was provided for 14 visits by departmental staff to Manus Island sites in the period 1 October 2017 to 28 November 2019.

81 The outcomes correspondence typically details the performance measures; applicable abatements; feedback in relation to exceptional service against the applicable performance measures as well as performance measures where a service provider is performing well consistently. Feedback is also provided when performance measures require improvements.

failure') penalties (known as abatements) and performance improvement notices (PINs) may be imposed.

3.26 Abatements represent the refund the department is owed if a contractor does not meet the service requirements agreed through the Performance Management Framework.

3.27 PINs are issued where a contractor repeatedly fails to deliver a service. Where this occurs, the service provider is required to submit a detailed Rectification Plan. If the contractor then fails to implement the Rectification Plan within an agreed timeframe, a monetary penalty is deducted from the monthly service fee until such time as the contractor implements the Rectification Plan. The value of the deduction will not exceed 15 per cent of the monthly service fee (excluding pass-through costs) in accordance with the relevant contract.

3.28 The inclusion of clauses enabling the use of abatements and PINs varied between the four contracts, as shown in Table 3.2.

Table 3.2: Inclusion of clauses in contracts enabling abatements and PINs

Contractor	Abatement	Penalty Improvement Notice
Canstruct	Yes	No
JDA	No	Yes
NKW	No	Yes
Paladin	Yes	Yes

Source: ANAO analysis of Service Provider contracts/departmental documentation.

3.29 Other than the department advising that 'each contract was established independently', the department was not able to provide any rationale as to why it did not establish abatement and PIN clauses consistently across the four contracts given the commonality in the nature of services to be provided under each.⁸²

3.30 In addition to inconsistencies in the presence of these clauses between the four contracts, there are inconsistencies between the Canstruct and Paladin contracts in relation to the circumstances under which an abatement is imposed. For Paladin, any performance failure against specified service requirements⁸³ would result in an abatement, whereas for Canstruct, provided the department considered that its overall performance for a specific 'contract responsibility' in a particular month was assessed as three or above⁸⁴ on a five point scale, no abatement would be imposed, regardless of the number of performance failures.

3.31 The contracts for Canstruct and Paladin also provide for 'excusable performance failures' which are a recognition by the department that a contractor's failure to meet a key performance indicator might have been due to circumstances beyond the contractor's control.

82 The department advised that 'Offshore Contracts Section (OCS) manages the four contracts as provided and OCS had no input for the four contracts procurement/negotiation processes including abatements/PINs'.

83 Examples of performance failures included in the contract are loss of a key (abatement \$4,500); when the number of complaints against the number of meals exceeds five per cent (abatement \$4,200) and when any new asset is not added to the asset register within five days (abatement \$3,120).

84 Where 3 is 'meets expectations', 4 is 'exceeds expectations' and 5 is 'exceptional'.

3.32 Between May 2018 and October 2019, Paladin incurred 5,484⁸⁵ abatements totalling \$5,813,448 in penalties.⁸⁶ Canstruct had some performance failures, but no abatements were applied due to its overall performance rating. As noted at Table 3.2, the JDA and NKW contracts did not include provision for abatements.

3.33 The department advised that:

Canstruct have not, during the term of the contract failed to deliver services to the extent that the abatement regime in the contract has come into effect. The abatement regime in the Contract, by necessity, is very strict as to what comprises a failure sufficient to trigger an abatement, Canstruct, as a mature entity, and with significant input from ex-BRS staff, were able to avoid performance failures that triggered abatements.

Paladin's abatements often related to administrative requirements such as record keeping, reporting timeframe requirements not met and quality improvement requirements. Paladin have progressively refined their operating processes and improved service delivery outcomes.

Were payments to contractors made in accordance with Letters of Intent?

Payments to Canstruct and Paladin were made in accordance with the relevant LOIs, but the department did not enforce the conditions of payment for Canstruct. Not all payments to JDA were supported by an LOI or applicable agreement. Payments to NKW were made above the LOI approved limit. Other payments were made to NKW outside the LOI without a contract.

3.34 The Commonwealth Resource Management Framework (see Figure 1.3) governs the use and management of public resources. The PGPA Act is the cornerstone of this framework and encourages entities to establish Accountable Authority Instructions (AAIs) to assist officials to meet their responsibilities under the PGPA Act.

3.35 The department's AAIs provide instructions for spending money, including that 'money cannot be spent without the approval of a delegate'⁸⁷ and departmental staff must be satisfied that:

- invoices are in accordance with the terms and conditions of the arrangement;
- a valid tax invoice is received;
- the decision to authorise payment is documented in writing; and
- the evidence is maintained in TRIM.

3.36 In addition, the department's Contract Management Manual states 'Payments should be aligned with contract deliverables, performance and outcomes'.

3.37 As noted at paragraphs 3.6–3.10, the department initially engaged each of the contractors under LOIs. These documents are often general in nature when compared to formal contractual frameworks and hence have a higher inherent risk of payments being inappropriately processed.

85 Total number of PMF failures.

86 The abatement total for July 2018 was \$8,097,300. However, the contract specified that abatement penalties would be capped at 15 per cent of the total monthly fee and as a result, the amount was reduced to \$2,606,748.

87 The AAIs note that there are three primary spending money steps which require a delegation as per the PGPA Act, those being: s.23(3) — approval of the spending proposal; s.23(1) — entering into or varying an arrangement; and s.23(1) administering an arrangement which involves authorising an invoice for payment.

This audit therefore examined whether payments to contractors were made in accordance with the LOIs (Table 3.3) in place prior to the establishment of formal contracts.

Table 3.3: Payments under Letters of Intent

Service Provider	LOI period	Funding amount approved by the LOI	Total number of invoices received/paid	Total value of invoices paid (\$m) ^a
Canstruct	28 September 2017 to 31 October 2017	Up to \$10 million	1/1	8.2
JDA	29 December 2017 to 9 March 2018	Up to \$5.6 million	12/12	2.7
NKW	8 September 2017 to October 2017	Up to \$2.9 million	8/8	4.5
Paladin	21 September 2017 to 28 February 2018	Up to \$89.3 million	9/9	89.2

Note a: Total value of invoices have been rounded up.

Source: ANAO analysis of departmental documentation.

Canstruct

3.38 All payments to Canstruct were made in accordance with the relevant LOI deliverables and agreed funding. However, the department did not enforce the conditions of payment. Under the relevant LOI, Canstruct was required to:

- submit invoices monthly in arrears;
- provide full substantiation of transition costs; and
- submit and have approved a new transition plan.

3.39 The Canstruct LOI was signed on 28 September 2017 and Canstruct submitted a single invoice for transition costs on the following day (that is, not in arrears). The department approved payment on 10 October 2017. Based on the available record, Canstruct did not fully substantiate transition costs. While it revised its transition plan on 8 October 2017, there is no evidence that the revised plan was approved by the department.⁸⁸

JDA

3.40 The department and JDA first signed an LOI on 29 December 2017 with retrospective effect from 4 December 2017. However, between October and November 2017 the department paid JDA a total of \$0.3 million for settlement support services. The department was unable to provide an LOI or invoices and related approvals for these payments. While approved payments for LOI deliverables did not exceed LOI funding approvals, the department was unable to provide invoices to support approved payments for transition-in costs.⁸⁹

88 The revised plan was not provided to the PGPA s23(1) delegate on 10 October 2017 when approval was sought and provided for payment of Canstruct's transition-in costs.

