

# **Establishment and Use of ICT Related Procurement Panels and Arrangements**

Across Entities

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Canberra ACT  
31 August 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 across entities titled *Establishment and Use of ICT Related Procurement Panels and Arrangements*. 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

A handwritten signature in black ink, which appears to read 'Grant Hehir', is positioned below the 'Yours sincerely' text.

Grant Hehir  
Auditor-General

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

## **AUDITING FOR AUSTRALIA**

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

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# Audit snapshot

## Auditor-General Report No.4 2020–21

### *Establishment and Use of ICT Related Procurement Panels and Arrangements*



#### Why did we do this audit?

- ▶ In 2018-19 Australian government expenditure on ICT related goods and services was over \$3.9 billion. The use of procurement panels and arrangements is intended to achieve efficiency and reduce risk, while supporting the achievement of value for money. Previous audits have identified shortcomings with respect to some entities' application of the Commonwealth Procurement Rules (CPRs).



#### Key facts

- ▶ Three procurement arrangements were examined in this audit: the IT Services panel, the Digital Marketplace panel and the IBM Whole of Australian Government Arrangement.
- ▶ The combined reported value of contracts under the arrangements is over \$2.8 billion.
- ▶ The audit examined the establishment of these arrangements and seven entities' use of the three arrangements.



#### What did we find?

- ▶ In establishing the three selected ICT related procurement panels and arrangements, Infrastructure and DTA could not fully demonstrate that the arrangements supported the achievement of value for money outcomes.
- ▶ In their use of the 15 selected ICT related procurement panels and arrangements, entities could demonstrate that the majority of procurements supported the achievement of value for money outcomes, however in three cases it was difficult for entities to demonstrate this due to the absence of competition.
- ▶ When using such arrangements, entities need to adopt processes that are not just technically compliant with the CPRs but are also consistent with their intent, which is to drive value for money through competition.



#### What did we recommend?

- ▶ The Auditor-General made four recommendations aimed at improving compliance with the CPRs and ensuring officials have sufficient understanding of procurement requirements.

# Summary and recommendations

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## Background

1. Procurement is the process of acquiring goods and services.<sup>1</sup> It is integral to the conduct of Australian Government activity and a core function of the Commonwealth public sector. In 2018–19 there were 78,150 contracts published on AusTender<sup>2</sup> with a combined value of \$64.5 billion.<sup>3</sup> Contracts in the Information Technology Broadcasting and Telecommunications category accounted for 6.1 per cent of the total value of reported contracts, representing over \$3.9 billion.<sup>4</sup> Auditor-General Report No. 27 2019–20 *Australian Government Procurement Contract Reporting Update* reported that the number and value of panel contracts reported each year has increased significantly over the last ten years. In 2018–19, more than 36 per cent of reported contracts, involving over 17 per cent of reported contract values, were identified as having been drawn from a panel.<sup>5</sup>

## Cooperative and coordinated procurements, including panel arrangements

2. ‘Cooperative’ procurement is the use of a procurement contract by more than one entity. Department of Finance (Finance) guidance states that cooperative procurement ‘enables entities to reduce expenditure by sharing administration costs and utilising their combined economies of scale’.<sup>6</sup>

3. Finance guidance states that ‘coordinated’ procurement arrangements are typically established for commonly used goods or services to increase efficiency, reduce cost, enhance service and quality and provide increased transparency, standard terms and conditions and improved contract management that benefits both the government and suppliers.<sup>7</sup>

4. Cooperative and coordinated procurements generally result in an overarching contract, agreement or standing offer arrangement. A standing offer arrangement is often referred to as a

- 
- 1 Department of Finance (Finance), *Commonwealth Procurement Rules*, 20 April 2019, paragraph 2.7, [Internet], Finance, available from [https://www.finance.gov.au/sites/default/files/2019-11/CPRs-20-April-2019\\_1.pdf](https://www.finance.gov.au/sites/default/files/2019-11/CPRs-20-April-2019_1.pdf) [accessed June 2020].
  - 2 AusTender is the Australian Government’s procurement information system. It provides a central web-based facility for publishing Australian Government business opportunities and annual procurement plans and reporting contracts and standing offers awarded with a value of \$10,000 or more. Contract values shown on AusTender are a reflection of contract commitment, not actual expenditure.
  - 3 Finance, *Statistics on Australian Government Procurement Contracts—Total Procurement Contracts* [Internet], Finance, available from <https://www.finance.gov.au/government/procurement/statistics-australian-government-procurement-contracts> [accessed June 2020].
  - 4 Finance, *Statistics on Australian Government Procurement Contracts—2018–19 Procurement Contracts: Top 20 Categories for Goods and Services* [Internet].
  - 5 Auditor-General Report No.27 2019–20 *Australian Government Procurement Contract Reporting Update*, pp.34–5, [Internet], ANAO, available from <https://www.anao.gov.au/work/information/australian-government-procurement-contract-reporting-update-2019> [accessed June 2020].
  - 6 Finance, *Cooperative Agency Procurement*, [Internet], Finance, available from <https://www.finance.gov.au/government/procurement/buying-australian-government/cooperative-agency-procurement> [accessed June 2020].
  - 7 Finance, *Whole of Australian Government Procurement*, [Internet], Finance, available from <https://www.finance.gov.au/government/procurement/whole-australian-government-procurement> [accessed June 2020].

panel arrangement. Finance defines a panel arrangement as ‘a tool for the procurement of goods or services regularly acquired by entities’.<sup>8</sup> Typically under a panel arrangement, multiple suppliers are appointed and each supplier is able to provide goods or services to an entity.

## **Rationale for undertaking the audit**

5. The use of cooperative and coordinated procurement arrangements, which can include panel arrangements, is intended to achieve efficiency and reduce risk, while supporting entities to achieve value for money outcomes. Previous ANAO audits have identified shortcomings with respect to some entities’ application of the Commonwealth Procurement Rules (CPRs), including panel arrangements.<sup>9</sup> Given the large number of procurements undertaken and the centrality of procurement to the operation of government and program delivery, entities’ procurement practices should be efficient, effective, ethical and economical and suited to the size and complexity of the goods or services sought.

## **Audit objective, criteria and scope**

6. The objective of the audit was to assess the extent to which entities’ establishment and use of ICT related procurement panels and arrangements supported the achievement of value for money outcomes.

7. To form a conclusion against the objective, the audit examined whether entities complied with the Commonwealth Procurement Rules (CPRs) and followed related guidance<sup>10</sup> when:

- establishing ICT related procurement panels and arrangements; and
- using ICT related procurement panels and arrangements.

8. The audit assessed selected components of the establishment and use of two ICT related cooperative procurement panels:

- the IT Services panel established by the Department of Infrastructure, Transport, Regional Development and Communications (Infrastructure); and
- the Digital Marketplace panel established by the Digital Transformation Agency (DTA).

9. The audit also examined the establishment and use of the IBM Whole of Australian Government Arrangement (IBM Arrangement) managed by the DTA.

10. Use of the panels and IBM Arrangement was examined at Infrastructure, DTA and the following Commonwealth entities:

- Australian Electoral Commission;

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8 Finance, *Panel Arrangements* [Internet], Finance, available from <https://www.finance.gov.au/government/procurement/buying-australian-government/panel-arrangements> [accessed June 2020].

9 The CPRs establish the procurement framework for the Commonwealth public sector. In general, previous audits have found that some entities needed to employ more competitive procurement processes, better document value for money assessments, obtain appropriate approvals and improve reporting on AusTender. See for example: Auditor-General Report No.48 2014–15 *Limited Tender Procurement*; Auditor-General Report No. 54 2013–14 *Establishment and Use of Multi-Use Lists*; and Auditor-General Report No.31 2011–12 *Establishment and Use of Procurement Panels*. [Internet], ANAO, available from <https://www.anao.gov.au/pubs/performance-audit> [accessed June 2020].

10 Related guidance is guidance outlined in the CPRs and other guidance provided by Finance.



- Australian Taxation Office;
- Department of Home Affairs;
- Department of Industry, Science, Energy and Resources; and
- Services Australia.

11. The ANAO examined a sample of 15 procurements — five from each of the two panels examined and five procurements made under the IBM Arrangement.

12. The audit also examined whether Infrastructure and DTA established effective monitoring arrangements to enable them to assess whether the panels or arrangements met their objectives.

13. During the course of the audit, the ANAO was advised by the Department of Finance of allegations of fraud related to the supply of information technology contractors. At the time of publishing this report investigations are ongoing.

## Conclusion

14. In establishing the three selected ICT related procurement panels and arrangements, Infrastructure and DTA could not fully demonstrate that the arrangements supported the achievement of value for money outcomes. In their use of the 15 selected ICT related procurement panels and arrangements, entities could demonstrate that the majority of procurements supported value for money outcomes, however in three cases it was difficult for entities to demonstrate this due to the absence of competition.

15. In relation to the establishment of the selected arrangements:

- Infrastructure complied with the CPRs and adopted related guidance when establishing its panel but could have adopted a more robust approach to the consideration of price, quality and risk to better support the achievement of a value for money outcome.
- DTA did not comply with all of the CPRs but did adopt a number of sound practices outlined in Finance guidance when establishing the Digital Marketplace panel. Its approach did not support the achievement of a value for money outcome or treat suppliers equitably. Once DTA identified these deficiencies it changed its processes. DTA's new approach complies with the minimum requirements of the CPRs, although DTA's consideration of price, quality and risk could be more robust to better demonstrate that its evaluation of suppliers achieves value for money outcomes.
- In establishing the IBM Whole of Australian Government Arrangement (IBM Arrangement) DTA largely complied with the requirements of the CPRs and the approach adopted a number of sound practices outlined in Finance guidance and supported the achievement of a value for money outcome. As the IBM Arrangement was only conducted with one supplier, the approach supported the achievement of a value for money outcome in the circumstances.
- Infrastructure and DTA obtained relevant approvals and complied with CPR reporting requirements. Given the scale and scope of its procurement arrangements, DTA should have been more active in identifying and managing key risks and probity arrangements in the establishment process.

- Infrastructure did not conduct systematic monitoring to assess whether its panel arrangement was meeting its objectives. The panel ceased operation in February 2020. DTA conducts a range of monitoring activities in relation to the Digital Marketplace panel and the IBM Arrangement. Monitoring indicates the Digital Marketplace panel objectives are largely being met and the IBM Arrangement is achieving some of its objectives although anticipated savings have not yet been achieved.<sup>11</sup>

16. In relation to the use of the selected arrangements, entities largely complied with the CPRs to support the achievement of a value for money outcome. For one procurement, documentation did not fully demonstrate that the conditions for limited tender were met. In two other procurements, there was limited evidence supporting value for money considerations. In these three cases it was difficult for entities to demonstrate that the procurements achieved a value for money outcome. There were instances of entities not meeting requirements regarding the approval of variations to contracts, record keeping and AusTender reporting. There was also scope for some entities to strengthen their consideration and management of risk and probity.

17. When procuring from panels the CPRs remove the requirement for procurements over the relevant threshold to be offered to the wider market. This occurs whether or not the arrangement provides buyers with sufficient information to be an effective substitute for going to the wider market. The ability to achieve value for money for individual procurements from a panel is therefore impacted by the robustness of the processes used to assess suppliers when establishing the panel. For example, where a panel includes suppliers with low technical ability or high risk, or buyers cannot use price to help select the suppliers to approach, it is difficult to obtain a high degree of assurance that value for money has been appropriately assessed and achieved. It is also difficult to obtain such assurance when entities only approach one or a small number of suppliers. Procurements from panels and similar arrangements are often perceived as requiring less time and effort to conduct, particularly when the cost and time involved in running an open approach to market is considered, or when engaging a new supplier. When using panels and similar arrangements, entities need to adopt processes that are not just technically compliant with the CPRs but are also consistent with their intent, which is to drive value for money through competition.

## Supporting findings

### **Establishment of ICT related procurement panels and arrangements — procurement planning and evaluation of suppliers**

#### *Planning, determination of procurement method and approach to market*

18. Infrastructure's planning and approach to market for the establishment of the IT Services panel complied with the CPRs and demonstrated adoption of key sound practices identified in Finance guidance. Infrastructure documented reasons for establishing the panel and approached the market to conduct an open tender, which encouraged competition from the outset to support the achievement of a value for money outcome. Had Infrastructure established stronger thresholds in terms of price, quality and risk and included details in the request documentation,

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11 In July 2020 DTA advised the ANAO that planned savings have been delayed but are anticipated to be met.

it would have been in a position to undertake a more robust assessment of value for money at the evaluation stage.

19. DTA's planning and approach to market for the establishment of its Digital Marketplace panel did not comply with all of the CPR requirements but did demonstrate the adoption of a number of key sound practices identified in Finance guidance. The planning and approach to market did not support the achievement of a value for money outcome. DTA documented clear objectives for establishing the panel and approached the market to conduct an open tender which encouraged competition. However, DTA's request documentation did not require suppliers to provide price information and DTA was therefore unable to conduct a value for money assessment in accordance with CPR requirements. Additionally, suppliers were able to join the panel based on different requirements — this resulted in not all suppliers being treated equitably, which is inconsistent with the CPRs.

20. DTA's planning and approach to market for the establishment of the IBM Arrangement complied with the CPRs and demonstrated adoption of key sound practices identified in Finance guidance. DTA documented clear objectives for establishing the arrangement and approached IBM via a limited tender as part of a coordinated approach to expand the number of Whole of Australian Government (WoAG) arrangements in place.

#### *Evaluation of suppliers and value for money consideration*

21. Infrastructure's evaluation of suppliers and consideration of value for money when establishing the IT Services panel complied with the CPRs. Had Infrastructure established strong thresholds in terms of price, quality and risk the department would have been able to undertake a more robust assessment of value for money.

22. DTA appointed sellers to the Digital Marketplace panel without a value for money assessment and suppliers were admitted based on different requirements — decisions which are not consistent with the CPRs. DTA identified that the panel had been established incorrectly and conducted a 'value for money (VFM) refresh' exercise. From 1 July 2018 existing and prospective suppliers have been required to provide one price for each of the categories applied for as well as technical information, which has enabled DTA to undertake a value for money assessment of suppliers. While DTA's new process is sufficient to achieve compliance with the minimum requirements of the CPRs, its consideration of price, quality and risk could be more robust to better demonstrate that its evaluation of suppliers supports the achievement of value for money outcomes.

23. In establishing the IBM Arrangement, DTA's evaluation approach complied with the CPRs and demonstrated adoption of key sound practices to support the achievement of a value for money outcome. Establishing the IBM Arrangement involved detailed contractual negotiations with both IBM and affected Commonwealth entities. Each entity involved in the negotiations reviewed the proposed terms and prices relevant to them and engaged with DTA to assist in forming the Australian Government negotiating position.

## **Establishment of ICT related procurement panels and arrangements — approval, reporting, risk management, probity and monitoring arrangements**

### *Approvals, records and AusTender reporting*

24. Infrastructure and DTA obtained relevant approvals for each of the three selected arrangements. Infrastructure and DTA also complied with the CPRs when reporting details of these arrangements on AusTender.

### *Management of risk and probity*

25. When establishing the selected arrangements Infrastructure and DTA established processes to manage risk and probity. Given the scale and scope of the procurements, DTA should have been more active in identifying and managing key risks for the Digital Marketplace panel and IBM Arrangement, and developed more robust probity arrangements for both arrangements.

### *Monitoring arrangements*

26. Infrastructure did not conduct systematic monitoring to assess whether the panel objectives were met. The panel ceased operation in February 2020. DTA undertakes a range of monitoring activities in relation to the Digital Marketplace panel. Monitoring indicates that its objectives are largely being met. DTA's role in establishing and monitoring the ongoing use of the IBM Arrangement enabled it to ascertain that the arrangement is largely meeting its objectives. As the planned timeframe for establishing the IBM Arrangement was not achieved, planned savings have also not been achieved. As at June 2020, DTA was working with Finance to finalise arrangements for achieving anticipated savings from the IBM Arrangement.