89 The JDA LOI provided for transition-in costs of \$1.25 million and Schedule 3 services of \$4.4 million.

NKW

3.41 The LOI between the department and NKW for the refurbishment of Camp 70 and construction of Camp 300 provided for approximately \$2.94 million.⁹⁰ Payments made for LOI deliverables exceeded the approved LOI funding amount by approximately \$1.6 million, and the department was unable to provide evidence of any authorisation for payments above the approved amount.

3.42 Separately, the department made approximately \$96 million in payments to NKW for site management fees in relation to Camp 70 and 300 between October 2017 and September 2018. There was no contract in place with NKW until 21 September 2018. The department advised that these payments were supported by the 2013 Australia/PNG MOU during the period while contract negotiations were finalised.⁹¹ The MOU is a country-to-country agreement and does not provide a basis for transactions with a commercial service provider.

3.43 The department conducted a review of NKW invoices in March 2018 that resulted in:

- costs being renegotiated in some cases and substantial refunds to the department (of around \$5 million); and
- the department developing a process with NKW for invoicing and reporting protocols.

Paladin

3.44 All payments to Paladin were made in accordance with the relevant LOI deliverables and agreed funding.

90 The LOI stated 'the fees to be paid by the Department to NKW for the Works is up to PGK 7,000,000'. The PGPA s23 spending approval stated that this was equivalent to approximately AUD\$2.94 million.

91 In April 2020 the department stated: 'the MOU provides the legal authority, the approval as per the PGPA delegation provides administration and funding authority, and the draft contract formed the basis of the service delivery framework. In relation to the authority for payments to NKW. The Department's position is outlined below:

- In accordance with the 2013 MOU with PNG for the transfer, assessment and settlement of persons from Australia in PNG, Australia agreed to bear all costs.
- The Department administers MOU arrangements on behalf of and at the request of the PNG Government. The legal authority to administer MOU arrangements is provided by s198AHA of the Migration Act 1958. The power to enter into and administer MOU arrangements falls under the PGPA Act framework.
- On 10 August 2017, the Secretary approved the Department to apply special measures to procurement processes that supported the closure of the Manus Regional Processing Centre (MRPC Procurements) in accordance with paragraph 2.6 of the Commonwealth Procurement Rules.
- Accordingly, a Letter of Intent (LOI) to commence, "make good works" was executed with NKW on 9 September 2017. A Request for Quote (RFQ) for site management services at West Lorengau Haus and Hillside Haus was subsequently issued on 9 October 2017. Prior to the commencement of the Contract and pending completion of the procurement process, NKW performed site management services at these sites under an informal interim contractual arrangement. The authority to enter in and administer the interim contractual arrangement was provided by the MOU and the PGPA Act.
- PGPA approval were maintained throughout the informal interim contract arrangement.

4. Implementation of actions and recommendations from previous ANAO and JCPAA reports

Areas examined

This chapter examines whether the department has implemented the recommendations of Auditor-General Report No.16 2016–17 *Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services* and Joint Committee of Public Accounts and Audit (JCPAA) Report 465: *Commonwealth Procurement*.

Conclusion

The department has substantially implemented the recommendations of Auditor-General Report No.16 2016–17 and JCPAA Report 465: *Commonwealth Procurement* by developing training programs to address skill and capability gaps and by implementing a wide range of procurement and contract management guidance and instructional material. The department has significantly improved its record keeping practices and has reported to the JCPAA on its implementation of the ANAO's recommendations.

4.1 Auditor-General Report No.16 2016–17 was tabled in September 2016.⁹² Following examination of a number of ANAO reports relating to procurement, in September 2017, the JCPAA tabled *Report 465: Commonwealth Procurement* (the 2017 JCPAA report), which included a recommendation for the department. The recommendations of both reports are listed at Appendix 8.

Did the department implement the recommendations of Auditor-General Report No.16 2016–17?

The department has undertaken a body of work aimed at addressing recommendations arising from the respective previous ANAO reports on procurement and contract management activities for the offshore processing centres. Specifically:

- there is a suite of procurement-focused training programs tailored to workplace requirements;
- a procurement-specific page on the department's intranet contains a wide range of guidance and instructional material; and
- evidence from the fieldwork conducted for this audit indicates the department has significantly improved its record keeping practices and that staff now use the TRIM electronic data and records management system.

4.2 Auditor-General Report No.16 2016–17 found that the department's management of procurement activity for garrison support and welfare services at the offshore processing centres

92 A related report, Auditor-General Report No.32 2016–17 [Offshore Processing Centres in Nauru and Papua New Guinea — Contract Management of Garrison Support and Welfare Services](#), was tabled in January 2017 but is not part of this audit's scope.

in Nauru and Papua New Guinea (Manus Island) had ‘fallen well short of effective procurement practice’. The audit’s two recommendations were intended to address:

- the significant skill and capability gaps identified amongst personnel at all levels in the department, including within the central procurement and budget units; and
- persistent shortcomings in the planning and conduct of the procurements, including in relation to record keeping, consistency and fairness in the treatment of suppliers, and the assessment of value for money.

4.3 The wording of these recommendations is reproduced in full at Table A.9 in Appendix 8. The focus of the recommendations was that the department needed, as a priority, to address deficiencies in the following areas as they relate to procurement:

- training and staff selection;
- procurement guidance; and
- information management and record keeping.

4.4 In assessing whether the department has implemented the recommendations of Auditor-General Report No.16 2016–17, the ANAO reviewed:

- the evidence collected in this audit;
- material located on the department’s intranet (such as guidance and training material); and
- evaluation of the department’s own assessment of its implementation of the recommendations.⁹³

Training and staff selection

4.5 After the tabling of Auditor-General Report No.16 2016–17, the department engaged a consultant to review the department’s procurement and contract management capability and identify options for ‘upskilling and professionalisation’. A subsequent internal review found that while the department had a range of training options, ‘there remains a scattered skill base’.

4.6 In June 2017, the CFO agreed to a proposal to consolidate and rationalise training in both procurement and contract management to ensure a more systematic and strategic approach to ensuring the right people have the right training, ranging from staff who occasionally are required to arrange a simple procurement or purchase through to large complex procurements (such as the garrison support and welfare contracts). The available training is listed on the departmental intranet and includes:

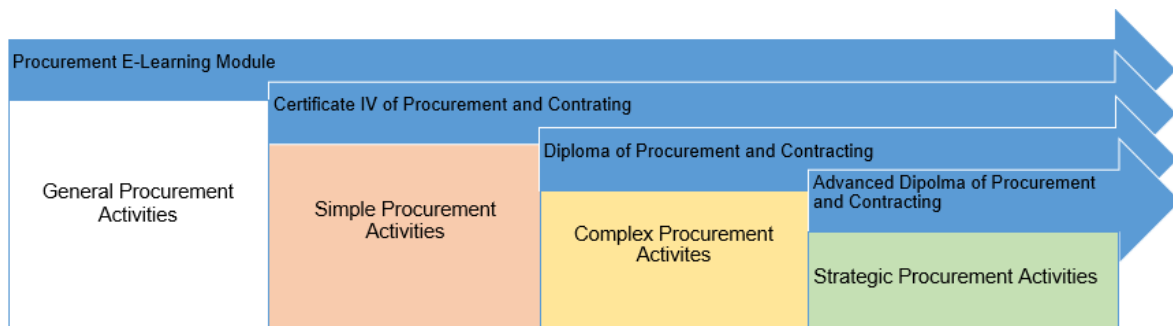
- Procurement (one day, internal and e-learning);
- Contract management 101 (one day, external);
- Certificate IV in Government (Procurement and Contracting) (external, eight days over eight weeks); and

93 The department’s Recommendation Management and Assurance section tracks recommendations arising from internal and external assurance activities such as the ANAO, the Commonwealth Ombudsman and the Australia Human Rights Commission (and non-government agencies such as the Red Cross). As at 23 August 2019, the section was monitoring 317 ‘open’ recommendations.