## **Use of ICT related procurement panels and arrangements**

### *Planning, determination of procurement method and approach to market*

27. For the sample of 15 procurements reviewed by the ANAO there were seven where entities had not met the requirement in the CPRs to estimate the value of the procurement prior to determining the procurement approach. In all seven cases this did not impact the selection or reporting of the procurement method — the operation of the CPRs means that these procurements are automatically required to be reported on AusTender as employing the same procurement method used to establish the initial arrangement, regardless of the value of the procurement.

28. All entities documented the objective of the procurement and the goods or services procured were within the scope of the respective arrangement. For one limited tender procurement with IBM, ATO documentation did not fully demonstrate that the conditions for limited tender were met. Request documentation was prepared for nine of the 10 procurements. The documentation conveyed the key requirements of the procurement and included evaluation criteria that would enable the entity to assess the financial and non-financial benefits of the procurement to achieve a value for money outcome.

### *Evaluation of suppliers and value for money consideration*

29. Fourteen of the 15 procurements reviewed by the ANAO documented the evaluation of suppliers and consideration of value for money to meet the minimum requirements of the CPRs and related Finance guidance. For the one remaining procurement, documentation provided did

not fully demonstrate that the conditions for limited tender were met. Given this, there is no assurance that the procurement achieved value for money. In the case of two of the 14 procurements, the limited available documentation supporting value for money considerations makes it difficult for entities to demonstrate that these procurements represented value for money.

30. Where there was request documentation, the evaluation of suppliers was consistent with the criteria contained in the request documentation. For most of the sampled procurements, buyers were not able to compare the prices suppliers provided in response to requests for quote with the suppliers' prices under the arrangement. This applied particularly to procurements made under the Digital Marketplace panel as buyers are not provided with the price suppliers provided to DTA when applying for inclusion on the panel.

31. Given that buyers procuring from the Digital Marketplace panel cannot see individual panellists' approved prices (to inform their decisions on which suppliers to approach) the degree of assurance available to them as to whether any procurement from the panel truly represents value for money is diminished, as the buyer is only able to select the best value for money of those suppliers approached (rather than the market as a whole). Assurance regarding the value for money of a procurement is improved by having access to meaningful pricing information.

#### *Approvals, records and AusTender reporting*

32. All of the 15 procurements examined by the ANAO had appropriate evidence of approval for the initial procurement. Amendments relating to all but one procurement had appropriate records of approval. Record keeping requirements and AusTender reporting requirements were mostly met.

#### *Management of risk and probity*

33. All entities had established processes to identify, analyse, allocate and treat risk when conducting procurements. For the 15 procurements examined by the ANAO, supporting documentation referenced the consideration of risk, although there was scope for some entities to strengthen their management and consideration of risk.

34. There was documentation indicating consideration of probity for 12 of the 15 procurements examined by the ANAO. There was evidence of all unsuccessful tenderers being advised for six of the eight relevant procurements examined that involved more than one supplier.

## Recommendations

35. This report makes four recommendations. Two are directed to the Digital Transformation Agency, one is directed to both the Department of Home Affairs and the Department of Industry, Science, Energy and Resources and one is directed to the Australian Taxation Office.

#### **Recommendation no.1 Paragraph 2.54**

The Digital Transformation Agency ensures that when establishing procurement panels suppliers are treated equitably and are appointed on the basis of a value for money assessment in accordance with the requirements of the CPRs.

**Digital Transformation Agency response:** *Agreed.*

**Recommendation no.2**  
**Paragraph 2.71**

The Digital Transformation Agency ensures that officials undertaking complex procurements have sufficient understanding of the procurement requirements, the nature of the arrangement being established and procurement related risks.

**Digital Transformation Agency response:** *Agreed.*

**Recommendation no.3**  
**Paragraph 4.37**

The Department of Home Affairs and the Department of Industry, Science, Energy and Resources give greater consideration to competition when selecting suppliers from a panel, particularly in the case of high value procurements or where there is likely to be a substantial increase in the value of a procurement, to drive value for money.

**Department of Home Affairs response:** *Agreed.*

**Department of Industry, Science, Energy and Resources response:** *Agreed.*

**Recommendation no.4**  
**Paragraph 4.47**

The Australian Taxation Office ensure limited tender is used only where the conditions for limited tender outlined in the CPRs are met.

**Australian Taxation Office response:** *Agreed.*

## **Summary of entities' responses**

36. The proposed audit report was provided to the seven audited entities and the Department of Finance, which administers the Commonwealth Procurement Framework. An extract of the proposed report was also provided to the Department of Defence. Where entities provided a summary response, they are provided below.

### **Department of Infrastructure, Transport, Regional Development and Communications**

The Department welcomes the report and acknowledges the overall conclusions that the Department complied with the Commonwealth Procurement Rules when establishing the IT Services Panel, obtained relevant approvals and complied with reporting requirements.

The IT Services Panel ceased operation on 17 February 2020, however, the Department will consider the findings of the audit report, particularly in regard to strengthening the consideration of price, quality, risk and monitoring of objectives for any future ICT related procurement panels and arrangements.

### **Digital Transformation Agency**

The DTA agrees with the ANAO's findings and recommendations 1 and 2. The DTA will continue to take steps to improve the establishment and management of its panels in line with the ANAO's findings. The DTA supports the recommendations tabled by the ANAO.

## Australian Electoral Commission

The AEC strives to continually improve procurement processes, including those that use the mentioned ICT panel arrangements. The findings in the audit report indicate that the AEC's current processes are generally sufficient in satisfying all reporting requirements, however the AEC acknowledges that continual emphasis on recording appropriate evidence relating to communications with unsuccessful suppliers is required.

The AEC is committed to achieving value for money in all procurement processes, and this includes addressing financial and non-financial considerations. The AEC has implemented a number of initiatives to provide ongoing education to all staff, promoting compliance with Commonwealth Procurement Rules and covering many of the 'Key messages to Australian Government entities' noted in the report.

## Australian Taxation Office

The ATO welcomes this review and agrees with the ANAO's focus on achieving value for money, which is the core rule of the CPRs and underpins all the ATO's procurement processes.

The ATO has a robust procurement framework in place. Where limited tender procurement is to be used, we ensure it is permissible under the Commonwealth Procurement Rules and achieves value for money. We confirm this was the case for the relevant ATO procurements covered by this audit.<sup>12</sup>

Noting this, the ATO agrees with the recommendation as presented in the section 19 report.

In relation to procurement 3, the ATO also notes that, under the CPR limited tender provisions at 10.3e, there was no requirement to approach the open market prior to extending the contract. In consideration of value for money in this procurement, sufficient weight should be given to the priority of ensuring continuity of services to the community.

For this procurement, given the specialised nature of SBR2 services in question, there was only one provider with the proven ability to deliver a compatible solution to the scale needed. Utilisation of another provider would have resulted in compatibility issues and high transition costs, presenting significant risks both to the continuity of critical services to the community and to containment of costs. These factors weighed heavily in the decision to utilise limited tender.

In addition, the market testing activity undertaken subsequent to the contract extension was to identify potential suppliers for a new and different service – being the replacement of SBR2. It was for a different purpose than the services obtained under the contract extension.

## Department of Defence

Defence acknowledges the findings contained in the audit report extract on *Establishment and Use of ICT Related Procurement Panels and Arrangements*.

Defence notes the ANAO's finding regarding DTA's records about Defence's compliance with the moratorium in place during the establishment of an expanded Whole-of-Government ICT procurement arrangement. Defence is pleased to confirm that the Department of Finance provided written and verbal permission for Defence's Accountable Officer to approve the creation of new and extension of existing IBM contracts during the moratorium, based on a risk assessment

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12 ANAO comment: as discussed in the report, ATO documentation does not fully demonstrate that the CPR conditions for limited tender were met. See paragraphs 4.41 to 4.47 and paragraphs 4.65 to 4.68.

of operational need and urgency. Defence considers that new contracts or contract change proposals that Defence entered into with IBM during the moratorium aligned with this advice.

Defence primarily sought an exemption from the moratorium to mitigate potential operational risks to the Australian Defence Force that may have eventuated if a capability was not provided during the moratorium. Defence also received legal advice that if the contractual relationship with IBM was not maintained during this period, there was a risk of significantly increased program costs and delivery delays for government approved programs within Defence. Legal advice also indicated that Defence should not change provider during delivery of a capability as Defence would not be able to rely on protections such as warranties and IP rights afforded under extant contracting mechanisms.

Defence did not engage with the Finance Minister's office regarding the approach taken as the Department of Finance advised that they would brief the Finance Minister with a view to adjusting the delegation to allow small contracts, as well as second extensions, to be agreed by the Department of Finance, rather than the Finance Minister.

## **Department of Home Affairs**

The Department of Home Affairs (the Department) welcomes the ANAO's findings that the Department has established processes to identify, analyse, allocate and treat risk when conducting a procurement, and that the two selected procurements examined for the Department:

- documented the objective of the procurement and the services procured were within scope of the respective arrangement,
- provided the delegate with sufficient information to make an informed decision regarding approval and maintained appropriate records of approval, being:
  - a level of documentation commensurate with the scale, scope and risk of the procurement,
  - evidence of agreements with suppliers, in the form of a written contract/official order, and
  - records for limited tender that include the value and type of goods procured, circumstances justifying the use of limited tender and demonstration of value for money,
- documented the evaluation of suppliers and consideration of value for money to meet the requirements of the Commonwealth Procurement Rules and related Finance guidance, and
- complied with AusTender reporting requirements.

The Department will continue to consider approaching more than one supplier to provide services and will actively consider ways to enhance competitive tension in procurements when selecting suppliers from a panel, particularly in relation to high value procurements. The Department continues to review processes to ensure procurement processes are documented in a robust manner.

We note that in instances when a single supplier is approached under a panel arrangement, a competitive process usually precedes the direct source. This was the case with Home Affairs Procurement 1, in which the original contract was formed following a competitive request for quotation process through the Digital Marketplace in 2017. The justification for a subsequent direct approach is documented and includes a review of performance indicating if the supplier previously delivered a similar service to a high standard, whether the supplier holds the necessary



clearances and if the supplier has a strong understanding of the Department's IT architecture and environment.

## Services Australia

Services Australia welcomes the ANAO's audit report on *Establishment and use of IT related procurement panels and arrangements* and notes that no recommendations have been made for our agency.

Nevertheless, in the interests of further strengthening our procurement practices, Services Australia will consider the report's findings, and incorporate any broader lessons where appropriate.

## Key messages from this audit for all Australian Government entities

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

### Procurement

- When using panel arrangements, the CPRs remove the requirement for procurements over the relevant threshold to be offered to the wider market, irrespective of whether or not the arrangement provides buyers with sufficient information (such as pricing information) to be an effective substitute for going to the wider market. Given the obligation on officials to use and manage public resources in an efficient, effective, economical and ethical manner (proper use), entities need to ensure they adopt processes that are not just technically compliant with the CPRs but are also consistent with the intent of the CPRs, which is to drive value for money through competition.
- A key step in effective procurement is to have a clear understanding of the requirement for the procurement. Entities should ensure officials undertaking complex procurements have sufficient understanding of the procurement related objectives, procurement requirements, the nature of the arrangement being established and procurement related risks.
- When establishing procurement panels, entities need to ensure that suppliers are treated equitably and are appointed on the basis of a value for money assessment in accordance with the requirements of the CPRs.
- Close consideration of procurement scope in the initial planning stages is likely to better ensure that the procurement can accommodate future requirements and reduce the need for contract variations.
- When planning to procure from an existing arrangement, it is useful to document why the arrangement, and the individual supplier, were selected. This approach provides clarity in circumstances where there may be multiple alternative arrangements and suppliers. It is also useful to maintain documentation to support any assertions made. This can assist delegates ensure the arrangement and supplier selected are likely to result in a value for money outcome.
- When procuring from an existing procurement arrangement, entities need to ensure they estimate the procurement value for the procurement in accordance with the CPRs.

- Seeking multiple quotes generates competitive tension, helps drive value for money, and is consistent with the intent of the CPRs.
- It is important for entities to ensure risk management and probity considerations are commensurate with the scale, scope and risks of the procurement when procuring from pre-existing arrangements.
- When allocating a risk rating to a procurement it is useful to document why the procurement was given that rating. This can assist officials to ensure the risk assessment process was sufficiently thorough and can assist in monitoring risks over the course of the procurement.
- When answering tenderers' questions entities should ensure all suppliers are given the same information and at the same time, to ensure no potential supplier is given an advantage.

## **Audit findings**

# 1. Background

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## Introduction

1.1 Procurement is the process of acquiring goods and services.<sup>13</sup> It is integral to the conduct of Australian Government activity and a core function of the Commonwealth public sector. In 2018–19 there were 78,150 contracts published on AusTender<sup>14</sup> with a combined value of \$64.5 billion.<sup>15</sup>

1.2 Contracts in the Australian Government's 'Information Technology Broadcasting and Telecommunications' category accounted for 6.1 per cent of the total value of reported contracts, representing over \$3.9 billion.<sup>16</sup>

1.3 Whole of Australian Government (WoAG) arrangements are available for government entities to use when procuring certain goods or services. These can take the form of either 'cooperative' or 'coordinated' procurements.<sup>17</sup>

## Cooperative and coordinated procurements

1.4 Cooperative procurement is the use of a procurement contract by more than one entity. Entities can procure cooperatively by approaching the market together (known as clustering) or utilising the contractual or standing offer arrangement<sup>18</sup> of another entity (known as piggybacking). Department of Finance (Finance) guidance states that cooperative procurement 'enables entities to reduce expenditure by sharing administration costs and utilising their combined economies of scale'.<sup>19</sup>

1.5 Finance guidance states that coordinated procurement arrangements:

are established for commonly used goods or services by the Commonwealth. These arrangements ensure more efficient processes to deliver better prices, service and quality for the Commonwealth. Coordinated procurement arrangements also offer increased transparency, standard terms and conditions and improved contract management that benefits both the government and suppliers.

Where established, coordinated procurement arrangements are mandatory for non-corporate Commonwealth entities, as defined in section 8 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).<sup>20</sup>

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13 Department of Finance (Finance), *Commonwealth Procurement Rules*, 20 April 2019, paragraph 2.7, [Internet].

14 See footnote 2.

15 Finance, *Statistics on Australian Government Procurement Contracts—Total Procurement Contracts* [Internet].

16 Finance, *Statistics on Australian Government Procurement Contracts—2018-19 Procurement Contracts: Top 20 Categories for Goods and Services* [Internet].

17 Finance, *Whole of Australian Government Procurement* [Internet].

18 A standing offer arrangement is an arrangement setting out the terms and conditions, including a basis for pricing, under which a supplier agrees to supply specified goods and services to a relevant entity for a specified period. Finance, *Commonwealth Procurement Rules*, April 2019 Appendix B: Definitions [Internet].

19 Finance, *Cooperative Agency Procurement*, [Internet].

20 Finance, *Whole of Australian Government Procurement*, [Internet]. A non-corporate Commonwealth entity, such as a government department, is not a body corporate. A corporate Commonwealth entity is a Commonwealth entity that is a body corporate and has a separate legal personality to the Commonwealth.

## Panel arrangements

1.6 Cooperative and coordinated procurements generally result in an overarching contract, agreement or standing offer arrangement. A standing offer arrangement is often referred to as a panel arrangement. Finance defines a panel arrangement as:

a tool for the procurement of goods or services regularly acquired by entities. In a panel arrangement, a number of suppliers are selected, each of which are able to supply identified goods or services to an entity.