- Diploma and Advanced Diploma in Government (Procurement and Contracting) (external, 10–15 days over 8–15 weeks).

4.7 Figure 4.1 shows the relationship between the various courses on offer and the level of complexity of the procurement. The figure is taken from a procurement education and accreditation ‘rubric’ which is available to supervisors to assist them in making decisions about staff selection and deployment of existing resources. The intention is that the rubric will assist supervisors to determine whether their staff possess appropriate skills and qualifications.

Figure 4.1: Procurement and accreditation rubric



Source: Department of Home Affairs.

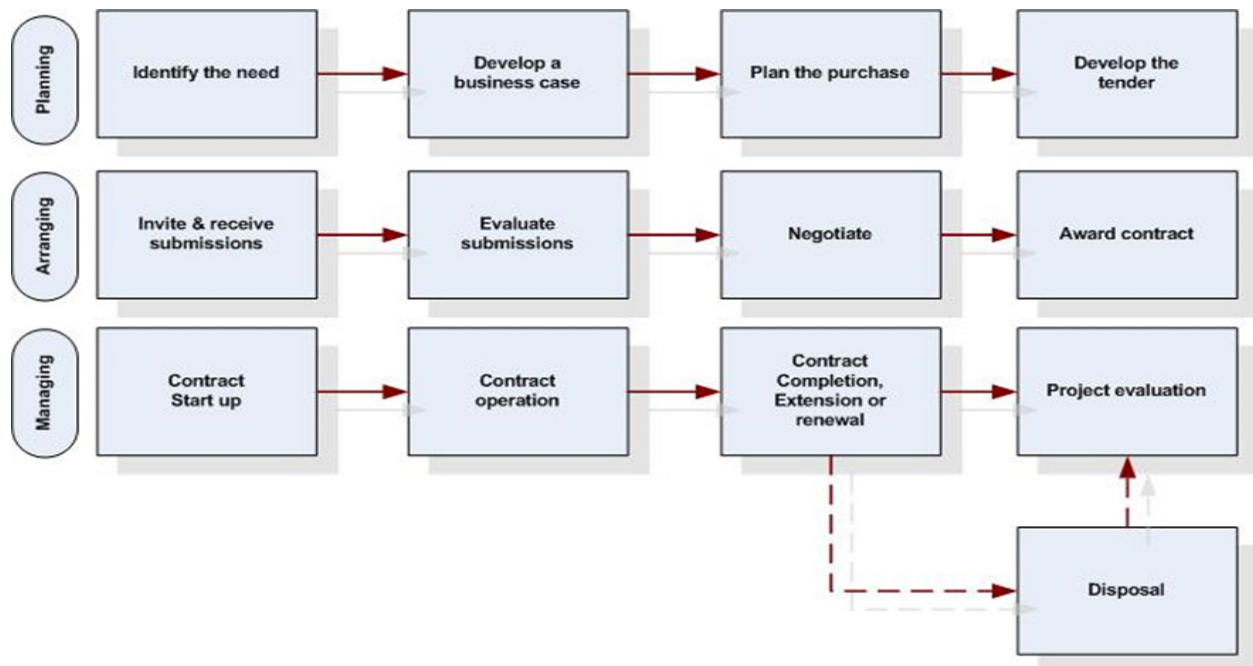
4.8 Within the department, responsibility for more complex procurements and contract management rests with the Procurement, Property, and Contracts division, which is headed by a First Assistant Secretary (SES Band 2) who is also the department’s Chief Procurement Officer. Within that division, the Procurement and Contract Policy and Procurement Support and Assistance branches are responsible for procurement support, assurance and advice to line areas.

4.9 As at August 2019, 11 of 12 Executive Level staff (92 per cent) in the branch had completed at least one of the Certificate IV, Diploma or Advanced Diploma in Procurement and Contracting referred to, at paragraph 4.6.

Procurement guidance

4.10 Auditor-General Report No.16 2016–17 highlighted the lack of guidance material for staff engaged in procurement activity. The department has developed a suite of guidance material aimed at addressing this issue which is now available to all staff via the intranet. A document entitled *Introduction to procurement in Home Affairs* provides a useful overview of the process and includes the process summary shown in Figure 4.2.

Figure 4.2: Procurement in the Department of Home Affairs: process summary



Source: Department of Home Affairs.

4.11 The steps outlined in Figure 4.2 apply to both the procurement of goods and services. A *Procurement classification tool* uses a number of 'yes/no' questions to assist staff to determine whether a particular procurement is considered under departmental policy to be:

- simple (less than \$200,000);
- complex (between \$200,000 and \$10 million and of low risk); or
- strategic (greater than \$10 million or complex procurements which are high risk).⁹⁴

4.12 There is a range of further guidance material which is summarised in Table 4.1.

⁹⁴ As noted at paragraph 1.32, the department has mandated an additional level of oversight (High Risk, High Value) for strategic projects greater than \$50 million.

Table 4.1: Procurement guidance

Stage	Guidance note
1. Planning the procurement (four guidance notes)	Identifying the requirement
	Overview of procurement planning
	Procurement documentation and recordkeeping
	Developing a probity plan
2. Preparing for market (six guidance notes)	Preparing statements of requirements
	Managing conflicts and confidentiality
	Probity considerations in Stage 2
	Developing an evaluation plan
	Preparing Approach to Market documentation
	Record keeping in Stage 2
3. In market (four guidance notes)	Probity considerations in Stage 3
	Receiving submissions
	Questions, clarifications and amendments
	Procurement documentation and recordkeeping
4. Evaluating submissions (three guidance notes)	Evaluating submissions
	Recordkeeping during evaluations
	Probity considerations during evaluations
5. Concluding the procurement process	Reporting requirements

Source: ANAO analysis of departmental documentation.

4.13 Where relevant, the guidance notes include hyperlinks to other relevant material (such the CPRs and the department's AAls). A Procurement Help Desk email account has also been established and the guidance material referred to above encourages staff to use this to seek expert assistance at any stage of a procurement.

Information management and record keeping

4.14 Deficiencies in information management and record keeping in the department have been a consistent theme in ANAO audits since 2011.⁹⁵ Auditor-General Report No.32 2016–17⁹⁶ stated:

The ANAO's review indicates that DIBP contract management records were held by a variety of parties, across a variety of systems, in both paper and electronic format. Some records were only held in paper form or in shared electronic folders in Nauru and on Manus Island, by DIBP or contractor staff. DIBP (National Office) staff maintained records in shared folders in National Office, in individual and group email records, as loose papers, and as paper or electronic files in the department's record keeping system. In addition, there was no systematic approach or minimum expectations applied by the Contract Authority or Administrator or contract management staff, in relation to records creation and maintenance, including the systems in which they were to be maintained. This ad hoc approach meant that key records could not be found, were duplicated or were incomplete.

4.15 Following the tabling of the ANAO offshore procurement⁹⁷ and contract management⁹⁸ reports respectively in 2016–17, the department developed a Records Management Action Plan (Action Plan). The Action Plan (see Table A.10 in Appendix 8) included a five year remediation strategy as well as immediate practical steps such as the mandating of the inclusion of a TRIM reference in all departmental templates, and that documents 'are not to be signed off without a TRIM reference inserted'.