A panel is generally established by open tender and is usually established through deeds of standing offer<sup>21</sup> (deeds) with contracts formed under those deeds when the goods or services are acquired.<sup>22</sup>

1.7 Auditor-General Report No. 27 2019–20 *Australian Government Procurement Contract Reporting Update* reported that the number and value of panel contracts reported each year has increased significantly over the last ten years. In 2018–19, more than 36 per cent of reported contracts, involving over 17 per cent of reported contract values, were identified as having been drawn from a panel. This report also identified that it is common for a relatively small proportion of suppliers on a panel to be awarded the majority of contract value. For example, for eight of the top ten panels<sup>23</sup> by total value over the ten years analysed, less than one third of the suppliers represented on the panel were awarded at or over 80 per cent of the panel's total value.<sup>24</sup>

## Legislative and policy framework applicable to procurement

1.8 Under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), an entity's accountable authority has a duty to promote the proper (efficient, effective, economical and ethical) use and management of public resources.<sup>25</sup> Under the PGPA Act, the Finance Minister issues the Commonwealth Procurement Rules (CPRs) for officials to follow when performing duties in relation to procurement. The CPRs 'govern how entities buy goods and services, and are designed to ensure the Government and taxpayers get value for money.'<sup>26</sup> In addition to setting out the rules officials must follow when undertaking procurement, the CPRs also indicate good practice.<sup>27</sup>

1.9 The CPRs state that 'Achieving value for money is the core rule of the CPRs. This requires the consideration of the financial and non-financial costs and benefits associated with

21 A panel can also be established via an agreement rather than deed of standing offer.

22 Finance, *Panel Arrangements* [Internet], Finance, available from <https://www.finance.gov.au/government/procurement/buying-australian-government/panel-arrangements> [accessed June 2020].

23 Panels analysed were those with at least five suppliers awarded contracts over the period 2009–10 to 2018 – 19.

24 Auditor-General Report No.27 2019–20 *Australian Government Procurement Contract Reporting Update*, pp.34–5, [Internet].

25 Finance, *Duties of Accountable Authorities* [Internet], Finance, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/managing-risk-internal-accountability/duties/duties/duties-accountable-authorities> [accessed June 2020].

26 Finance, *Procurement* [Internet], Finance, available from, <https://www.finance.gov.au/government/procurement> [accessed June 2020].

27 Rules that must be complied with in undertaking procurement are denoted by the term 'must' in the CPRs. The term 'should' indicates good practice. Finance, *Commonwealth Procurement Rules*, April 2019 paragraph 3.1. [Internet].

procurement.’<sup>28</sup> The CPRs also require that ‘Officials responsible for a procurement must be satisfied, after reasonable enquiries, that the procurement achieves a value for money outcome.’<sup>29</sup> Under the CPRs procurements should:

- a. encourage competition and be non-discriminatory;
- b. use public resources in an efficient, effective, economical and ethical manner that is not inconsistent with the policies of the Commonwealth;
- c. facilitate accountable and transparent decision making;
- d. encourage appropriate engagement with risk; and
- e. be commensurate with the scale and scope of the business requirement.<sup>30</sup>

1.10 Additionally, the CPRs state that officials of non-corporate Commonwealth entities<sup>31</sup> must comply with the rules for all procurements listed in Division 1 of the CPRs, regardless of the procurement value. Officials must also comply with the additional rules listed in Division 2 of the CPRs when the estimated value of the procurement is at or above the relevant procurement threshold<sup>32</sup> and when an exemption under Appendix A of the CPRs<sup>33</sup> does not apply.<sup>34</sup>

1.11 The CPRs are supported by a range of tools including the AusTender reporting system, guidance material and templates developed and maintained by Finance.<sup>35</sup> In addition to the CPRs, entities determine their own procurement practices, consistent with the CPRs, through means such as accountable authority instructions (AAIs)<sup>36</sup> and, if appropriate, supporting operational guidelines.

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28 *ibid.*, paragraph 3.2.

29 *ibid.*, paragraph 4.4.

30 *ibid.*, paragraph 4.4.

31 These are Commonwealth entities, such as government departments, which are not a body corporate. See footnote 20.

32 When the expected value of a procurement is at or above the relevant procurement threshold and an exemption referenced in Appendix A of the CPRs does not apply, the rules in Division 2 of the CPRs must also be followed. The procurement thresholds (including GST) are:

- a. \$80,000 for non-corporate Commonwealth entities, other than for procurements of construction services;
- b. \$400,000 for prescribed corporate Commonwealth entities, other than for procurements of construction services; or
- c. \$7.5 million for procurements of construction services by relevant entities.

Finance, *Commonwealth Procurement Rules*, April 2019, paragraph 9.7 [Internet].

33 Appendix A of the CPRs lists goods and services which are exempt from the rules of Division 2 of the CPRs, and certain requirements of Division 1. See Finance, *Commonwealth Procurement Rules*, April 2019 Appendix A Exemptions [Internet].

34 *ibid.*, paragraph 3.5.

35 *ibid.*, p.3.

36 Accountable authority instructions (AAIs) are written instruments that may be issued by the accountable authority to instruct officials on matters relating to the finance law. AAIs assist the accountable authority in meeting their general duties under the PGPA Act and establishing appropriate internal controls for their entity. Finance, *Accountable Authority Instructions (AAIs) (RMG 206)* [Internet], Finance, available from <https://www.finance.gov.au/government/managing-commonwealth-resources/managing-risk-internal-accountability/duties/risk-internal-controls/accountable-authority-instructions-aais-rmg-206> [accessed June 2020].

## Previous audits

1.12 Previous ANAO audits have identified shortcomings with respect to some entities' application of the CPRs, including panel arrangements. In general, the audits have found that some entities needed to employ more competitive procurement processes, better document value for money assessments and obtain appropriate approvals.<sup>37</sup>

## Rationale for undertaking the audit

1.13 In 2018–19 the reported value of Australian Government contracts for ICT related goods and services was over \$3.9 billion.<sup>38</sup> The use of cooperative and coordinated arrangements, which can include procurement panels, is intended to achieve efficiency and reduce risk, while supporting entities to achieve value for money outcomes. Previous ANAO audits have identified shortcomings with respect to some entities' application of the CPRs, including panel arrangements. Given the large number of procurements undertaken and the centrality of procurement to the operation of government and program delivery, entities' procurement practices should be efficient, effective, ethical and economical.

1.14 The audit involved the examination of three procurement arrangements which, as of June 2020, had reported contracts to the value of \$3.9 billion. The three arrangements and the number and value of contracts under those arrangements, as reported on AusTender, is outlined in Table 1.1 below.

**Table 1.1: Number of contracts and contract value of procurements under the arrangements examined in the audit**

Procurement arrangement	Number of contracts	Contract value
IT Services panel Standing Offer Number 3403954	2,604	\$909,010,702
Digital Marketplace panel Standing Offer Number 3413842	4,705	\$1,775,781,988
IBM WoAG Arrangement Standing Offer Number 3520963	96	\$1,221,119,843
<b>Total</b>	<b>7,405</b>	<b>\$3,905,912,533</b>

Source: AusTender [Internet], available from <https://contracts.disclosurelo.gs/displaySON.php?SONID=SON3403954>; <https://contracts.disclosurelo.gs/displaySON.php?SONID=SON3413842>; and <https://contracts.disclosurelo.gs/displaySON.php?SONID=SON3520963> [accessed June 2020].

- 37 See for example: Auditor-General Report No.48 2014-15 *Limited Tender Procurement*; Auditor-General Report No. 54 2013–14 *Establishment and Use of Multi-Use Lists*; and Auditor-General Report No.31 2011–12 *Establishment and Use of Procurement Panels*. [Internet].
- 38 Finance, *Statistics on Australian Government Procurement Contracts—2018–19 Procurement Contracts: Top 20 Categories for Goods and Services*, [Internet].

## Audit approach

### Audit objective, criteria and scope

1.15 The objective of the audit was to assess the extent to which entities' establishment and use of ICT related procurement panels and arrangements supported the achievement of value for money outcomes.

1.16 To form a conclusion against the objective, the audit examined whether entities complied with the Commonwealth Procurement Rules (CPRs) and followed related guidance<sup>39</sup> when:

- establishing ICT related procurement panels and arrangements; and
- using ICT related procurement panels and arrangements.

1.17 The audit assessed selected components of the establishment and use of two ICT related cooperative procurement panels:

- the IT Services panel established by the Department of Infrastructure, Transport, Regional Development and Communications (Infrastructure); and
- the Digital Marketplace panel established by the Digital Transformation Agency (DTA).

1.18 The audit also examined the establishment and use of the IBM Whole of Australian Government Arrangement (IBM Arrangement) managed by the DTA.

1.19 Use of the panels and the IBM Arrangement was examined at Infrastructure, DTA and the following non-corporate Commonwealth entities:

- Australian Electoral Commission;
- Australian Taxation Office;
- Department of Home Affairs;
- Department of Industry, Science, Energy and Resources; and
- Services Australia.

1.20 The ANAO examined a sample of 15 procurements — five from each of the two panels examined and five procurements made under the IBM Arrangement.

1.21 The audit also examined whether Infrastructure and DTA established effective monitoring arrangements to enable them to assess whether the panels or arrangements met their objectives.

1.22 During the course of the audit, the ANAO was advised by the Department of Finance of allegations of fraud related to the supply of information technology contractors. At the time of publishing this report investigations are ongoing.

### Audit methodology

1.23 The audit procedures included:

- reviewing key documentation supporting the establishment and use of each panel and arrangement; and

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39 Related guidance refers to guidance outlined in the CPRs and other guidance provided by Finance.



- discussions with entity officials administering the arrangements, and the Department of Finance as policy owner.

1.24 The audit was conducted in accordance with ANAO Auditing Standards at a cost to the ANAO of approximately \$972,487.

1.25 The team members for this audit were Grace Guilfoyle, Elizabeth Wedgwood, James Sheeran, Ashton Barrington-Knight and Michelle Page.

## 2. Establishment of ICT related procurement panels and arrangements — procurement planning and evaluation of suppliers

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### Areas examined

This chapter examines whether the Department of Infrastructure, Transport, Regional Development and Communications (Infrastructure) and the Digital Transformation Agency (DTA) complied with the Commonwealth Procurement Rules (CPRs) and related guidance<sup>40</sup> when establishing three ICT related procurement arrangements to support the achievement of value for money outcomes.

### Conclusion

In relation to the establishment of the selected arrangements:

- Infrastructure complied with the CPRs and adopted related guidance when establishing the IT Services panel but could have adopted a more robust approach to the consideration of price, quality and risk to better support the achievement of a value for money outcome.
- DTA did not comply with all of the CPRs when establishing the Digital Marketplace panel although it did adopt a number of sound practices outlined in Finance guidance. DTA's approach to establishing the panel did not support the achievement of a value for money outcome or treat suppliers equitably. Once DTA identified these deficiencies it changed its processes. While DTA's new process is sufficient to achieve compliance with the minimum requirements of the CPRs, DTA's consideration of price, quality and risk could be more robust to better demonstrate that its evaluation of suppliers achieves value for money outcomes.
- In establishing the IBM Whole of Australian Government Arrangement (IBM Arrangement) DTA largely complied with the requirements of the CPRs and the approach adopted a number of sound practices outlined in Finance guidance. As the IBM Arrangement was only conducted with one supplier, the approach supported the achievement of a value for money outcome in the circumstances.

### Areas for improvement

The ANAO made two recommendations to DTA aimed at increasing compliance with the CPRs and ensuring officials undertaking complex procurements have sufficient understanding of the procurement requirements, the nature of the arrangement being established and procurement related risks.

2.1 Chapters 2 and 3 of this audit report review the establishment of three ICT related procurement arrangements. Details of the procurement arrangements selected for review are outlined in Table 2.1.

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40 Related guidance is guidance outlined in the CPRs and other guidance provided by the Department of Finance (Finance). References to the CPRs in this audit report refer to the version published on 20 April 2019. When assessing entities' compliance with the CPRs the ANAO has reviewed compliance against CPR requirements that applied at the time of undertaking the procurement.

**Table 2.1: Details of the three procurement arrangements examined in this audit**

Entity, arrangement and standing offer period	Nature of the arrangement	Description based on AusTender	Number of suppliers recorded on AusTender <sup>a</sup>
<b>Infrastructure IT Services panel</b> 18 February 2017 to 17 February 2020	Cooperative procurement <sup>b</sup> created following an open tender. Suppliers contracted under deed of standing offer.	The IT Services panel was established for the provision of IT contract personnel on an as required basis to deliver IT Services (Contract for Personnel) and/or specialist services, through the engagement of an organisation to conduct specific activities (contract for services) for 19 categories of services.	299
<b>DTA Digital Marketplace panel</b> 5 April 2017 to 23 February 2022	Cooperative procurement created following an open tender. Suppliers contracted under master agreement.	The Digital Marketplace ( <a href="https://marketplace.service.gov.au/">https://marketplace.service.gov.au/</a> ) is an online procurement platform intended to make it easier for all levels of government and digital businesses to work together. It is being delivered by DTA as part of the National Innovation and Science Agenda. Sellers approved to apply for opportunities through the Digital Marketplace are all members of the Digital Marketplace panel. The Digital Marketplace provides access to suppliers for computer services and personnel recruitment. There are 15 categories of services available.	1654
<b>DTA IBM Arrangement<sup>c</sup></b> 28 June 2018 to 30 June 2023	Coordinated procurement <sup>d</sup> created following a limited tender. Single Head Agreement for contracts between non-corporate Commonwealth entities and IBM. <sup>e</sup>	The IBM Arrangement was established for the provision of IBM software, hardware, professional services and cloud services.	1

Note a: Number recorded in June 2020.

Note b: Cooperative procurement is discussed in paragraph 1.4 of this audit report.

Note c: At the time of planning the establishment of the IBM Arrangement, Finance had responsibility for its development. Following a machinery of government change, responsibility for the establishment of the IBM Arrangement was transferred to DTA in May 2017. For the purpose of this audit report, the ANAO will refer to DTA or Finance/DTA. The ANAO will also refer to DTA notwithstanding that DTA was previously called the Digital Transformation Office.

Note d: Coordinated procurement is discussed in paragraph 1.5 of this audit report.

Note e: Non-corporate Commonwealth entities must use this arrangement when they buy IBM products and services. Corporate Commonwealth entities and state and territory government agencies may be able to use this arrangement.

Source: ANAO analysis of entity documentation and AusTender information.

## Did the planning, determination of procurement method and approach to market for the selected arrangements comply with the CPRs and related guidance?

Infrastructure's planning and approach to market for the establishment of the IT Services panel complied with the CPRs and demonstrated adoption of key sound practices identified in Finance guidance. Infrastructure documented reasons for establishing the panel and approached the market to conduct an open tender, which encouraged competition from the outset to support the achievement of a value for money outcome. Had Infrastructure established stronger thresholds in terms of price, quality and risk and included details in the request documentation, it would have been in a position to undertake a more robust assessment of value for money at the evaluation stage.

DTA's planning and approach to market for the establishment of its Digital Marketplace panel did not comply with all of the CPR requirements but did demonstrate the adoption of a number of key sound practices identified in Finance guidance. The planning and approach to market did not support the achievement of a value for money outcome. DTA documented clear objectives for establishing the panel and approached the market to conduct an open tender which encouraged competition. However, DTA's request documentation did not require suppliers to provide price information and DTA was therefore unable to conduct a value for money assessment in accordance with CPR requirements. Additionally, suppliers were able to join the panel based on different requirements — this resulted in not all suppliers being treated equitably, which is inconsistent with the CPRs.

DTA's planning and approach to market for the establishment of the IBM Arrangement complied with the CPRs and demonstrated adoption of key sound practices identified in Finance guidance. DTA documented clear objectives for establishing the arrangement and approached IBM via a limited tender as part of a coordinated approach to expand the number of Whole of Australian Government (WoAG) arrangements in place.

2.2 Procurement panels and similar type arrangements are generally established to operate for several years and the contractual commitments established under these arrangements may be of substantial value. Such arrangements are usually intended to achieve efficiency and reduce risk, while supporting entities to achieve value for money outcomes. Entities should design such arrangements to ensure objectives are achieved.<sup>41</sup>

2.3 The ANAO assessed whether Infrastructure and DTA complied with selected mandatory requirements of the CPRs and related guidance. Specifically, the ANAO assessed whether Infrastructure and DTA:

- included details of the proposed procurement in the relevant annual procurement plans;
- planned and scoped the procurement based on an identified need and determined the procurement method prior to approaching the market;
- approached the market in accordance with the CPRs; and

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41 As part of planning, entities should consider what monitoring should be undertaken to enable them to assess whether a procurement arrangement is meeting its objectives. Monitoring is discussed in chapter 3 of this audit report.

- prepared request documentation that:
  - conveyed the key requirements of the procurement — including scope of services and dates for submission — enabling suppliers to develop and lodge competitive and compliant submissions; and
  - included evaluation criteria that would enable the entity to assess the financial and non-financial benefits of the procurement to achieve a value for money outcome.

## Planning and determination of procurement method

### *Annual procurement plans*

#### 2.4 The CPRs state that:

in order to draw the market's early attention to potential procurement opportunities, each relevant entity<sup>42</sup> must maintain on AusTender a current procurement plan containing a short strategic procurement outlook. The annual procurement plan should include the subject matter of any significant planned procurement and the estimated publication date of the approach to market. Relevant entities should update their plans regularly throughout the year.<sup>43</sup>

#### 2.5 Finance guidance states that:

Relevant entities should not include planned procurements in their APPs [annual procurement plans] which they intend to conduct through a limited tender.<sup>44</sup>

2.6 The ANAO examined the annual procurement plans for Infrastructure and DTA to identify whether details of the selected arrangements had been included in each entity's relevant annual procurement plan.

- Infrastructure included details of the IT Services panel in the relevant procurement plan.
- DTA did not include details of the Digital Marketplace panel in its relevant procurement plan but included a refresh of its Digital Services Professional Panel (DSPP) in quarter two of 2016–17. This panel was the precursor to the Digital Marketplace panel.
- DTA did not include details of its planned approach to IBM in the relevant annual procurement plan. As this was conducted by limited tender with a direct approach to IBM, it was not required to be included.

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42 ANAO comment: under the CPRs relevant entities are non-corporate Commonwealth entities and prescribed corporate Commonwealth entities (listed in section 30 of the PGPA Rule). Relevant entities must comply with the CPRs when performing duties related to procurement. Finance, *Commonwealth Procurement Rules*, April 2019 Appendix B: Definitions [Internet].

43 *ibid.*, paragraphs 7.8–7.9.

44 Finance, Procurement Publishing and Reporting Obligations (RMG 423), [Internet], Finance, 2020, available from <https://www.finance.gov.au/publications/resource-management-guides/procurement-publishing-reporting-obligations-rmg-423>; <https://www.finance.gov.au/publications/resource-management-guides/procurement-publishing-reporting-obligations-rmg-423> [accessed June 2020].

*Planned and scoped the procurement based on an identified need and determined the procurement method prior to approaching the market*

2.7 The establishment of cooperative<sup>45</sup> and coordinated<sup>46</sup> procurement arrangements must be done in accordance with the CPRs and support a value for money outcome. The CPRs state that:

a thorough consideration of value for money begins by officials clearly understanding and expressing the goals and purpose of the procurement. When a business requirement arises, officials should consider whether a procurement will deliver the best value for money. It is important to take into consideration:

- a. stakeholder input;
- b. the scale and scope of the business requirement;
- c. the relevant entity's resourcing and budget;
- d. obligations and opportunities under other existing arrangements;
- e. relevant Commonwealth policies; and
- f. the market's capacity to competitively respond to a procurement.

When a relevant entity determines that procurement represents the best value for money, these considerations will inform the development and implementation of the procurement.<sup>47</sup>

2.8 Finance provides guidance for entities undertaking procurements. This includes:

Step 1: Plan the Procurement Based on an Identified Need

Step 2: Scope the Procurement

Step 3: Determine the Procurement Method

Step 4: Prepare to Approach the Market

Step 5: Approach the Market.<sup>48</sup>

2.9 As part of procurement planning, the CPRs require entities to estimate the value of the procurement in order to determine whether the procurement exceeds the relevant thresholds and is therefore also subject to Division 2 of the CPRs. For the purpose of a panel arrangement or other standing offer type arrangement, the value of a procurement is:

the estimated total value of the goods or services that may be procured from all members of the panel over the life of the panel arrangement. That is, the threshold is not the amount of each separate contract under the panel; it is the estimated total of all contracts or deeds of standing offer relating to the panel.<sup>49</sup>

2.10 The ANAO reviewed planning documentation supporting the establishment of the selected panels and the IBM Arrangement to identify whether Infrastructure and DTA planned and scoped

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<sup>45</sup> See paragraph 1.4 of this audit report.

<sup>46</sup> See paragraph 1.5 of this audit report.

<sup>47</sup> Finance, *Commonwealth Procurement Rules*, April 2019 paragraphs 4.2 and 4.3, [Internet].

<sup>48</sup> Finance, *Procurement Process Considerations Practice* [Internet], Finance, 2019, available from <<https://www.finance.gov.au/government/procurement/buying-australian-government/procurement-process-considerations>> [accessed June 2020].

<sup>49</sup> Finance, *Panel Arrangements, Planning and Establishing a Panel Arrangement* [Internet], Finance, 2019, available from <<https://www.finance.gov.au/government/procurement/buying-australian-government/panel-arrangements>> [accessed June 2020].

the procurement based on an identified need and determined the procurement method prior to approaching the market.

#### IT Services panel

2.11 Infrastructure planned and scoped the procurement based on an identified need and determined the procurement method prior to approaching the market. Infrastructure prepared a procurement plan that identified the objective of the panel, which was to replace an existing expiring panel. The expiring panel was well used by Infrastructure and other entities and Infrastructure had an ongoing need for the goods and services provided under its previous panel. Planning documentation indicated a panel was considered to provide an efficient and effective procurement method for the acquisition of IT services and would provide for reduced procurement timeframes, reduced administrative burden and provide repeatable processes through a central standing offer.

2.12 Planning documentation showed broad consideration of: obligations and opportunities under other existing arrangements; the likely demand; and the scope of services. Planning documentation also indicated that the total value of procurements under the proposed standing offer arrangement would exceed the relevant procurement threshold and the panel would be established following an open tender.<sup>50</sup> The arrangement would allow other entities to access the panel and it was going to be managed by the department. A risk assessment, tender evaluation plan and probity plan<sup>51</sup> were developed as part of the procurement planning.

#### Digital Marketplace panel

2.13 The establishment of the Digital Marketplace panel was an initiative under the Australian Government's National Innovation and Science Agenda (NISA).<sup>52</sup> DTA<sup>53</sup> was given responsibility for creating a new Digital Marketplace. The Digital Marketplace was to be an online directory of digital and ICT services from which government entities would procure, with the objectives of increasing participation of small to medium enterprises (SMEs) and start-ups by breaking down barriers to entry, delivering better procurement outcomes through increased competition, and promoting

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50 The CPRs require that an open tender involves publishing an open approach to market and inviting submissions. An open approach to market is any notice inviting potential suppliers to participate in a procurement which may include a request for tender, request for quote, request for expression of interest, request for information or request for proposal. A submission is any formally submitted response from a potential supplier to an approach to market. Submissions may include tenders, responses to expressions of interest or responses to request for quote. Finance, *Commonwealth Procurement Rules*, April 2019, Appendix B: Definitions [Internet].

51 Typically a probity plan provides the framework for ensuring that probity and transparency are maintained throughout a procurement process.

52 The NISA focused on science, research and innovation as long-term drivers of Australian economic prosperity, jobs and growth. One of the four pillars underpinning the agenda was 'Government as Exemplar'. One of three new initiatives under this pillar was 'Encouraging Innovation through Government Procurement'. In particular, to make it easier for start-ups and innovative small businesses to sell technology services to government. Australian Government, *National Innovation and Science Agenda Welcome to the Ideas Boom*, p. 15 [Internet], available from [https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/national-innovation-and-science-agenda-report.pdf?acsf\\_files\\_redirect](https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/national-innovation-and-science-agenda-report.pdf?acsf_files_redirect) [accessed June 2020].

53 The Digital Transformation Office was established as an executive agency in July 2015. In October 2016 the agency was renamed the Digital Transformation Agency (DTA).

innovation across government.<sup>54</sup> In part, this was to be achieved through the adoption of a dynamic pricing model where prices could fluctuate in response to demand rather than remain static or fixed for the duration of the panel arrangement.<sup>55</sup> DTA planned and scoped the procurement based on the identified need and determined the procurement method prior to approaching the market to conduct an open tender. As the value of the procurement under the proposed arrangement would exceed the relevant procurement threshold, planning documentation stated that the panel would be established following an open tender. However, planning deficiencies<sup>56</sup> resulted in the panel not being established in accordance with the CPRs.

2.14 In March 2016, DTA released a request for proposal (RFP) on AusTender for the establishment of the DSPP. DTA intended the DSPP to be an interim arrangement for the provision of digital services prior to the launch of the Digital Marketplace panel, which was planned for February 2017. In June 2016, DTA decided to use the DSPP as the underlying procurement mechanism for the Digital Marketplace platform and bring forward the launch of the Digital Marketplace to August 2016.

2.15 At its launch in August 2016 the Digital Marketplace did not meet all of the NISA objectives.<sup>57</sup> In order to meet these objectives work progressed to refine the Digital Marketplace design to support a continuously open self-referral arrangement with electronic agreements and 'just in time' seller assessments<sup>58</sup>, with DTA receiving applications to join the Digital Marketplace directly rather than sellers applying via AusTender. In February 2017 DTA released an RFP for the Digital Marketplace panel. This RFP made no reference to DTA appointing sellers on the basis of a value for money assessment and did not require potential suppliers to provide price information based on the intent of developing a digital marketplace in which prices could fluctuate subject to demand.

2.16 To accommodate the continuing requirement for seller assessments, DTA established its 'just in time' seller assessment protocol which enabled assessments to be conducted in parallel with opportunities posted on the Digital Marketplace. This protocol presented some risk. For example, if there was strong competition for an opportunity, with a surge in the number of assessments required, some might not be completed prior to the opportunity closing. The ANAO identified that a small number of such instances occurred. DTA advised the ANAO that processes are now in place to divert resources to assessment and operational activities to mitigate this risk. Prioritisation can be given to the digital and ICT specialist assessment teams based on DTA's monitoring of priority needs. This is mapped against the skills and capacity of individual DTA officials.

2.17 Finance guidance states that a panel is the end result of a procurement process, with a panel formed following an assessment of suppliers against evaluation criteria. Only suppliers that

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54 Australian Government, *National Innovation and Science Agenda Welcome to the Ideas Boom*, p.15 [Internet].

55 Sellers can respond to Digital Marketplace opportunities with a lower price to gain a competitive advantage. If a seller wishes to increase the maximum daily rate they provided on joining the Marketplace, DTA will be required to complete another Marketplace value for money assessment.

56 These are discussed further in paragraph 2.17.

57 For example, the DSPP was a traditional Australian Government procurement panel rather than a continuously open panel, and an objective of the NISA was to encourage innovation through government procurement by making it more accessible to start ups and small to medium business by breaking down barriers to technology procurement.

58 The 'just in time' assessment is requested by a seller who has identified an opportunity it wishes to apply for.



represent value for money are to be included on a panel.<sup>59</sup> DTA's planning documentation indicated that the establishment of the Digital Marketplace was not considered to constitute a procurement, and that DTA considered that the procurement would be completed when an entity approached the Digital Marketplace with an opportunity and suppliers responded. Nonetheless, DTA thought of the Digital Marketplace as a panel, without it meeting the requirements of a panel.<sup>60</sup> In effect, DTA had created a list of prequalified suppliers or a multi-use list rather than a panel and this impacted DTA's approach to market (see paragraphs 2.28 to 2.30) and the evaluation of suppliers (see paragraphs 2.49 to 2.53). DTA sought advice from Finance on various aspects of the Digital Marketplace but did not clearly identify that its planned approach was non-compliant with the CPRs.

2.18 DTA identified the errors in the establishment of the Digital Marketplace arrangements in December 2017 and undertook a 'value for money (VFM) refresh' exercise. A revised approach to market was published on AusTender in June 2018. From July 2018 it included the new requirement to provide information on price and referenced DTA's need to conduct a value for money assessment. A risk assessment and probity plan were also developed as part of the 'VFM refresh' process. The 'VFM refresh' exercise is discussed further in paragraph 2.56 of this audit report.

#### IBM Arrangement

2.19 The establishment of the IBM Arrangement followed a 2015 government decision to expand coordinated ICT procurement arrangements. Finance/DTA, which had responsibility for establishing the arrangement, conducted a scoping study that identified that WoAG arrangements with IBM, SAP and Oracle could produce improvements such as consistent and lower pricing, standardised terms and conditions, simplified contract management and flexibility with licensing arrangements. Finance anticipated savings from the three arrangements of up to \$30 million from 2015–16 to 2018–19.<sup>61</sup> Finance/DTA consulted widely in the scoping study phase, drawing on available data and advice from entities that had arrangements in place with the three suppliers.

2.20 The scoping study findings were provided to the Minister for Finance, who in April 2016 approved Finance negotiating WoAG arrangements with the three suppliers.<sup>62</sup> Negotiations were

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59 Finance, Procurement Panels [Internet], Finance, available from <https://www.finance.gov.au/government/procurement/buying-australian-government/panel-arrangements> [accessed June 2020].

60 To join a panel, tenderers must be assessed as being value for money. As outlined in the discussion on DTA's approach to market (paragraphs 2.28 to 2.30), DTA did not require suppliers to provide any information relating to their prices so DTA could not undertake a value for money assessment of suppliers. In addition, DTA did not subject all suppliers to the same process in order for them to become members of the panel. This is discussed further in paragraph 2.51.

61 Finance anticipated savings from aggregating demand, improving contractual terms and conditions, obtaining more favourable pricing and reducing administrative overhead. There is no evidence of how this figure was derived. Finance advised the ANAO that while it initially undertook the scoping study this work was transferred to DTA as part of a machinery of government change in 2017, with all relevant staff, project work and files transferred out of Finance.

62 The scoping study made five recommendations, including that from 1 April 2016 a moratorium be established under which non-corporate Commonwealth entities could not extend, expand, renew or enter into new contracts greater than 12 months for ICT goods and services with IBM, SAP or Oracle until WoAG arrangements were established and relevant ministerial approval, and approval of the Minister for Finance, was granted. While negotiations were under way, Finance provided entities with text for transition clauses for contracts.

led by Finance until May 2017, when DTA assumed responsibility for managing WoAG ICT procurement.

2.21 DTA/Finance planned and scoped the negotiations for the IBM Arrangement based on an identified need. DTA/Finance negotiated directly with IBM via limited tender<sup>63</sup> to create a whole of government contractual framework similar to the volume sourcing arrangement established with Microsoft in 2009. Once finalised, use of the IBM Arrangement would be mandatory for all non-corporate Commonwealth entities when procuring IBM products or services.<sup>64</sup>

2.22 Some shortcomings in planning for the IBM Arrangement impacted the procurement process. DTA initially treated the process as a 'project to establish a contractual framework' rather than a procurement. As a result, some processes usually adopted for a procurement of this size and scope, such as fit for purpose risk management and probity arrangements, were lacking (risk management is discussed further in paragraphs 3.27 to 3.31 and probity arrangements are discussed further in paragraph 3.41). DTA consulted entities which had existing arrangements with IBM and undertook other industry-specific research. However, as identified by DTA in its lessons learnt review, DTA lacked capability in terms of engaging effectively with IBM in negotiations.<sup>65</sup> The risk of this occurring was not identified at the planning stage and was only addressed in mid-2017 when DTA engaged the services of external specialists with experience in negotiating high value arrangements with large multinational corporations such as IBM (refer to paragraph 2.32 to 2.35 for an overview of how DTA's negotiation approach evolved over the negotiation period).