4.16 The Action Plan notes:

Record keeping behaviours, particularly the use of shared drives and email accounts for storage, have become habitual. Significant change management, underpinned by a targeted education program, will be required to modify behaviours.

4.17 Evidence identified throughout this audit indicates an improvement in record keeping: the majority of documents collected as evidence were filed in TRIM, and contained a TRIM reference, improving the ability to identify related records, and that staff recognise their obligation under the department's Records Management policy that:

... evidence of the Department's business activities and decision-making processes must be captured within approved records management systems.

4.18 Notwithstanding these procedural improvements, while covering documents such as minutes submitted for senior executive approval were scanned in and filed, often the attachments

95 In addition to the two audits on offshore garrison support and welfare referred to in this report, audit reports which have referred to deficiencies in the department's record keeping include: Auditor-General Audit Report No.53 2011–12 *Records Management in the Australian Public Service*; Auditor-General Audit Report No.21 2012–13 *Individual Management Services Provided to People in Immigration Detention*; Auditor-General Report No.47 2014–15 *Verifying Identity in the Citizenship Program*; Auditor-General Report No.13 2015–16 *Managing Compliance with Visa Conditions*; Auditor-General Report No.39 2016–17 *The Australian Border Force's Use of Statutory Powers*; and Auditor-General Report No.45 2017–18 *The Integration of the Department of Immigration and Border Protection and the Australian Customs and Border Protection Service*.

96 Auditor-General Report No.32 2016–17 [*Offshore Processing Centres in Nauru and Papua New Guinea — Contract Management of Garrison Support and Welfare Services*](#), paragraph 3.19.

97 Auditor-General Report No.16 2016–17 [*Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services*](#).

98 Auditor-General Report No.32 2016–17 [*Offshore Processing Centres in Nauru and Papua New Guinea — Contract Management of Garrison Support and Welfare Services*](#).

to the minute and key emails were not captured. It is important for the purposes of accountability that the entirety of submissions and documents for decision as they were presented, including attachments, are captured in the approved records management system.

4.19 Future audits of other areas of the department will be able to assess whether the improvement observed in this area of the department's activity is consistent across the department.

Has the department implemented the recommendations of JCPAA Report 465: Commonwealth Procurement?

The department complied with the recommendation of the Joint Committee of Public Accounts and Audit (JCPAA) by providing the JCPAA with a report in March 2018 on its implementation of the ANAO's recommendations.

4.20 In 2017, the JCPAA conducted an inquiry into Commonwealth procurement. The inquiry was based on three ANAO reports:

- Auditor-General Report No.1 2016–17 *Procurement of the International Centre for Complex Project Management to Assist on the OneSKY Australia Program* (Airservices Australia);
- Auditor-General Report No.13 2016–17 *Delivery of Health Services in Onshore Immigration Detention* (Department of Immigration and Border Protection); and
- Auditor-General Report No.16 2016–17 *Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services* (Department of Immigration and Border Protection).

4.21 In its September 2017 report, the JCPAA made nine recommendations, of which two were relevant to Auditor-General Report No.16 2016–17. These recommendations are shown at Table A.11 in Appendix 8.

4.22 Recommendation No. 8 of the JCPAA report was that the department report back to the Committee on its implementation of the recommendations in Auditor-General Report No.16 2016–17. The department complied with this recommendation by an Executive Minute provided to the Committee on 18 March 2018.

4.23 Recommendation No. 9 of the JCPAA report was aimed at the ANAO, not the department, but has been included here for completeness. It recommended that the ANAO consider conducting an audit of the department's next procurement of garrison support and welfare. This report fulfils that recommendation.



Grant Hehir
Auditor-General

Canberra ACT
28 May 2020

Appendices

Appendix 1 Department of Home Affairs' response



Australian Government
Department of Home Affairs

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

Dear Mr Hehir

Thank you for the opportunity to provide feedback and comments on the Australian National Audit Office's (ANAO) report on *The Department of Home Affairs' procurement of garrison support and welfare services* performance audit. The Department of Home Affairs (the Department) welcomes this ANAO performance audit and acknowledges the valuable role the ANAO plays in providing independent insights into potential areas of improvement.

In 2012, the Department established Regional Processing Centres (RPCs) on both the Republic of Nauru (Nauru) and Papua New Guinea (PNG) and entered into contracts with service providers for the delivery of garrison support and security services which have been delivered at each of these locations.

This is the third audit the ANAO has conducted since 2016 into the Department's contract management and procurement of offshore garrison support and welfare services. The Department welcomes the ANAO's conclusions in this report that the management of the procurement of garrison support and welfare services for offshore RPCs in Nauru and PNG was largely appropriate, and that the Department has substantially implemented the recommendations of previous ANAO and parliamentary reports. As acknowledged by the ANAO, the Department undertook a body of work aimed at addressing these recommendations including:

- establishing a suite of tailored procurement-focused training programs
- launching a procurement-specific page containing guidance and instructional material on the Department's intranet, and
- implementing significantly improved record-keeping practices.

Procurements

The Department is committed to working within the parameters established under the Commonwealth Procurement Rules (CPRs) to procure services to support activities at offshore RPCs and we note the ANAO's finding that procurement activities for the provision of garrison support and welfare services on Manus Island and Nauru were largely undertaken in accordance with the CPRs.

The management of offshore RPCs is highly complex, dynamic and involves working in collaboration with host governments in Nauru and PNG. Unlike onshore procurements, offshore procurement timeframes are impacted by bilateral government considerations, and the sovereignty of the host nation must be respected.

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For Nauru, the Department provides a supporting role to the Government of Nauru to manage and administer regional processing arrangements. The Department was working with the Government of Nauru on timing and also had to work in line with the requirements of the Government of Nauru and Nauruan legislation specific to contracts that will operate in Nauru but are engaged by external authorities (such as the Government of Australia).

This was reflected in the introduction of the *Nauru RPC Corporation Act 2017*, which requires the Nauru RPC Corporation and the Nauru Cabinet to approve regional processing service delivery contracts. This legislation imposed a new layer of approval not previously in place and meant that the Commonwealth could not enter into procurement or contracts with a preferred tenderer without Government of Nauru approval. This requirement impacted the available timeline and the Department was not the sole authority managing the timeline.

For PNG, on 5 July 2017, advice was received from the PNG Government that PNG was not in a position to continue with any contract negotiations for current or new contracts they were undertaking. This provided the Department with limited time to procure services to support the health and welfare of transferees in Manus Island and Port Moresby. The previous provider was due to cease operations on 31 October 2017 (coinciding with the closure of the Manus RPC), and to commence transition-out on approximately 1 August 2017. The PNG Government was due to have their contractors in place by this time to transition into the new contract.

These events left the Department with limited time to procure the services of a contractor who would understand the environment and be able to deliver services under a new operating model. The operating model for services provided to transferees is at the determination of the sovereign government and evolved quickly and regularly during the period July 2017 to February 2018, from transferees living in one centre to living in premises in Manus and Port Moresby with increased self-agency.

In August 2017, the Secretary of the Department, as accountable authority for the Department, applied paragraph 2.6 of the CPRs approving an exemption from certain requirements of the CPRs, for the protection of essential security interests and human health in PNG. This provided authority to enter into formal negotiations with potential PNG vendors ahead of the impending closure of the RPC on 31 October 2017. Failure to engage new service providers would have resulted in no services for approximately 850 transferees from 31 October 2017 at the closure of the Manus RPC.