## **Approach to market and request documentation**

2.23 The CPRs state that:

Relevant entities must use AusTender to publish open tenders and, to the extent practicable, to make relevant request documentation available ... [and entities] may use AusTender to publish limited tender approaches to market and make relevant request documentation available.<sup>66</sup>

2.24 Request documentation is provided to potential suppliers to enable them to understand and assess the requirements of the procuring entity and to prepare appropriate and responsive submissions. Mandatory requirements of the CPRs for request documentation for procurements at or above the relevant procurement threshold<sup>67</sup> are outlined in Table 2.2. Table 2.2 also includes Finance guidance relating to request documentation.

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63 Limited tender involves a relevant entity approaching one or more potential suppliers to make submissions, when the process does not meet the rules for open tender. For procurements at or above the relevant procurement threshold, limited tender can only be conducted in accordance with paragraph 10.3 of the CPRs, or when a procurement is exempt as detailed in Appendix A of the CPRs. Finance, *Commonwealth Procurement Rules*, April 2019, paragraphs 9.10 and 9.11 [Internet].

64 The IBM Arrangement is mandatory for non-corporate Commonwealth entities for purchases of IBM products or services and optional for corporate Commonwealth entities and State and Territory government entities.

65 DTA identified that one of the difficulties it had in establishing the IBM Arrangement was that the Commonwealth did not understand IBM's internal sales and reporting culture and the levers needed to bring IBM to the negotiating table. DTA considered that the commitment of new expenditure was needed to resolve this. The Commonwealth did this by consolidating its total overall spend into a single commercial value arrangement and agreeing to extend the existing commitment streams for a longer period of time.

66 Finance, *Commonwealth Procurement Rules*, April 2019 paragraphs 7.10-7.11 [Internet].

67 Procurements that are at or above the relevant procurement threshold are subject to the rules contained in Division 2 of the CPRs.

**Table 2.2: Mandatory requirements for request documentation for open tenders and Finance guidance for sound practices**

Mandatory CPR requirements for procurements	Finance guidance
<p>Request documentation must include a complete description of:</p> <ul style="list-style-type: none"> <li>a) the procurement, including the nature, scope and the quantity of the goods and services to be procured or, where the quantity is not known, the estimated quantity, and any requirements to be fulfilled, including any technical specifications, conformity certification, plans, drawings, or instructional materials;</li> <li>b) any conditions for participation, including any financial guarantees, information and documents that potential suppliers are required to submit;</li> <li>c) any minimum content and format requirements;</li> <li>d) evaluation criteria to be considered in assessing submissions and, if applicable to the evaluation, the relative importance of those criteria;</li> <li>e) any dates for the delivery of goods or supply of services, taking into account the complexity of the procurement; and</li> <li>f) any other terms or conditions relevant to the evaluation of submissions.</li> </ul>	<p>The request documentation for establishing panels should address a number of specific issues, including:</p> <ul style="list-style-type: none"> <li>• an explanation of how the panel will operate;</li> <li>• a clear definition of the nature and scope of the goods or services, including any exclusions from the panel's scope;</li> <li>• notice of whether the panel is to be exclusive or non-exclusive (i.e. whether the goods or services will only be provided to the entity from within the panel arrangement or may also be purchased through other procurement processes);</li> <li>• that there is no guarantee of work;</li> <li>• the duration of the panel, including any extension options;</li> <li>• a general indication of the intended size of the panel;</li> <li>• where there will be cooperative procurement with other entities;</li> <li>• the process of selecting suppliers from the panel; and</li> <li>• a requirement for indicative or set prices or rates, including a pricing schedule or outline of the pricing format required from tenderers.</li> </ul>

Source: Finance, CPRs, 2019, paragraph 10.6, [Internet] and Finance Guidance [Internet], available from <https://www.finance.gov.au/government/procurement/buying-australian-government/panel-arrangements> [accessed June 2020].

### *Use of AusTender*

2.25 Both Infrastructure and DTA used AusTender to publish their open tenders and to make relevant request documentation available. Request documentation was in the form of a request for tender (RFT) for the IT Services panel and a request for proposal (RFP) for the Digital Marketplace panel. The request documentation complied with relevant mandatory requirements of the CPRs (including publication on AusTender) and the tender request documents generally also met sound practices, with the exception of DTA documentation which did not include requirements regarding price for the Digital Marketplace panel. Given the procurements were to establish a standing offer or similar arrangement, the nature and scope of the goods and services to be procured were identified but the quantity of the goods and services was not estimated.

## *Request documentation*

### IT Services panel

2.26 The IT Services panel request documentation outlined the requirements that tenderers were asked to meet. This included providing: their business details; financial details<sup>68</sup>; a response to the statement of requirements, including a separate technical requirements response for each area of expertise nominated<sup>69</sup>; referee contact details; pricing; and a compliance checklist. Tenderers were asked to provide pricing in the form of hourly and daily rates with the option to provide prices as a band of rates for each category, or for various roles or levels in each category. In relation to the compliance checklist, tenderers were asked to state compliance or otherwise with the RFT draft deed, noting that their compliance would be a factor in assessing risk and considered as part of the value for money assessment. Infrastructure's assessment of this information in determining whether a tender represented value for money is discussed in paragraphs 2.38 to 2.48.

2.27 Infrastructure did not establish thresholds in terms of price, quality and risk and include them in the RFT. Had Infrastructure done so, it would have been in a position to undertake a more robust assessment of value for money of suppliers at the evaluation stage. This is discussed further in paragraph 2.48.

### Digital Marketplace panel

2.28 DTA's initial request documentation for the Digital Marketplace panel did not require price information nor make any reference to DTA conducting a value for money assessment. DTA's RFP required sellers to register online to submit responses to technical criteria including references. Potential sellers were also required to agree to the Master Agreement. DTA's failure to require price information impacted the evaluation process and resulted in DTA being unable to assess value for money in accordance with the CPRs. This issue is discussed further in paragraph 2.49.

2.29 Additionally, the RFT enabled suppliers to join the panel based on different requirements. This resulted in not all suppliers being treated equitably, which is inconsistent with the CPRs. New suppliers were able to join following the process described in paragraph 2.28. However, if a supplier was a member of the DSPP, they were effectively transferred to an equivalent category of expertise in the new panel and no further assessment was required. The supplier was only required to update their seller profile information and accept the Master Agreement. Similarly, DTA also offered suppliers on an Australian Taxation Office (ATO) IT multi-use list the option to transfer to the Digital Marketplace panel. This is discussed further in paragraph 2.51.

### IT Services panel and Digital Marketplace panel

2.30 Request documentation for both panels included information on:

- how the panel would operate;
- the panel being non-exclusive — the procuring entity had the discretion to source the property or services elsewhere;
- appointment to the panel providing no guarantee of work under the panel arrangement;

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68 This included details of assets, liabilities, income, debt, audited financial statements and certificates of currency for public liability, workers compensation and professional indemnity insurance.

69 Details were not to exceed 200 words for each criterion.

- the panel's duration and extension options. The IT Services panel's duration was three years with two extension options of two years each. DTA's Digital Marketplace panel was initially shown on AusTender as having a duration of three years.<sup>70</sup> No option for extensions were noted; and
- whether or not multi-entity access was permitted — it was for both panels.

#### IBM Arrangement

2.31 As the IBM Arrangement was established by limited tender, notification to the market via AusTender was not required. Finance/DTA approached IBM directly to negotiate an arrangement. Finance/DTA wrote to IBM to advise of its broad objectives for a WoAG arrangement in August 2016 and requested that IBM present a proposal for a WoAG arrangement that met these objectives. When the Minister for Finance agreed to negotiations commencing, approval was also provided for the moratorium (discussed in footnote 62) preventing non-corporate Commonwealth entities from signing contracts with IBM with a duration longer than 12 months. The moratorium was considered a very important source of leverage in negotiations with suppliers.<sup>71</sup> It was intended to ensure Commonwealth purchasing power was not diminished and negotiations of the WoAG agreement were not undermined by entities entering into new long term contracts with relevant suppliers.<sup>72</sup> Monitoring undertaken by Finance/DTA found that as at 7 February 2017 seven non-corporate Commonwealth entities did not comply with the terms of the moratorium by signing contracts with IBM, Oracle and/or SAP.<sup>73</sup>

2.32 DTA had planned to finalise negotiations by June 2017, however limited progress had been made by that time. In a lessons learnt review undertaken after the IBM Arrangement was finalised,

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70 The Master Agreement for the Digital Marketplace panel does not contain an end date although as at June 2020 AusTender shows an end date of 23 February 2022 on the standing offer notice for this panel.

71 The moratorium applied to IBM, SAP and Oracle and was to be lifted when arrangements with each of the entities were executed.

72 Initially, non-corporate Commonwealth entities could establish contracts with IBM for periods longer than 12 months with the approval of their minister and the Finance Minister. From May 2017, exemptions from the moratorium for contracts valued below \$250,000 could be approved by a delegate within the DTA.

73 In respect to any formal action taken by Finance/DTA in response to moratorium breaches, DTA documentation indicates that the Finance Secretary would write to colleagues to reinforce the importance of the existing moratorium in ensuring that the Commonwealth maintained a strong position during the negotiating process. DTA also advised the ANAO that it advised entities which breached the moratorium that this would need to be included in their statement of non-compliance under section 19 of the PGPA Act. This requires, among other things, that the accountable authorities of Commonwealth entities notify their responsible Minister, as soon as practicable, of any significant issue that has affected the entity. A significant issue, under section 19 of the PGPA Act, includes significant non-compliance with the finance law. Accountable authorities are also to notify the Finance Minister of instances of significant non-compliance with the finance law reported to their responsible Minister where there is also a connection to the management of public resources. The term significant is not defined. In relation to the IBM Arrangement, DTA records indicate that the Departments of Defence (Defence) and Home Affairs did not comply with the moratorium. Defence advised the ANAO that it sought the Department of Finance's approval to undertake the procurements outside of the moratorium. Defence further advised that the Department of Finance agreed that it was reasonable for Defence's Accountable Officer to approve extensions of the contracts and that Finance would brief the Minister on this matter. Home Affairs disputes any non-compliance. In June 2020 DTA advised the ANAO that it is unable to source any clear record confirming that Home Affairs breached the IBM moratorium and has recommended that the ANAO accept Home Affairs' position that it did not.

DTA concluded that a lack of understanding of IBM's business structure had resulted in difficulties engaging IBM in the negotiation process.<sup>74</sup>

2.33 DTA engaged the services of a lead negotiator from a firm specialising in negotiating contracts with ICT vendors. Following this, DTA expanded the negotiation aim from creating a WoAG contractual framework to including renewal or extension of Enterprise Licensing Agreements (ELAs) for entities with existing IBM ELAs.<sup>75</sup> This approach was intended to improve the Australian government's negotiating position by offering the incentive of significant new financial commitments from Australian Government entities to IBM.<sup>76</sup>

2.34 DTA also created a Cross Entity Negotiation Team (CENT) of senior executives from the five entities with the largest IBM ELAs in place at the time<sup>77</sup>, DTA personnel and the lead negotiator. CENT members signed a negotiation directive that outlined goals and protocols for the negotiation process. Before establishing the CENT, Finance/DTA had led negotiations independently without a documented negotiation strategy.

2.35 Negotiations continued into 2018, with a Head Agreement signed on 28 June 2018. DTA worked with four entities (ATO, Defence, Home Affairs and Services Australia) to negotiate new or extended ELAs and consulted with ten other entities with pre-existing IBM contracts to negotiate a single ELA that covered all ten entities (called the 'DTA ELA').<sup>78</sup> Execution of the Head Agreement became contingent on the five ELAs (one each for ATO, Defence, Home Affairs and Services Australia and the DTA ELA) being executed at the same time.

## Did the evaluation of suppliers and value for money consideration for the selected arrangements comply with the CPRs and related guidance?

Infrastructure's evaluation of suppliers and consideration of value for money when establishing the IT Services panel complied with the CPRs. Had Infrastructure established strong thresholds in terms of price, quality and risk the department would have been able to undertake a more robust assessment of value for money.

DTA appointed sellers to the Digital Marketplace panel without a value for money assessment and suppliers were admitted based on different requirements — decisions which are not consistent with the CPRs. DTA identified that the panel had been established incorrectly and conducted a 'value for money (VFM) refresh' exercise. From 1 July 2018 existing and

74 The lessons learnt review was discussed in paragraph 2.22 and is also discussed in paragraph 3.63.

75 ELAs are typically multi-year arrangements covering software licenses and associated support services, and in the case of the Department of Defence and Services Australia, mainframe hardware. Under ELAs, a bundle of goods and services is provided at a fixed (often significantly discounted) price.

76 The financial commitments were new in that they related to renewed or extended ELAs.

77 These were the Australian Taxation Office, Department of Defence, Department of Health, Department of Immigration and Border Protection (now the Department of Home Affairs) and Department of Human Services (now Services Australia).

78 The ten entities were: Australian Bureau of Statistics; Australian Electoral Commission; Department of Agriculture and Water Resources; Department of Foreign Affairs and Trade; Department of Health; Department of Industry, Innovation and Science; Department of Jobs and Small Business; Department of Social Services; Geoscience Australia; and IP Australia. The Department of Health was part of the CENT as it had the fifth largest IBM ELA at the time, however it opted to become part of the DTA ELA. DTA itself was not procuring anything from IBM under the DTA ELA.

prospective suppliers have been required to provide one price for each of the categories applied for as well as technical information, which has enabled DTA to undertake a value for money assessment of suppliers. While DTA's new process is sufficient to achieve compliance with the minimum requirements of the CPRs, its consideration of price, quality and risk could be more robust to better demonstrate that its evaluation of suppliers supports the achievement of value for money outcomes.

In establishing the IBM Arrangement, DTA's evaluation approach complied with the CPRs and demonstrated adoption of key sound practices to support the achievement of a value for money outcome. Establishing the IBM Arrangement involved detailed contractual negotiations with both IBM and affected Commonwealth entities. Each entity involved in the negotiations reviewed the proposed terms and prices relevant to them and engaged with DTA to assist in forming the Australian Government negotiating position.

2.36 The core rule of the CPRs is achieving value for money. This requires consideration of the financial and non-financial costs and benefits associated with a procurement.<sup>79</sup> The tender evaluation process is central to selecting suppliers that are likely to result in a value for money outcome. To meet the accountability and transparency requirements of the CPRs, it is important that entities select the best value for money proposals and document the reasons and process by which they arrived at their decision.

2.37 The ANAO assessed whether Infrastructure and DTA's evaluation of supplier submissions complied with selected mandatory requirements of the CPRs and related guidance. Specifically, the ANAO assessed whether entities:

- conducted a value for money assessment showing consideration of relevant financial and non-financial costs and benefits of each submission; and
- the value for money assessment was consistent with request documentation.

## IT Services panel

2.38 Infrastructure's evaluation criteria were specified as follows:

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79 Finance, *Commonwealth Procurement Rules*, April 2019, paragraph 3.2 [Internet].

- the extent to which the tender meets the Technical Requirements<sup>80</sup>;
- the tendered price; and
- any risks inherent in the tender, including the degree of compliance with the draft contract and any actual or perceived conflict of interest.

2.39 Infrastructure conducted assessments of the financial and non-financial costs and benefits of each submission consistent with the request documentation discussed in paragraph 2.26. An evaluation report<sup>81</sup> outlined the evaluation process and results, and made recommendations to the delegate on potential suppliers.

2.40 Technical assessments were completed by a Tender Evaluation Committee and advisors<sup>82</sup>, with four sub-committees formed according to knowledge and expertise in one or more service categories. Ratings were applied for technical ability and capacity in accordance with a scoring method outlined in the tender evaluation plan and presented in Table 2.3 below.