In these circumstances, the Department welcomes the ANAO finding that the Department demonstrated the achievement of value for money for the Nauru procurement, that benchmarks used by the Department were appropriate and negotiation processes effective. In relation to the PNG procurements, the Department is of the view that negotiation processes were appropriate, in light of the changed sovereign nation's operating model, the significantly restricted timeframe and the constantly changing operating environment.

Probity

As part of the procurement process, a probity management framework was developed for these procurements requiring each departmental officer involved in the procurements to complete a conflict of interest declaration at the outset of the procurement and declare any further real or perceived conflicts of interest that eventuate during the procurement process. From the Department's point of view, it is not unusual practice for a departmental officer to have multiple roles during a procurement process, both over the term of the procurement and concurrently, and we note the ANAO's observation regarding officers' ongoing obligations in terms of declaring real and perceived conflicts of interest.

Performance Management

The Department recognises that performance management is a vital element of successful contract management and notes the ANAO's conclusion that once contract management plans and performance management frameworks were established, contractors met all associated reporting requirements in a timely manner, and the Department established a largely fit-for-purpose framework for monitoring contractor performance.

Audit Recommendations

The Department agrees with the two recommendations made by the ANAO in this report regarding documentation of decisions in limited tender procurements and interim performance reporting while contract negotiations are being finalised. The Department has undertaken to develop policy guidance and update internal procurement procedures with a particular focus on highly sensitive, high value, and/or complex procurements. The Department will further develop policy guidance, that interim performance management frameworks be developed when Letters of Intent are issued to contractors pending finalisation of contracts, in circumstances where a risk assessment (including consideration of relevant timeframes and key transition risks of deliverables) deems it to be necessary.

The Department would like to thank the ANAO for their collaborative approach throughout the audit process. We will continue to progress implementation of the recommendations as a priority.

Yours sincerely



Penny McKay
Chief Audit Executive

14 May 2020

Appendix 2 Relevant paragraphs of the Commonwealth Procurement Rules

Paragraph 2.6

Nothing in any part of these CPRs prevents an official from applying measures determined by their Accountable Authority to be necessary for the maintenance or restoration of international peace and security, to protect human health, for the protection of essential security interests, or to protect national treasures of artistic, historic or archaeological value.

Paragraph 10.3 – conditions for limited tender

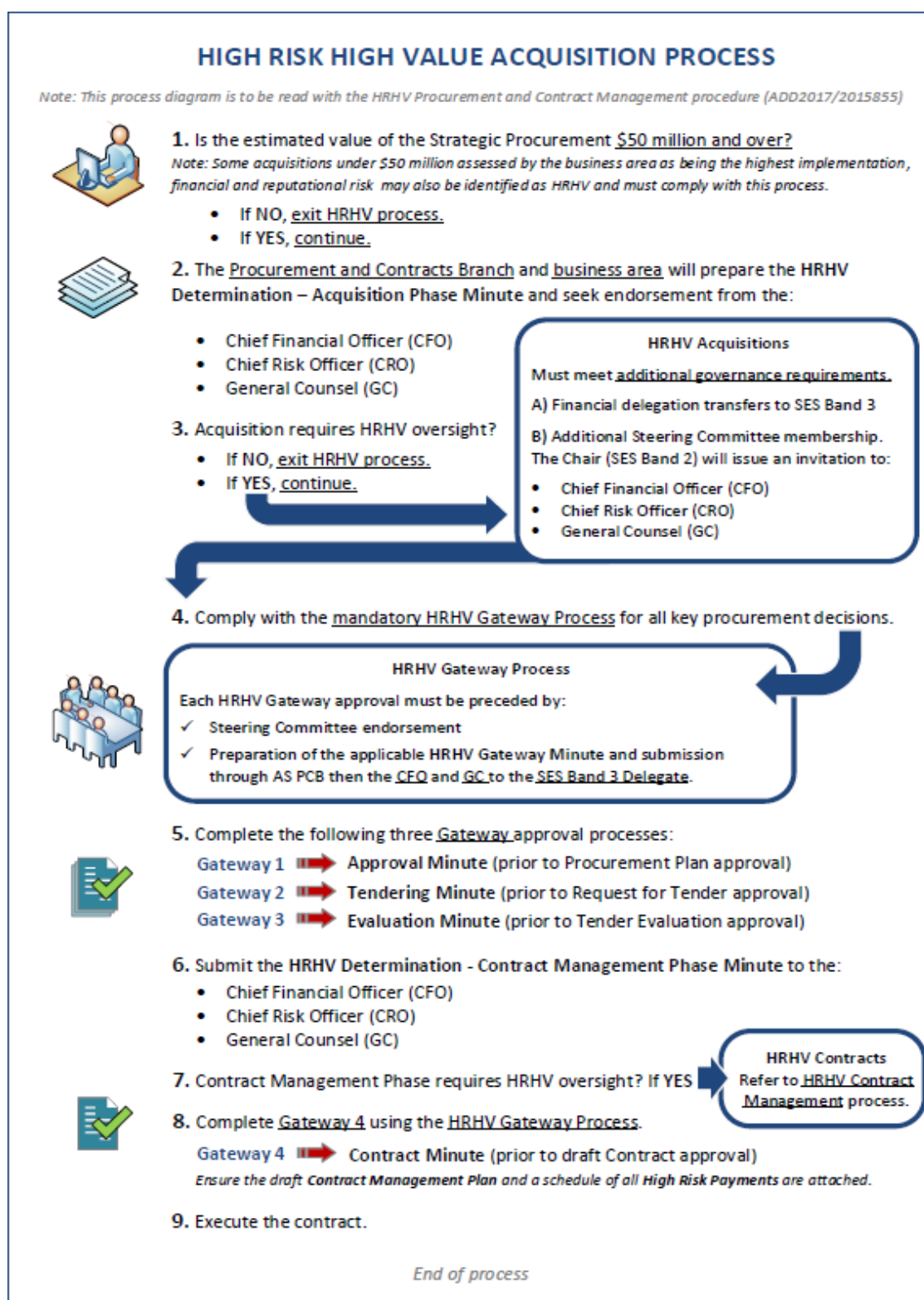
A *relevant entity* **must** only conduct a *procurement* at or above the relevant *procurement threshold* through *limited tender* in the following circumstances:

- a. when, in response to an *approach to market*
 - i. no *submissions*, or no *submissions* that represented value for money, were received,
 - ii. no *submissions* that met the *minimum content and format requirements* for *submission* as stated in the *request documentation* were received, or
 - iii. no *tenderers* satisfied the conditions for participation, and the *relevant entity* does not substantially modify the essential requirements of the *procurement*; or
- b. when, for reasons of extreme urgency brought about by events unforeseen by the *relevant entity*, the *goods* and services could not be obtained in time under *open tender* or *prequalified tender*; or
- c. for *procurements* made under exceptionally advantageous conditions that arise only in the very short term, such as from unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy, or receivership, and which are not routine *procurement* from regular *suppliers*; or
- d. when the *goods* and services can be supplied only by a particular business and there is no reasonable alternative or substitute for one of the following reasons
 - i. the requirement is for works of art,
 - ii. to protect patents, copyrights, or other exclusive rights, or proprietary information, or
 - iii. due to an absence of competition for technical reasons; or
- e. for additional deliveries of *goods* and services by the original *supplier* or authorised representative that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services, or installations, when a change of *supplier* would compel the *relevant entity* to procure *goods* and services that do not meet requirements for compatibility with existing equipment or services; or
- f. for *procurements* in a commodity market; or
- g. when a *relevant entity* procures a prototype or a first good or service that is intended for limited trial or that is developed at the *relevant entity's* request in the course of, and for, a particular *contract* for research, experiment, study, or original development; or

- h. in the case of a *contract* awarded to the winner of a design contest, provided that
 - i. the contest has been organised in a manner that is consistent with these CPRs, and
 - ii. the contest is judged by an independent jury with a view to a design *contract* being awarded to the winner; or
- i. for new *construction services* consisting of the repetition of similar *construction services* that conform to a basic project for which an initial *contract* was awarded through an *open tender* or *prequalified tender*, and when the initial *approach to market* indicated that *limited tender* might be used for those subsequent *construction services*.