**Table 2.3: Infrastructure tender evaluation scoring system for technical requirements**

Rating	Description of tender	Score
Outstanding	Tender is highly convincing and credible. Tender demonstrates outstanding capability, capacity and experience relevant to, or understanding of, the requirements of the Evaluation Criteria. Documentation provides complete details. All claims adequately demonstrated and substantiated.	50
Very good	Tender complies, is convincing and credible. Tender demonstrates very good capability, capacity and experience, relevant to, or understanding of, the requirements of the Evaluation Criteria. Minor uncertainties and shortcomings in the Tenderer's claims or documentation.	40

80 For this criterion, two sub criteria were outlined in the request for tender, as follows:

1. Ability - the Tenderer's ability to provide the Supplies in accordance with the Statement of Requirements, based on:
  - a) The Tenderer's skills and experience in providing the category on a similar scale and complexity for the appropriate category (to a maximum of 200 words); and
  - b) The Tenderer's capability and track record at providing similar goods and services of the scale and complexity for the appropriate category (to a maximum of 200 words), and
2. Capacity - the capacity of the Tenderer to provide the Supplies in accordance with the Statement of Requirements including the ability to obtain and retain resources (to a maximum of 200 words). The RFT documentation also stated that: tenderers must satisfy the conditions for participation and minimum content and format requirements; and overall best value for money represented by the tenders will be determined having regard to:
  - i. each tender's Technical Performance Score;
  - ii. each tender's offered pricing proposal, relative to other tenders in accordance with Evaluation Criterion 2 (Price); and
  - iii. the evaluation of the risks inherent in the tender in accordance with Evaluation Criterion 3 (Risk).

81 An evaluation report for a tender process is an important accountability and transparency mechanism. It should provide assurance to the decision-maker (generally a delegate) on the evaluation process undertaken, a basis for the delegate to make an informed procurement decision, and a basis for review of the process.

82 Advisors were listed as members of the department's Procurement Advice and Reporting Team and Legal Services Branch.



Rating	Description of tender	Score
Adequate	Tender complies and is credible but not completely convincing. Tender demonstrates adequate capability, capacity and experience, relevant to, or understanding of, the requirements of the Evaluation Criteria. Tenderer's claims have some gaps.	30
Marginal	Tender has minor omissions. Credible but barely convincing. Tender demonstrates only a marginal capability, capacity and experience relevant to, or understanding of, the requirements of the Evaluation Criteria.	20
Poor	Unconvincing. Tender has significant flaws in demonstrating the Tenderer's capability, capacity and experience relevant to, or understanding of, the requirements of the Evaluation Criteria.	10
Unacceptable	Tenderer was not evaluated as it did not provide any requested information relevant to the RFT and/or contravened nominated restrictions.	0

Note: The evaluation plan also stated that: each tender evaluation committee member must individually assess and score each tender for each technical requirement using the scoring method; and the descriptions in the middle column were intended to act only as guidance on assessing ratings, and were not intended to be wholly exclusive of the issues to be taken into account, nor to be applied literally.

Source: Infrastructure documentation.

2.41 The Evaluation Report identified 14 suppliers with scores of less than 20 in terms of ability or capacity (across the 19 categories). Infrastructure advised the ANAO that no minimum cut off was applied to exclude tenderers on technical grounds (other than the supplier being rated 'unacceptable') as this was not specified in either the RFT or evaluation plan criteria. In the RFT, Infrastructure also broadly referred to standards and industry certifications such as 'knowledge of' or 'experience in'<sup>83</sup> but these were not defined, mandated or verified, nor were any referees contacted.

2.42 In relation to risk, Infrastructure prepared a compliance check worksheet which listed each tenderers' compliance with the RFT requirements and identified tenderers' requests for changes to, or exemptions from, the proposed common deed. Infrastructure sought legal advice on the risk and administrative obligations of managing multiple variations of a deed under the panel arrangement. Some changes were made and potential tenderers were required to agree to the revised common deed in order to join the panel.

2.43 To determine any conflict of interest, tenderers were asked to provide a statement regarding any issues that they reasonably considered may give rise to a conflict of interest in the provision of the required services, and any actions or arrangements that the tenderer proposed to undertake in response to these issues. The RFT advised that clarification may be sought by the department at any time as part of this RFT process. Departmental records indicate that two tenderers advised of potential conflicts: one was from the organisation with a contractor working with Infrastructure to assist with the panel procurement<sup>84</sup>; and another tenderer disclosed a potential conflict of interest for one of its directors working in an unrelated public sector entity.

83 For example, for the majority of categories suppliers were asked to provide details of relevant industry technical certifications/qualifications for the services based on the list of technologies listed in the service definition applicable to each category.

84 Probity arrangements relating to this are discussed in paragraphs 3.32 to 3.35.

2.44 Infrastructure also undertook high level financial viability checks based on the information provided in the tenders. The evaluation report indicated that where tenderers did not provide sufficient financial information or had a poor financial position (for example were not profitable or had limited financial strength) they were assessed as representing higher risk. Tenderers assessed as 'almost certain' or 'likely' in terms of likelihood of financial distress were included on the panel. Infrastructure advised the ANAO that no cut off was applied as this was not specified in either the RFT or the evaluation criteria, and the assessment was undertaken as part of the risk profile for each tenderer and considered at that stage of the evaluation.

2.45 In relation to price, the Tender Evaluation Committee:

- recorded the highest hourly rate submitted from each tenderer for each of the 19 technical categories.<sup>85</sup> Where a band of rates was submitted for either services or personnel, the highest rate for each band was recorded<sup>86</sup>;
- calculated the average of the maximum prices and doubled it<sup>87</sup>; and
- calculated each tenderer's maximum price as a percentage of twice the average of the maximum prices.<sup>88</sup>

2.46 Value for money was determined with regard to:

- the degree to which the tender met the technical requirements;
- an assessment of each tender against its offered pricing proposal; and
- an assessment of the risks identified with each tender.

2.47 Suppliers were considered to offer value for money for a service category when their highest daily rate for that service category was below a ceiling rate. That ceiling rate was set at twice the average maximum hourly rate for each service category. Where suppliers were not considered to offer value for money<sup>89</sup>, as their rates were in excess of the ceiling rate, they were invited to join the panel provided they agreed to reduce rates to a level at or below the ceiling rate for those service categories. Of the 307 tenderers who applied to join the panel, 306 were invited to join subject to meeting these conditions and only one tenderer was not recommended as value for money for any service category (and on that basis was not recommended to the delegate as a preferred supplier).<sup>90</sup>

2.48 The process used by Infrastructure to assess quality, risk and price when evaluating tenderers for inclusion on the panel was likely to support a value for money outcome. However, the

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85 The RFT required pricing based on daily and hourly rates for the categories of expertise. Pricing was to include all levies, charges and duties. Rates could be provided as bands of rates for each category or for various roles or levels in each category.

86 However, Infrastructure did not specify a required industry standard or benchmark for technical competency. As a consequence, the Tender Evaluation Committee was not able to ensure that prices provided for different roles by one supplier were comparable to roles and prices provided by other suppliers.

87 Infrastructure advised the ANAO that the evaluation committee considered this approach would provide sufficient range to seek value for money outcomes without having outliers at a rate that would be difficult to justify was competitive.

88 Infrastructure advised the ANAO that the percentage was calculated to show how far each supplier was from the average maximum rate to inform the assessment process.

89 Infrastructure's Tender Evaluation Report identifies 33 tenderers as not representing value for money for one or more service categories.

90 The number of suppliers who joined the panel was 301.

lack of strong thresholds for price, quality and risk meant that Infrastructure included suppliers on the panel who were rated as poor on aspects of their technical performance and/or identified as high risk. For future procurements, Infrastructure should strengthen its consideration of price, quality and risk by establishing strong thresholds and including them in request documentation. Doing so would make assessment processes more robust and would enable Infrastructure to obtain greater assurance as to the value for money offered by suppliers.

## Digital Marketplace panel

2.49 DTA did not undertake a value for money assessment of suppliers prior to appointing them to the panel. While this approach was consistent with the request documentation — which did not require that price information be provided — it did not reflect Finance requirements. As discussed in paragraph 2.17, only suppliers that represent value for money should join a panel, and value for money cannot be determined without price information. In effect, DTA established a list of pre-qualified suppliers from which buyers could select, with no information on price available to buyers. This arrangement is closer to a multi-use list (MUL) than a panel arrangement.<sup>91</sup>

2.50 As discussed in paragraph 2.15, DTA published the Digital Marketplace panel RFP on AusTender in February 2017. From this point seller applications were opened on the Digital Marketplace website. DTA asked potential suppliers to:

- register online as a seller by providing required commercial and financial details and agree to the Master Agreement;
- request an assessment based on responses to technical criteria for each category of expertise<sup>92</sup>; and
- agree to the Digital Marketplace Terms of Use.<sup>93</sup>

2.51 Concurrently, DTA invited members of the DSPP to ‘upgrade’ their profile to the Digital Marketplace panel. If a DSPP seller accepted the Digital Marketplace Master Agreement, the seller

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91 A multi-use list (MUL) is a list of suppliers who have applied for inclusion on the list and satisfied a set of conditions for participation. The process of establishing a MUL is not a procurement itself and does not involve the assessment of value for money. The ability to procure via prequalified tender was removed from the CPRs effective 1 January 2018, except in relation to the legal services MUL. From 20 April 2019 the CPRs have ceased allowing entities to procure via prequalified tender.

92 For example, to be accepted into the change and transformation category DTA required applicants to meet two or more of the following five criteria:

- work at the team, portfolio or program level, to help organisations establish processes for managing a portfolio of work in an agile way;
- plan and deliver change activities and lead stakeholder engagement;
- identify drivers for organisational change;
- design and embed change programs; and
- assess business readiness, design and implement target operating models.

To be accepted for the agile delivery and governance category, DTA required applicants to meet two or more of the 17 nominated criteria. The number of criteria varied between the different categories.

93 The Terms of Use govern all access to and use of the Digital Marketplace and constitute a binding legal agreement between the supplier, their entity and DTA. By accessing the Digital Marketplace, the supplier agrees to be bound by these Terms of Use and comply with the included Code of Conduct. The Terms include requirements relating to security; registration; termination; notifications; code of conduct; licence and usage; disclaimer; indemnity; external links; linking and syndication; jurisdiction and definitions.

was approved to join the Digital Marketplace panel and matched to a category similar to the one for which they had been approved for the DSPP.<sup>94</sup> Likewise, Australian Taxation Office (ATO) IT MUL suppliers were also offered the option to transfer to the Digital Marketplace panel. Only if additional categories of expertise were requested were these sellers assessed. The ATO IT MUL suppliers were able to join the Digital Marketplace panel without a value for money assessment — an approach that was not compliant with the CPRs. DTA did not treat all potential suppliers equitably, as required by the CPRs, as suppliers were able to join the panel via different means.<sup>95</sup>

2.52 The panel was established to be continuously open to sellers on a self-referral basis. Suppliers who were not on the DSPP or the ATO IT MUL who wished to join the panel applied online and provided general commercial and financial information<sup>96</sup>; nominated for one or more of the 15 categories<sup>97</sup> for which they sought approval; submitted relevant case studies and referee contacts; and accepted the Digital Marketplace panel Master Agreement. The Master Agreement forms the underlying agreement for any panel contracts awarded and sellers must accept it to become a registered seller. The Master Agreement contains various obligations but does not contain details

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94 This resulted in suppliers assessed as value for money via a different process for a different panel being transferred to the Digital Marketplace panel for a similar category.

95 CPR paragraph 6.6 states that officials undertaking procurement must act ethically throughout the procurement. Ethical behaviour includes dealing with potential suppliers, tenderers and suppliers equitably. Finance, *Commonwealth Procurement Rules*, April 2019, [Internet].

96 DTA officials completed a profile assessment tool checklist. This lists the information that tenderers have to provide and includes guidance to assessors relating to the checks that need to be undertaken. The checklist and guidance includes:

- supplier name and Australian Business Number — confirm they match;
- business description — check it is clear, reads well and has a maximum of one obvious spelling or grammatical error;
- badges, for example recruiter — check information; Indigenous — confirm listed on Supply Nation; disability — confirm listed on Australian Disability Enterprises directory; start-ups and SME — flag as identifier;
- website — check the website URL and branding are largely consistent with the name of the business;
- LinkedIn — check the profile is largely consistent with the name of the business;
- business contact — check no obvious issues;
- case studies — check they are written in clear, legible English (the detailed assessment against the criteria is done later);
- services — no review required and for products — read each product description and check it's well written and test links to confirm they take user to something meaningful and note any oddities;
- company details, location and recognition — note anything irregular;
- case study referees — check each case study has a referee and contact details are provided;
- disclosures — if yes to any, check explanations and seek second review if any doubt about the explanation; financial documents — open document and confirm it references the financial position of the business; and
- public liability and workers compensation — open the document and confirm coverage and date matches.

97 The 15 categories listed on the Digital Marketplace panel are: delivery and governance; change and transformation; content and publishing; cyber security; data science; digital sourcing and ICT; procurement; emerging technologies; ICT risk management and audit activities; ICT systems integration; marketing, communications and engagement; software engineering and development; strategy and policy; support and operations; training, learning and development; and user research and design.

of the price or the services to be provided.<sup>98</sup> These details are included in the individual work orders of buyers using the panel. This reflects that DTA considered that the procurement, and the need to establish value for money, would be undertaken not when establishing the panel but later when entities were using the panel.<sup>99</sup>

2.53 DTA conducted a two-step assessment of sellers. A seller was assessed for suitability by DTA officials for each of the categories nominated. For each nominated category of expertise, a seller's case studies were required to meet a specified set of criteria.<sup>100</sup> Referees were not routinely contacted.<sup>101</sup> If successful, the seller became a registered seller.<sup>102</sup> If unsuccessful, the tenderer was provided with feedback and was able to reapply multiple times. Only active sellers could apply for opportunities in the Digital Marketplace. To become an active seller, the seller must have had already been a registered seller and then expressed interest in an opportunity published by a buyer in an area of expertise for which they were a registered seller. This would trigger an assessment against the relevant areas of expertise. The RFP stated that the assessment included: reviewing the case studies against the assessment criteria (which did not require price information) for the area of expertise; confirming references; and checking corporate documentation and disclosures. Further, the RFP stated that the assessment may also take into account tools, methodologies and technologies, where relevant for the area of expertise, risks not considered in other assessment criteria and pricing (where relevant). As no price information was required DTA did not conduct any value for money assessments of suppliers before permitting sellers to become either a registered or active seller, which is inconsistent with Finance guidance and the requirements of the CPRs. Finance guidance states that a panel is the end result of a procurement process where a number of suppliers are appointed to the panel. The CPRs require all procurements to achieve a value for money outcome, and when assessing value for money officials must consider the relevant financial and non-financial costs and benefits of each submission. This matter, and the issues of equity discussed in paragraph 2.49, should be addressed by DTA in any future procurement arrangements.

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98 The Master Agreement contains information on: terms; priority of documents; work orders; adding services and products; non-exclusive arrangement; seller obligations; licences, warranties and documentation; intellectual property rights; delivery; specified personnel, security and safety; subcontracting; payment and expenses; interest for late payment; taxes; buyer material; confidentiality; privacy obligations; audit and access; alternative dispute resolution; termination and suspension; variation; waiver; assignment and novation; survival; notices; jurisdiction and definitions.

99 DTA advised the ANAO that it planned the Digital Marketplace panel to operate as a commercial environment in which the marketplace would establish price at the time procurements were made under the panel arrangement and at that point entities would conduct a value for money assessment.

100 See footnote 92 for an example.

101 DTA advised the ANAO that if the category assessor required further information to make a robust value for money assessment, the assessor would contact referees to seek further information or to verify the information provided by the seller and referee discussions would be documented.

102 Registered sellers had a seller profile, visible to buyers, on the Digital Marketplace. They could view opportunities but could not apply for them.