Source: Commonwealth Procurement Rules, 1 March 2017, Department of Finance.

Appendix 3 High risk, high value governance arrangements



HIGH RISK HIGH VALUE CONTRACT MANAGEMENT PROCESS

Note: This process diagram is to be read with the HRHV Procurement and Contract Management procedure (ADD2017/2015855)



1. Amend the Contract Management Plan to reflect the:

- HRHV Status
- Financial delegate at or above SESB3
- Special directions that apply in accordance with the Financial Delegations Schedules
- High Risk Payments subject to the HRHV process.

HRHV Contract Status Review
Note: The status of the contract management phase can be reviewed by the CFO, CRO and GC at any time.

High Risk Payments



High Risk Payments may occur only after the governance process (described in Step 2) is complete and authorisation given by the delegate.

Note: It is important to coordinate the timing of all steps in the HRHV High Risk Payment process to ensure compliance with the invoice payment terms.

2. For each identified High Risk Payment:

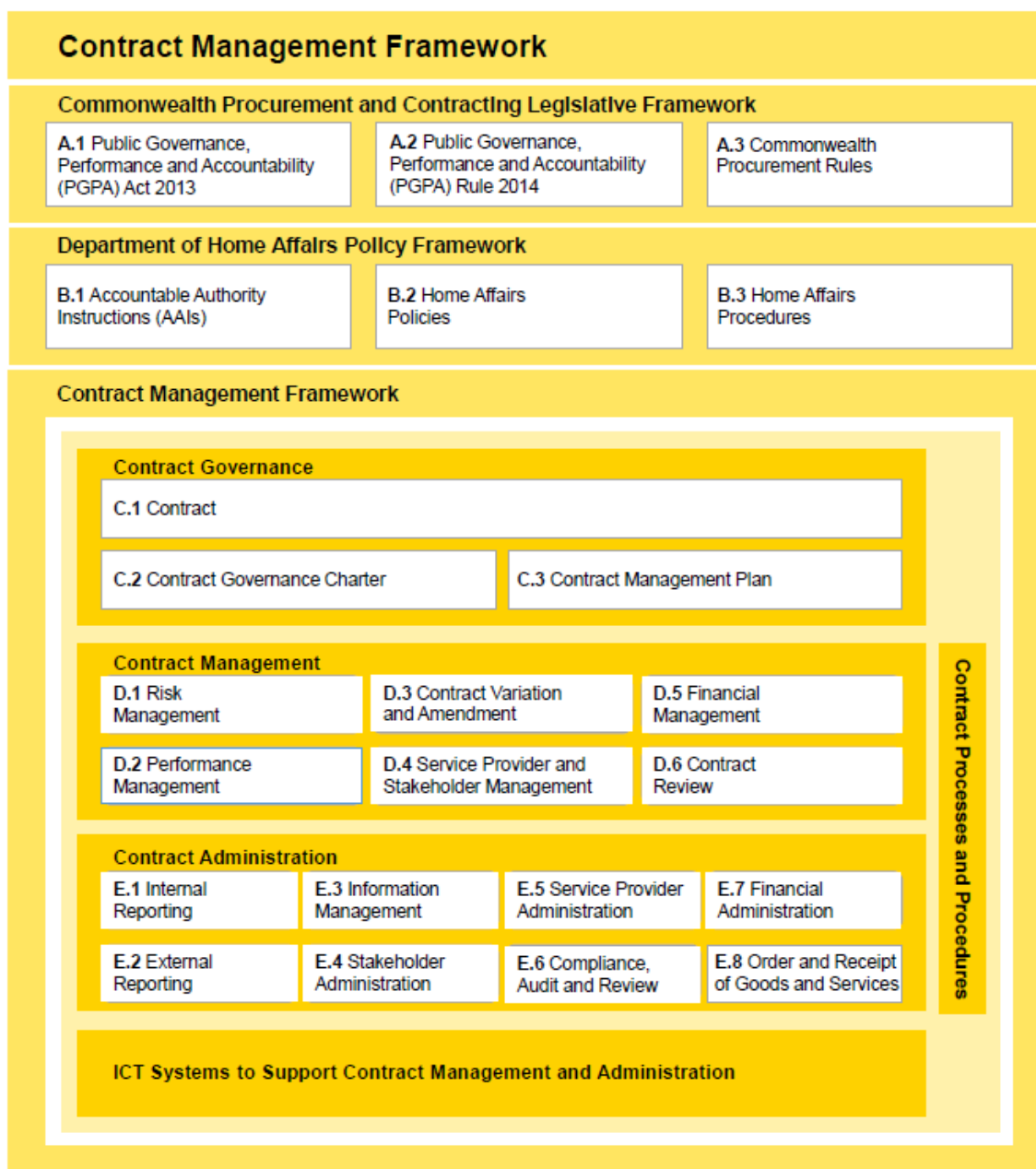
- ✓ A Steering Committee meeting must be convened to consider the appropriateness of the payment; and
- ✓ Preparation of the HRHV Contract Payment Minute. This contains advice from the:
 - Chief Financial Officer (CFO) confirming the payment is consistent with the Department's *Accountable Authority Instructions*
 - General Counsel (GC) confirming the payment is consistent with *legal principal and practice*.
- ✓ Submission of the Minute to the SES Band 3 Delegate.

3. Facilitate the payment.

End of process

Source: Department of Home Affairs.

Appendix 4 Contract Management Framework



Source: Contract Management Manual, 13 July 2017, page 16.

Appendix 5 Garrison support and welfare contracts: performance measures

Table A.1: Performance measures: Canstruct

Canstruct: Contract responsibility for performance reporting
Individual Management Plans — reviewed or developed
Individual Management Plans — audited
Refer all complaints within required timeframe
Respond to all complaints within required timeframe
Programs and Activities offered per Resident
Appropriate Programs and Activities schedules submitted
Communication Management — access to communication services
Communication Management
Individual allowance program and canteen
Residents are referred for medical attention on request
Efficient and effective coordination of reception and induction, transfer and discharge processes at the Site
Provide the required starter packs to Residents during reception and induction processes
Incident management — post incident reviews
Incident management — critical incident reporting timeframes
Incident management — major incident reporting timeframes
Incident management — minor incident reporting timeframes
Security and Emergency systems
Safety and security of the site — provision of reports
Safety and security of the site — unauthorised access to the site
Safety and security of the site — transferee head counts
Transferee property
Management of emergencies
Training of locally engaged personnel
Appropriate behaviour by service provider personnel
Maintenance of assets, infrastructure and grounds — scheduled
Maintenance of assets, infrastructure and grounds — unscheduled
Cleaning — routine and non-routine
Quality of food and beverages — food safety audits
Quality of food and beverages — quality
Environmental management principles

Canstruct: Contract responsibility for performance reporting
Work Health and Safety
Transport and escort services
Participation in committee meetings
Collaboration and continuous improvement — responsive to external ABF scrutiny
Collaboration and continuous improvement — corporate reporting requirements
Collaboration and continuous improvement — attendance and contributions to national government committee meetings / schedules
Availability of Programmes and Activities (P&A)
Reception, Induction and Orientation processes
Reception, Induction and Orientation processes
Maintenance of the accommodation database

Source: Canstruct Individual Service Provider Reporting template.

Table A.2: Performance measures: JDA Wokman

JDA Wokman: Contract responsibility for performance reporting
Complaints management — refer within required timeframe
Complaints management — resolve within required timeframe
Needs assessment — report
Needs assessment — self-assessment and QA
Case management plans — report
Case management plans — self-assessment and QA
Case management reporting — refugees
Case management reporting — non-refugees
Case management reporting — AVR cohort in Port Moresby
Case management support for the Medical Transfer cohort
Support payments and allowances
Programs — development and delivery of programs
Education program — needs and interest of refugees
Reporting
Work Health and Safety
Auditing

Source: JDA Wokman reporting template.

Table A.3: Performance measures: NKW Holdings

NKW Holdings: Contract responsibility for performance reporting
Interaction with residents
Health of residents
Complaints management
Reception
Accommodation management (management of keys)
Cleaning (routine)
Cleaning (non-routine)
Catering for non-refugees
Meet HACCP requirements ^a
Catering Personnel
Individual Allowance Program
Maintenance of Assets — planned
Maintenance of Assets — reactive
Work Health and Safety

Note a: HACCP is Hazard Analysis Critical Control Points, a preventative food safety system that takes stock of the hazards in food.

Source: NKW Holdings reporting template.

Table A.4: Performance measures: Paladin

Paladin Holdings: Contract responsibility for performance reporting
Mandatory training and qualifications
Governance and reporting requirements — reports
Governance and reporting requirements — meetings
Financial Management Services and Procurement — Additional Service Requests (ASRs)
Compliance with Performance Improvement Notices (PIN)
Resident Reception, Induction Processes
Timeliness of Maintenance Tasks — planned
Timeliness of Maintenance Tasks — reactive
Completeness of Asset Register and Condition Audit — New assets
Completeness of Asset Register and Condition Audit — Annual Audit
Delivery of Cleaning Services
Key Control Processes
Work Health and Safety
Timely Delivery of Transport Services — Scheduled
Transport and escort requests in accordance with agreed timeframes — requested

Paladin Holdings: Contract responsibility for performance reporting
Delivery of Scheduled Transport Services — Scheduled
Security and Emergency Exercises
Timely and accurate completion of incident reports — Critical
Timely and accurate completion of incident reports — Other
Incident reporting quality and completeness — Accuracy
Post Incident Review timeliness
Implementation of Recommendations from PIRs
Entry and Egress Processes
Perimeter Security

Source: Paladin Holdings reporting template.

Appendix 6 Timeliness of reports by service providers to the department

Table A.5: Canstruct: timeliness of reports

Month	Due date	Date submitted	Days late
March 2018	10 April 2018	10 April 2018	0
April 2018	10 May 2018	10 May 2018	0
May 2018	10 June 2018	10 June 2018	0
June 2018	10 July 2018	10 July 2018	0
July 2018	10 August 2018	10 August 2018	0
August 2018	10 September 2018	10 September 2018	0
September 2018	10 October 2018	10 October 2018	0
October 2018	10 November 2018	9 November 2018	-1
November 2018	10 December 2018	10 December 2018	0
December 2018	10 January 2019	10 January 2019	0
January 2019	10 February 2019	8 February 2019	-2
February 2019	10 March 2019	7 March 2019	-3
March 2019	10 April 2019	9 April 2019	-1
April 2019	10 May 2019	18 April 2019	-22 ^a
May 2019	10 June 2019	10 June 2019	0
June 2019	10 July 2019	10 July 2019	0
July 2019	10 August 2019	9 August 2019	-1
August 2019	10 September 2019	10 September 2019	0
September 2019	10 October 2019	October 2019	0

Note: Negative number indicates report submitted before due date.

Note a: As at April 2019, the Government of Nauru had not agreed to extension of the Canstruct contract; and Canstruct and the department agreed to early submission of the report for that month.

Source: ANAO analysis of contractor reports and departmental documentation.

Table A.6: JDA Wokman: timeliness of reports

Month	Due date	Date submitted	Days late
August 2018	10 September 2018	11 September 2018	1
September 2018	10 October 2018	5 October 2018	-5
October 2018	10 November 2018	6 November 2018	-4
November 2018	10 December 2018	5 December 2018	-5
December 2018	10 January 2019	9 January 2019	-1
January 2019	10 February 2019	7 February 2019	-3
February 2019	10 March 2019	8 March 2019	-2

Month	Due date	Date submitted	Days late
March 2019	10 April 2019	8 April 2019	-2
April 2019	10 May 2019	8 May 2019	-2
May 2019	10 June 2019	7 June 2019	-3
June 2019	10 July 2019	5 July 2019	-5
July 2019	10 August 2019	7 August 2019	-3
August 2019	10 September 2019	6 September 2019	-4
September 2019	10 October 2019	7 October 2019	-3

Note: Negative number indicates report submitted before due date.

Source: ANAO analysis of contractor reports and departmental documentation.

Table A.7: NKW Holdings: timeliness of reports

Month	Due date	Date submitted	Days late
November 2018	10 December 2018	5 December 2018	-5
December 2018	10 January 2019	8 January 2019	-2
January 2019	10 February 2019	6 February 2019	-4
February 2019	10 March 2019	4 March 2019	-6
March 2019	10 April 2019	5 April 2019	-5
April 2019	10 May 2019	8 May 2019	-2
May 2019	10 June 2019	6 June 2019	-4
June 2019	10 July 2019	8 July 2019	-2
July 2019	10 August 2019	5 August 2019	-5
August 2019	10 September 2019	6 September 2019	-4
September 2019	10 October 2019	5 October 2019	-5

Note: Negative number indicates report submitted before due date.

Source: ANAO analysis of contractor reports and departmental documentation.

Table A.8: Paladin: timeliness of reports

Month	Due date	Date submitted	Days late
May 2018	10 June 2018	25 June 2018	15
June 2018	10 July 2018	6 July 2018	-4
July 2018	10 August 2018	9 August 2018	-1
August 2018	10 September 2018	6 September 2018	-4
September 2018	10 October 2018	10 October 2018	0
October 2018	10 November 2018	7 November 2018	-3
November 2018	10 December 2018	7 December 2018	-3
December 2018	10 January 2019	9 January 2019	-1

Month	Due date	Date submitted	Days late
January 2019	10 February 2019	12 February 2019	2
February 2019	10 March 2019	11 March 2019	1
March 2019	10 April 2019	8 April 2019	-2
April 2019	10 May 2019	8 May 2019	-2
May 2019	10 June 2019	5 June 2019	-5
June 2019	10 July 2019	8 July 2019	-2
July 2019	10 August 2019	5 August 2019	-5
August 2019	10 September 2019	5 September 2019	-5
September 2019	10 October 2019	5 October 2019	-5

Note: Negative number indicates report submitted before due date.

Source: ANAO analysis of contractor reports and departmental documentation.