## Recommendation no.1

2.54 The Digital Transformation Agency ensures that when establishing procurement panels suppliers are treated equitably and are appointed on the basis of a value for money assessment in accordance with the requirements of the CPRs.

**Digital Transformation Agency response:** *Agreed.*

2.55 *The DTA notes, as discussed in this report, that since July 2018 suppliers have been treated equitably and have been appointed to the Digital Marketplace panel on the basis of VFM assessments in accordance with the requirements of the CPRs. The DTA continues to adhere to the requirements of the CPRs and will ensure its policies, procedures and supporting governance arrangements remain fit-for-purpose for future procurement arrangements established by the DTA.*

### *Digital Marketplace panel as it operates now*

2.56 As a consequence of machinery of government changes in 2017 responsibility for IT procurement policy was transferred from Finance to DTA. Following this, DTA identified that it had not conducted a value for money (VFM) assessment of suppliers in accordance with the requirements in the CPRs in December 2017 (see paragraphs 2.49 to 2.53), and commenced a 'VFM refresh' of the Digital Marketplace panel. This required all suppliers (existing and prospective) to provide a price for a consultant at or below level five of the 'Skills Framework for the Information Age'<sup>103</sup> for each category of expertise they nominated.<sup>104</sup> This price was used to conduct value for money assessments. The Marketplace would retain a dynamic pricing approach — sellers would be able to monitor the market and respond with lower prices and sellers could seek to increase their pricing at any time, but to do so would require another assessment process.

2.57 The revised process to become a registered or approved seller is similar to DTA's previous process. Suppliers register online at any time by providing the required commercial and financial details, agree to the Master Agreement and request an assessment based on responses to technical criteria for each category of expertise. DTA conducts the initial checks discussed in paragraph 2.52 above.

2.58 To become an approved seller, suppliers must now specify in their seller profile a maximum daily charge (including GST) for a consultant at or below level five of the Skills Framework for the

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103 This framework is a model for describing and managing skills and competencies for professionals working in ICT, software engineering and digital transformation. The level of responsibility for level 5 in terms of autonomy, influence, complexity, knowledge and business skills is provided at <https://www.sfia-online.org/en/framework/sfia-7/busskills/level-5>.

104 DTA advised the ANAO that the Skills Framework for the Information Age is used by a number of government buyers when seeking digital/ICT contractors and provides guidance to the market in relation to the skill level and level of responsibility required within a role. DTA further advised that: the Framework is recognised as the world's most widely used skills and competency framework for ICT and digital roles; it is observed by both Government and industry which allows the market to pitch a suitably skilled candidate that is in line with the role's requirements and sets the daily rate expectations; and through discussions with agencies, level 5 was considered to be the general level that government agencies use when seeking digital contractors.

Information Age, for each category of expertise they have nominated.<sup>105</sup> DTA has set a price threshold for each category of expertise. Price thresholds are determined such that 95 per cent of the prices received in the previous year are below or equal to the threshold.<sup>106</sup> If at this stage a supplier does not provide the necessary information or provides a price above a specified threshold, DTA rejects the application and advises the potential seller. A seller can reapply for an assessment multiple times. DTA advised the ANAO that the price threshold does not disqualify a seller based on price alone. If a seller is seeking to be approved in a category, and the seller provides a price that is above the 95th percentile, the seller is required to provide additional justification of why its offering represents value for money.<sup>107</sup>

2.59 DTA assesses whether the seller's case study/studies represent value for money for each category of expertise nominated, based on:

- (a) the extent to which the case studies demonstrate technical capacity and capability which meet the DTA technical assessment criteria, including:
  - the extent to which the case studies provide additional value above the technical assessment criteria and represent innovation; and
  - comments from referees (noting that DTA advised the ANAO that referees are not routinely contacted)<sup>108</sup>;
- (b) the extent to which supporting documentation indicates that the seller is a legitimate business (see paragraph 2.52 for examples of the checking done);
- (c) the pricing that the seller agrees to offer buyers for that category of expertise; and
- (d) any other legal, technical or financial risks to the DTA, the Commonwealth or a buyer by appointing the seller to the panel for the specified category of expertise.

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105 Registered Sellers can view the category rates that Approved Sellers have bid for previous opportunities in the Digital Marketplace.

106 If a category receives insufficient responses to reliably calculate a threshold, DTA calculates the threshold from all specialist responses. Price thresholds are reviewed and adjusted annually after 31 March each year. For the initial time suppliers provided price information, DTA used historical data (the average of prices offered for opportunities within established categories) to calculate the threshold for the panel categories. Since then, DTA has set the maximum price as 95 per cent of prices in that category for level 5 under the Skills Framework for the Information Age. DTA advised the ANAO that if the threshold reduces and a previously supplied price was now over the new 95 per cent threshold, DTA would review the details previously provided by the seller to determine if their offering continued to be value for money. The seller would be notified if it was determined not to be value for money and would have an opportunity to modify its offering. If modified, the seller would have another value for money assessment to determine if the revised price was within the threshold and would remain on the panel if it was, or be removed from the panel if it was not. DTA advised the ANAO that it has never had to remove a seller due to the threshold being readjusted to a level lower than a seller's previously approved rate.

107 For example, if a seller was initially required to meet a minimum of two criteria in a category to demonstrate their capability, the seller would be required to provide evidence that it meets the minimum two criteria plus one or more additional criteria. The category assessor will use all information provided to determine if the offering is value for money based on the further evidence provided. DTA advised the ANAO that assessors are also required to seek a second opinion to further validate any value for money assessments that include a price that is above the category threshold.

108 DTA advised the ANAO that if the category assessor requires further information to make a value for money assessment, the assessor will contact the referee to seek further information or to verify the information provided by the seller. These referee discussions are documented within the seller assessments.

2.60 If sellers are assessed by DTA as having demonstrated their capability against criteria (a), (b) and (d), DTA then conducts a value for money assessment. If the seller meets DTA requirements they are registered as an approved seller, also known as a member of the Digital Marketplace, and are able to access opportunities on the Digital Marketplace.<sup>109</sup>

2.61 When applying for opportunities in the Digital Marketplace, approved sellers can request that DTA conduct an additional assessment if the seller considers that their solution should involve prices at a higher level than the price threshold. To be successful, DTA requires the seller to meet one or more additional criteria than required for the seller's initial application to become an approved seller at a higher price.<sup>110</sup> DTA provides feedback to the seller and records details of the assessment and feedback.

2.62 DTA advises sellers of all assessment outcomes. Sellers can also view feedback on the Digital Marketplace. If the seller assessment is negative, a seller can address DTA's feedback and submit another application for another value for money assessment.

2.63 Approved sellers can request changes to their seller profile. All changes, such as adding a category of expertise or seeking a price increase, must be assessed by DTA as meeting technical and value for money requirements. These and other administrative changes are managed online through the Digital Marketplace website, with changes recorded on AusTender. DTA conducts seller assessments using a 'just in time' approach.<sup>111</sup> DTA assessors complete the assessment and authorisation process, and are delegated to enter into contracts on DTA's behalf, pursuant to section 23 of the PGPA Act.<sup>112</sup>

2.64 As DTA now requires tenderers to provide price information, it meets the minimum requirements of the CPRs to be considered a panel. However, the process adopted to join the Digital Marketplace panel is still not robust. Tenderers are allowed multiple attempts (with DTA providing feedback on where improvements are needed) to demonstrate their technical ability in order to meet the criteria to be included on the panel, and referees are not routinely contacted.<sup>113</sup> Tenderers provide a single maximum price which, under the terms of use, they are required not to exceed

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109 Only approved sellers are able to apply for panel opportunities.

110 DTA advised the ANAO that as at 18 June 2020, 170 sellers (of a total 2603 sellers) had been approved in a category with a price above the threshold, and DTA has averaged about four sellers per month who are approved in a category with a price above the threshold.

111 The just in time approach is discussed in paragraph 2.16

112 DTA manages applications using JIRA, an issue and project tracking application used to allocate and track assessments. Only assessors can log into the Digital Marketplace panel administration portal to assess requirements or update profiles. The system records decisions, reasons for the decisions and other information relevant to the supplier, such as mergers.

113 DTA advised the ANAO that the ability for a tenderer to re-apply is (in part) a response to the Digital Marketplace Panel's objective of reducing barriers for SME and start-up sellers and to increase competition. DTA stated that for 'many of these businesses their first interactions with government are often when responding to request-for-tender documentation. The panel has built an application process that does not penalise businesses for failing to understand the complexities of a government tender. The process allows for sellers to address deficiencies by re-applying sooner rather than being subject to a lock out period which for some panels could be up to 5 years or longer. This is the transformational nature of the panel; from the outset its aim was to make it easier for industry to have visibility and get access to apply and compete for government digital business.'



unless certain conditions are met.<sup>114</sup> Buyers wanting to use the panel are provided with a summary of the range of daily rates sellers have been awarded for roles in each category.<sup>115</sup> Buyers do not get to see the approved maximum prices of individual suppliers but can ask DTA to provide this information. This means that buyers who do not ask DTA for the specific price information can only use the summary of daily rates on the Digital Marketplace to guide their decision-making regarding which panellists to approach.<sup>116</sup> The impact of the lack of individual supplier price information on the selection of suppliers for individual procurements is discussed further in chapter 4 of this audit report.

## IBM Arrangement

2.65 DTA established clear objectives for the IBM Arrangement, which included:

- treatment of the Australian Government as a single customer, with standardised pricing and terms and conditions;
- achievement of savings to be returned to the Australian Government;
- reduced administrative burden for entities, including through streamlined management of licensing compliance;
- flexibility in licensing arrangements, including portability between entities; and
- incorporating the broader requirements of all non-corporate Commonwealth entities, with no entity to be worse off under a WoAG arrangement.

2.66 DTA received four separate offers from IBM and each was assessed against these objectives. When the final IBM offer was received in May 2018, it was determined to be broadly in line with DTA's objectives. Details relating to the Head Agreement and individual work orders (these were the ELAs discussed in paragraph 2.33) were further negotiated until the arrangement was executed on 28 June 2018.

2.67 When negotiating the IBM Arrangement, DTA undertook a number of activities that meant that the final arrangement was likely to represent value for money. In assessing value for money, DTA relied on its own analysis and drew on assessments provided by the lead negotiator, advice provided by members of the CENT (discussed at paragraph 2.34) and advice from the entities that were party to the DTA ELA. DTA would not enter into the Head Agreement unless the other entities agreed that the proposed arrangement was value for money.<sup>117</sup> DTA also obtained legal advice throughout the process. DTA's advice to its delegate detailed how the Head Agreement met DTA's objectives and contained assessments of value for money provided by entities that were party to

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114 The Master Agreement that all suppliers are required to sign to join the Digital Marketplace panel states that a seller is obligated to supply the deliverables specified in a work order at a price no less favourable than the pricing offered by the seller in their application to be a registered seller, unless the circumstances warrant alternative pricing and that alternative pricing can be justified. This obligation does not apply to additional costs specified in a work order (for example, travel).

115 Examples of the price information available on the Digital Marketplace are provided in Appendix 3.

116 Buyers can search category, expertise and location to inform the selection of suppliers. This is discussed further in paragraph 4.22.

117 Individual entities determined value for money having regard to various factors such as price reductions, price protections against future price rises, offsets, avoided costs, additional inclusions and the flexibility and portability of arrangements.

the five ELAs. This presented a reasonable argument that DTA's objectives were met in the establishment of the IBM Arrangement.

2.68 DTA agreed to certain compromises on its objectives, on practical grounds. The Head Agreement provided standardised terms and conditions for non-corporate Commonwealth entities with the exception of Services Australia, which had separate terms contained in an annexure to the Head Agreement. This was to preserve terms that Services Australia had negotiated with IBM under previous arrangements, the loss of which would have placed Services Australia in a worse position. Similarly, DTA approved certain contracts remaining separate to the terms of the Head Agreement, including Home Affairs' Main Processing Services Agreement (MPSA), which was originally established in 2008 and contained complex contractual arrangements that were not practical to incorporate into the Head Agreement.<sup>118</sup>

### **Digital marketplace panel and IBM Arrangement**

2.69 As mentioned in paragraph 2.17, DTA's planning documentation indicated that the creation of the Digital Marketplace panel was not itself considered to be a procurement. This contributed to it not being established in accordance with Finance requirements, as tenderers were not subject to a value for money assessment prior to joining and suppliers were not treated equitably as tenderers were allowed to join the panel via different means. DTA subsequently introduced a price component for tenderers on the Digital Marketplace panel, with the result that it met the minimum requirements for a panel. However, as discussed in paragraph 2.64, the processes to join are not robust and impact the level of assurance (available to buyers) that suppliers on the panel represent value for money.

2.70 Further, as discussed in paragraph 2.22, DTA initially treated the process to establish the IBM Arrangement as a 'project to establish a contractual framework' rather than a procurement, and shortcomings in planning for the IBM Arrangement impacted on both the effectiveness of DTA's negotiation approach and its management of risk and probity. DTA identified the objectives of the Digital Marketplace panel and the IBM Arrangement but not how these related to the underlying procurement mechanism used to establish these arrangements. The misunderstandings evident in the establishment of both arrangements indicates a need for DTA to ensure that officials undertaking complex procurements have sufficient understanding of key issues, such as framework requirements for specific procurement arrangements and the related risks.

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118 A similar exception was granted in relation to Defence's Enterprise Resource Planning contract in July 2019, which was awarded to IBM after an open approach to market that commenced prior to finalisation of the IBM Arrangement.

## Recommendation no.2

2.71 The Digital Transformation Agency ensures that officials undertaking complex procurements have sufficient understanding of the procurement requirements, the nature of the arrangement being established and procurement related risks.

**Digital Transformation Agency response:** *Agreed.*

2.72 *The DTA will continue to ensure that complex procurements draw on the experience, corporate knowledge and lessons learned from previous and ongoing negotiations to establish digital sourcing arrangements. Additionally, the DTA will continue to provide training for staff to ensure they are aware of and understand current government procurement and risk management obligations. This includes training programs, on the job learning opportunities and participation in the DTA's Digital Sourcing Network (DSN) series of events.*

### 3. Establishment of ICT related procurement panels and arrangements — approval, reporting, risk management, probity and monitoring arrangements

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#### Areas examined

This chapter examines whether the Department of Infrastructure, Transport, Regional Development and Communications (Infrastructure) and the Digital Transformation Agency (DTA) complied with approval and reporting requirements, undertook risk management, managed probity and established effective monitoring arrangements to enable them to assess whether the arrangements met their objectives.

#### Conclusion

In relation to the establishment of the selected arrangements:

- Infrastructure and DTA obtained relevant approvals, complied with CPR reporting requirements and established processes to manage risk and probity. Given the scale and scope of its procurement arrangements, DTA should have been more active in identifying and managing key risks and probity arrangements in the establishment process.
- Infrastructure did not conduct systematic monitoring to assess whether its panel arrangement was meeting Infrastructure's objectives. The panel ceased operation in February 2020. DTA conducts a range of monitoring activities in relation to the Digital Marketplace panel and the IBM Arrangement. Monitoring in relation to the Digital Marketplace panel indicates that its objectives are largely being met. Monitoring in relation to the IBM Arrangement indicates that it is achieving some of its objectives although anticipated savings have not yet been achieved.

#### Area for improvement

The ANAO identified an opportunity for DTA to better ensure its management of risk and probity is commensurate with the nature, scale and scope of its procurement activity.

3.1 This chapter focuses on approval, reporting, risk management, probity and monitoring arrangements in the establishment of the three ICT related procurement panels. Details of the procurement arrangements selected for review were outlined in Table 2.1.

#### Did approvals, records and AusTender reporting for the selected arrangements comply with the PGPA Act, CPRs and related guidance?

Infrastructure and DTA obtained relevant approvals for each of the three selected arrangements. Infrastructure and DTA also complied with the CPRs when reporting details of these arrangements on AusTender.