Appendix 7 Key meetings between the contractors and the department

Meeting	Purpose	Frequency
Canstruct (Nauru)		
Nauru Garrison and Welfare Contract Meeting	Established to analyse and respond to current and emerging issues on Nauru	Monthly
Joint Offshore Service Provider Forum	Established as a coordination and information sharing forum with a focus on offshore processing and settlement support	Quarterly
Performance Management Meeting	Established as a monitoring and information sharing forum for performance compliance and reporting	Monthly
Infrastructure Management Forum	Established to discuss operational matters relating to on-island infrastructure and additional services	Fortnightly
JDA, NKW and Paladin (Manus Island)		
Weekly Contract Management Meetings	To raise and track contract management or service delivery issues	Weekly
Joint Offshore Service Provider Forum (JOSPF) — Manus Island	Established as a coordination and information sharing forum with a focus on offshore processing and settlement support	Quarterly
Performance Management Meeting	Established as a monitoring and information sharing forum for performance compliance and reporting	Monthly
Fortnightly Collaboration Meeting (JDA)	Onsite operational meeting with all service providers to discuss objectives, issues/concerns	Fortnightly
Finance Meeting (JDA)	Meeting to discuss financial matters relating to the contract payment.	Fortnightly
Transition-In Meeting (JDA)	Progress meeting on Transition-In activities	Monthly
NKW Management Meeting	Established to analyse and respond to current and emerging issues on Manus Island relating to the management of the NKW contract	As required
Fortnightly commercial/finance meeting	Meeting to discuss financial issues	Fortnightly
Weekly Service Delivery Meeting (NKW, Paladin)	Established to discuss service delivery, contractual and operational matters	Weekly
Joint Stakeholder Collaboration Forum (NKW, Paladin)	Established for all stakeholders including the PNG Government, to collaborate and raise issues to resolution.	Monthly (teleconference conducted two weeks either side of monthly meeting)

Meeting	Purpose	Frequency
Paladin Garrison Contract Meeting	Established to analyse and respond to current and emerging issues on Manus Island relating to the management of the Paladin contract	Monthly

Source: ANAO from departmental documents.

Appendix 8 Recommendations of Auditor-General Report No.16 2016–17 and JCPAA Report 465: Commonwealth Procurement

Table A.9: Recommendations of Auditor-General Report No.16 2016–17 Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services

Rec. number	Recommendation
1	<p>That the Department of Immigration and Border Protection address, as a priority:</p> <ol style="list-style-type: none"> through training and staff selection — the significant procurement skill and capability gaps identified in this audit amongst personnel at all levels, including: <ul style="list-style-type: none"> the central procurement unit; budget unit; program area staff; and delegates; through guidance, training and staff selection — an approach to ensuring that officials have appropriate seniority and experience to undertake key procurement roles, such as chief negotiators and delegates, and effectively manage procurement risk; and through guidance, training and a strategic approach to records management — persistent shortcomings in record keeping for procurement activities.
2	<p>That the Department of Immigration and Border Protection take practical steps to ensure adherence to the requirements of the resource management framework when undertaking procurements, including:</p> <ol style="list-style-type: none"> the obligation to manage all aspects of a procurement process in accordance with the Commonwealth Procurement Rules; compliance with Government approved scope and contract value; in respect to open tender processes, adopting a value for money assessment which compares tenderers against other bids; the application of documented eligibility criteria in line with the Request for Tender and consistent with the Commonwealth Procurement Rules, with any modifications advised to all potential suppliers; the need for ethical conduct throughout the procurement to ensure consistent and fair treatment of suppliers; the need to recognise and manage actual, potential and perceived conflicts of interest; and the maintenance of clear and complete records of all tender bids, key actions, decisions, conflict of interest and SES disclosure declarations.

Source: Auditor-General Report No.16 2016–17 *Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services*.

Table A.10: Action Plan

Action no.	Action
1	Immediately enhance processes for approving complex, high-risk procurements through a system of assurance steps, including specific thresholds for high-risk procurements (to be developed in consultation with the CRO ^a) and assistance for delegates making complex procurement decisions. The CFO ^b and Chief Audit Executive will oversee and sign-off that each high-risk procurement has been undertaken appropriately, prior to delegate approval. These enhancements will be embedded in the Procurement Reform Programme.
2	Complete health check by internal audit of the process and planning for current, planned procurement around garrison and welfare, health and settlement services.
3	Review conflict of interest processes and declarations for all procurements above a defined risk and value threshold (to be based on contract diagnostics undertaken by the Chief Audit Executive)
4	Enhance governance arrangements for high risk procurements including mandating the use of steering committees with membership to include the Department's principal assurance areas; CFO, CAE ^c and General Counsel. Under enhanced governance arrangements, steering committees will be tasked with considering issues including risk, probity, contestability, achievement of value for money, compliance and outcome delivery.
5	Develop a simplified and enhanced risk assessment framework for procurements to ensure that high risk procurements are appropriately managed and have the early involvement from risk, probity, contracting and legal experts.
6	Strengthen the policy and guidance on the engagement of independent commercial, probity and contract management advisors in procurements.
7	<p>Implement the information management strategy to ensure the right people can access the right information at the right time, to support informed, effective decision making. This strategy has a range of initiatives, which include:</p> <ul style="list-style-type: none"> • Implementing robust leadership and governance of information, underpinned by clear policies and standards. • Building information management capability, including tools and procedures that facilitate timely and reliable access to information across multiple systems • Building the capacity for sustainable information management by instilling appropriate disciplines in our people, processes and systems. This includes ensuring that information is created, stored and used in accordance with legislation.
8	Whole-of-Department Procurement and Contract Management Reform. Fast track the inflight reform program to encompass all procurement and contract management functions across the Department. This work will include improved guidance, education and training as well as longer term system improvements. Capability uplift will be ensured across the Department generally, with particular focus on areas undertaking high risk procurement and contract management through implementation of an enhanced Skills and Competency framework that addresses the prerequisite requirements needed to effectively conduct procurement and manage contracts. Improved contract management will build upon the contract management framework that is being developed in the Detention Services Division. The framework has been developed using the ANAO Better Practice Guide, guidance from the Chartered Institute of Procurement and Supply and other leading best practice guidance.

9	Increase coverage within the Department's Strategic Assurance Programme for 2016–17. The Department's assurance programme for 2016/17 will have a specific focus on procurement and contract management. This will include contract diagnostic internal audit which will assess the appropriateness of the Department's management of its contracts for completeness and validation.
10	Enhance accountability of the Department's procurement and contract management risk through the enterprise risk process. Procurement and contracting has been identified as one of the Department's 11 enterprise risks. Under the risk management framework, Deputy Secretary Corporate (Band 3) will oversee the management of this risk. The level of risk and the need for any further improvements will be discussed quarterly at the Department's risk committee.

Note a: CRO = Chief Risk Officer.

Note b: CFO = Chief Finance Officer.

Note c: CAE = Chief Audit Executive.

Source: Auditor-General Report No.16 2016–17 *Offshore Processing Centres in Nauru and Papua New Guinea: Procurement of Garrison Support and Welfare Services*.

Table A.11: Relevant recommendations of JCPAA Report 465: Commonwealth procurement

Rec. number	Recommendation
8	The Committee recommends that the Department of Immigration and Border Protection report back to the Committee providing a post-implementation progress report for each of the audit recommendations in Auditor-General Report No. 16, 2016–17 including: <ul style="list-style-type: none"> • an update on procurement processes and their compliance with the CPRs • an update on staff training , development and guidance on procurement practices.
9	The Committee recommends that the Australian National Audit Office consider conducting a performance audit of the next Department of Immigration and Border Protection procurement of garrison support and welfare services to determine whether lessons have been learnt and that the Commonwealth Procurement Rules have been followed.

Source: JCPAA Report 465: *Commonwealth Procurement*, Joint Committee of Public Accounts and Audit, September 2017.