3.2 The ANAO assessed whether Infrastructure and DTA's approvals, records and AusTender reporting complied with selected mandatory requirements of the Commonwealth Procurement Rules (CPRs) and related guidance. Specifically the ANAO assessed whether, for each arrangement, Infrastructure and DTA had:

- maintained appropriate records of approval;
- had evidence of agreements with suppliers in the form of contracts;
- maintained a level of documentation commensurate with the scale, scope and risk of the procurement;
- maintained a report in accordance with paragraph 10.5 of the CPRs (IBM Arrangement only); and
- reported the arrangement on AusTender within 42 days.

## Approvals and records

3.3 Subsection 23(3) of the PGPA Act provides that the accountable authority of a non-corporate Commonwealth entity may approve a commitment of relevant money for which the accountable authority is responsible. Subsection 23(1) of the PGPA Act provides that an accountable authority may, on behalf of the Commonwealth, enter into an arrangement (which includes a contract, agreement, deed or understanding) under which relevant money will be payable by the entity. An accountable authority may delegate these powers to officials.

3.4 In some entities there is a two stage approval process, where an arrangement cannot be entered into under subsection 23(1) of the PGPA Act until approval for the commitment of relevant money has first been given by a delegate under subsection 23(3) of the Act. The framework enables each non-corporate Commonwealth entity to adopt its own processes and internal requirements relating to the approval of commitments of relevant money. These may be documented in Accountable Authority Instructions (AAIs) made under the PGPA Act and/or in directions attached to delegations or authorisations to commit relevant money.

3.5 Under section 18 of the PGPA Rule, where an accountable authority or official (i.e. a delegate) approves the commitment of relevant money, that person must record the approval in writing as soon as practicable after giving the approval.

3.6 In respect to procurement, paragraphs 7.2 to 7.4 of the CPRs state that:

7.2 Officials must maintain for each procurement a level of documentation commensurate with the scale, scope and risk of the procurement.

7.3 Documentation should provide accurate and concise information on:

- a. the requirement for the procurement;
- b. the process that was followed;
- c. how value for money was considered and achieved;
- d. relevant approvals; and
- e. relevant decisions and the basis of those decisions.

7.4 Relevant entities must have access to evidence of agreements with suppliers, in the form of one or a combination of the following documents: a written contract, a purchase order, an invoice or a receipt.<sup>119</sup>

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119 Finance, *Commonwealth Procurement Rules*, April 2019, paragraphs 7.2–7.4 [Internet].

3.7 In addition, Finance procurement guidance states that officials undertaking an evaluation process should 'provide sufficient documentation and information to the delegate to enable them to make an informed decision.'<sup>120</sup>

#### *IT Services panel*

3.8 Once Infrastructure's Technical Evaluation Committee had determined a list of preferred suppliers to join the IT Services panel, the committee sought delegate approval that those suppliers listed represented value for money. The delegate was advised that, subject to delegate approval, each preferred supplier would be invited to join the panel and asked to execute the deed of standing offer.<sup>121</sup> The delegate was provided with information on the process undertaken, the requirement for the panel, the proposed categories, the officials involved in the assessment, a timeline of the process, pricing details for each category and risk assessment information for each supplier. The delegate endorsed the recommendations of the committee on 3 February 2017. The delegate had appropriate delegation to enter into the arrangements.

3.9 For a sample of five suppliers, the ANAO established that DTA had maintained contracts with all suppliers.

#### *Digital Marketplace panel*

3.10 As the Digital Marketplace panel remains continuously open, DTA uses a 'just in time' evaluation approach to assess and appoint sellers to the panel within nominated categories. Because potential panel members have to agree to the Master Agreement as part of the process of becoming an approved seller, once a DTA official approves a seller, the seller automatically becomes a member of the panel and it is the approving official who is exercising a delegation relating to section 23 of the PGPA Act. All DTA officials assessing suppliers have a relevant delegation and approval of the seller has the effect of DTA entering into an agreement. The application and assessment workflows provide documentation of the process.

3.11 For a sample of five suppliers, each had signed the Master Agreement with DTA.

#### *IBM Arrangement*

3.12 The IBM Arrangement Head Agreement and the DTA ELA were executed by DTA and IBM on 28 June 2018 in accordance with DTA delegations, which provide for DTA's Chief Procurement Officer to approve the establishment of WoAG procurement arrangements. The delegate was provided with detailed information outlining the objectives of the procurement, the processes followed and the basis on which the arrangement was assessed as representing value for money. Each agency participating in the IBM Arrangement (either as part of the DTA ELA or establishing their own ELA with IBM directly) provided DTA with confirmation that the arrangement represented value for money for them, and evidence of delegate approvals to enable the arrangement to proceed. This was a necessary step for assessment of the overall IBM Arrangement and for establishment of the DTA ELA, which DTA was executing on behalf of ten entities.

3.13 Where a procurement has been undertaken through limited tender, the CPRs state that:

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120 Finance, *Procurement Process Considerations* [Internet].

121 The delegate was advised that as part of the legal compliance review there were a small number of items in the deed of standing offer that needed to be addressed. Infrastructure also advised the delegate that it would update the deed to reflect these items and also provide a marked-up version of the deed to each tenderer to show the changes made since the RFT. A list of changes was provided to the delegate.

an official must prepare and appropriately file within the relevant entity's records management system a written report that includes:

- a. the value and type of goods and services procured;
- b. a statement indicating the circumstances and conditions that justified the use of limited tender; and
- c. a record demonstrating how the procurement represented value for money in the circumstances.<sup>122</sup>

3.14 DTA's approval documentation for the IBM Arrangement met these requirements.

3.15 Both DTA and Infrastructure maintained a level of documentation that was commensurate with the scale, scope and risk of their respective arrangements and met the requirements outlined in paragraphs 3.6 and 3.7 above. However, as discussed in paragraphs 3.27 to 3.31 below, some documentation relating to risk management for the IBM Arrangement was lacking.

### **AusTender reporting**

3.16 The CPRs state that:

Regardless of value, standing offers must be reported on AusTender within 42 days of the relevant entity entering into or amending such arrangements. Relevant details in the standing offer notice, such as supplier details and the names of other relevant entities participating in the arrangement, must be reported and kept current.<sup>123</sup>

3.17 Infrastructure's IT Services panel and DTA's Digital Marketplace panel were reported on AusTender within 42 days of entering into the arrangement. DTA reported the IBM Arrangement on AusTender within the required timeframes. The DTA ELA with IBM was not reported on AusTender until 1 July 2019, one year after its commencement date.

### **Did the management of risk and probity for the selected arrangements comply with the CPRs and related guidance?**

When establishing the selected arrangements Infrastructure and DTA established processes to manage risk and probity. Given the scale and scope of the procurements, DTA should have been more active in identifying and managing key risks for the Digital Marketplace panel and IBM Arrangement, and developed more robust probity arrangements for both arrangements.

3.18 The CPRs provide that:

entities must establish processes to identify, analyse, allocate and treat risk when conducting a procurement. The effort directed to risk assessment and management should be commensurate with the scale, scope and risk of the procurement. Relevant entities should consider risks and their potential impact when making decisions relating to value for money assessments, approvals of proposals to spend relevant money and the terms of the contract.<sup>124</sup>

3.19 The CPRs further provide that:

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122 Finance, *Commonwealth Procurement Rules*, April 2019 paragraph 10.5 [Internet].

123 *ibid.*, paragraph 7.20.

124 *ibid.*, paragraph 8.2.

officials undertaking procurement must act ethically throughout the procurement. Ethical behaviour includes:

- a. recognising and dealing with actual, potential and perceived conflicts of interest;
- b. dealing with potential suppliers, tenderers and suppliers equitably.<sup>125</sup>

3.20 Finance procurement guidance states that:

Persons involved in the tender process, including contractors such as legal, commercial or probity experts, should make a written declaration of any actual, potential or perceived conflicts of interests prior to taking part in the process. These persons should also have an ongoing obligation to disclose any conflicts that arise through until the completion of the tender process. The nature of such declarations could relate to, for example: other employment; prior employment; financial interests in organisations that may be potential suppliers; relationships with people who have interests in these organisations; or relationships between contract managers and incumbent providers where contract managers are on evaluation panels.<sup>126</sup>

3.21 The ANAO assessed whether Infrastructure and DTA's management of risk and probity for the selected arrangements complied with the CPRs and demonstrated adoption of key sound practices identified in Finance guidance.

## **Entities' approaches to managing risk**

### *IT Services panel*

3.22 Infrastructure developed a procurement plan for the establishment of the IT Services panel. This included a risk assessment for the procurement. Risk was assessed as low. The procurement plan and the risk assessment were provided to the relevant delegate as part of the process of gaining approval to commence the procurement.

3.23 Infrastructure's tender evaluation plan detailed three elements to assess risks associated with a tenderer's offer: financial viability; compliance with the request for tender (RFT) including the draft contract; and risk profile. Management of any differences in the evaluation of risk were to be determined by members of the Tender Evaluation Committee as part of its deliberations.

3.24 Infrastructure had not identified the risks relating to the absence of strong thresholds in the assessment of suppliers and their inclusion in the request documentation (as discussed in paragraph 2.48).

### *Digital Marketplace panel*

3.25 DTA undertook a range of activities to identify risks to the establishment of the Digital Marketplace platform and panel.<sup>127</sup> DTA also sought legal advice and advice from Finance regarding the planned operation of the Digital Marketplace. However, as discussed in paragraph 2.17, it did not adequately identify that its planned approach was non-compliant with the CPRs. In particular

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125 *ibid.*, paragraph 6.6.

126 Finance, *Ethics and Probity in Procurement*, Tips #9, [Internet], Finance, available from <https://www.finance.gov.au/government/procurement/buying-australian-government/ethics-probity-procurement> [accessed June 2020].

127 This included research on buyers and sellers nationally, to obtain information on: the perceptions of buyers and sellers; the processes required to develop a fully online operation; and policies that may require adjustment to limit the risk of not achieving the Digital Marketplace's objectives. DTA also established a risk matrix that identified a number of delivery, policy, legal, operational and technology related risks.



(as discussed in paragraphs 2.28 and 2.49) DTA's failure to require price information in its initial approach to market impacted the evaluation process and resulted in DTA being unable to assess value for money in accordance with the CPRs. Further, DTA did not treat all potential suppliers equitably, as required by the CPRs, as suppliers were able to join the panel via different means (as discussed in paragraph 2.51).

3.26 Once DTA identified these issues in December 2017, risks identified in the establishment of the Digital Marketplace panel were recorded in the Marketplace risk register. DTA advised the ANAO that it now monitors and assesses risks and risk treatments through the DTA Sourcing Division's Program Management Office. DTA further advised the ANAO that the risk register is updated fortnightly, with risks included, reviewed and/or closed, and reported in the Digital Marketplace panel status report. DTA has also held consultation meetings ahead of any planned changes to the Marketplace, to help entities reduce risks in procurement.<sup>128</sup>

### *IBM Arrangement*

3.27 Planning documentation for the IBM Arrangement negotiations referred to intended risk management processes. However, these were not consistently applied and risk management practices were not commensurate with the scale and scope of the procurement.

3.28 The planning documentation stated that:

A risk register and risk management plan will be maintained by Finance<sup>129</sup> as part of programme management documentation, in accordance with the Department's risk management approach. This will involve the following:

- Evaluating and documenting risks in fit-for-purpose registers at programme and project levels
- Continuous monitoring and reviewing of programme / project risks and risk treatments
- Reporting risks via status reports, in accordance with the programme's tolerance thresholds.

3.29 A risk management plan was not prepared and there is no record of the risk register being consistently monitored or updated.<sup>130</sup> A risk assessment was undertaken during the scoping study period and included in planning documentation but this did not contain risks specific to the IBM process. The identified risks also did not include risks such as:

- the final arrangement not meeting the government's objectives; and
- probity risks.

3.30 A further unidentified risk, which crystallised in the course of negotiations, was not understanding IBM's business model well enough to effectively engage with IBM in the negotiation

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128 For example, feedback to DTA indicated that some buyers believed the Digital Marketplace was appropriate for low value procurements only, and buyers lacked confidence that the Master Agreement and work order template provided them with adequate protections for high value procurements. Workshops were held with government entities and the Australian Information Industry Association acting on behalf of industry sellers, and subsequently advice via email was sent to buyers advising of planned changes to the Master Agreement prior to its release on 1 July 2019.

129 ANAO comment: at the time the IBM Arrangement was being planned, Finance had responsibility for its establishment. Responsibility for establishing the arrangement was transferred to DTA from May 2017.

130 DTA advised the ANAO that risks were monitored and the system regularly updated but no documents were maintained.

process. IBM's first three commercial offers did not meet DTA's objectives in establishing the arrangement and contributed to the negotiation process taking longer than anticipated (see paragraph 2.32). A lessons learnt review undertaken by DTA after the IBM Arrangement was finalised identified that 'the Commonwealth did not understand IBM's internal incentives and levers to bring them to the negotiation table' and that engaging external experts with experience in negotiating large arrangements with multinational companies made a critical difference in the negotiation process (see paragraphs 2.32 to 2.35 for an overview of how the DTA's negotiation approach evolved over the negotiation period).

3.31 Late in the negotiation period there were renewed efforts to identify and manage risks, especially risks relating to finalising the arrangement within the negotiation timeframes. There was difficulty in reaching a consensus view among government entities that would use the arrangement and tight timeframes caused detailed assessments of commercial and legal elements of the arrangement to be rushed.<sup>131</sup>

## **Entities' approaches to managing probity**

### *IT Services panel*

3.32 Infrastructure's internal policies require all procurements exceeding \$500,000 to have a probity plan. A probity plan was developed for this procurement and a probity advisor appointed. The probity plan developed for the procurement broadly covered: the procurement and evaluation of tenders; probity principles and implementation; and record keeping with linkages to the procurement plan, tender evaluation plan and high level timeline for the procurement. A movement control register, deed of non-disclosure pro forma, declaration of personal interests pro forma, and probity checklist were attached. Infrastructure created a risk profile for each tenderer with potential risks based on suppliers' level of compliance with the proposed deed of standing offer and assessed the 306 valid submissions received. Conflict of interest and deed of non-disclosure forms were completed by all Tender Evaluation Committee members and departmental staff working on the tender.

3.33 Infrastructure employed a contractor to assist the department to undertake the procurement. This person was also a member of the Tender Evaluation Committee. As the contractor worked for an organisation that would likely apply to join the panel, Infrastructure established arrangements to manage potential and/or actual conflicts of interest. This included the contractor completing a declaration of personal interests and deed of non-disclosure. The contractor also completed an undertaking about conflicts of interest for the company for which the contractor worked. In addition, the company provided Infrastructure with its planned protocols for managing any conflict. Infrastructure advised the ANAO that the contractor did not evaluate any part of their firm's tender response and was excluded from any conversations about scoring for the tender.

3.34 As discussed in paragraph 2.43, tenderers were asked to provide a statement regarding any issues they considered may give rise to a conflict of interest in the provision of the required services

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131 Some entities signing ELA agreements under the IBM Arrangement noted that assessments and approvals had to be rushed to meet the DTA's deadlines. For example, Services Australia's supporting documentation indicated that significant effort and time would be required to identify and ensure key contractual protections were carried across into the new WoAG documents. However a limited timeframe was provided for this activity.

and any actions or arrangements that the tenderer proposed to undertake in response to these issues. The RFT advised that clarification may be sought by the department at any time as part of this RFT process. Departmental records indicated that two tenderers advised of potential conflicts. One was from the organisation mentioned above which had a staff member contracted to Infrastructure, and another tenderer disclosed a conflict relating to one of its directors working in an unrelated public sector entity.

3.35 Infrastructure advised the ANAO that no other probity matters arose during the process and accordingly there are no records of probity matters having been raised or managed.

#### *Digital Marketplace panel*

3.36 DTA did not have a probity plan, risk management plan or tender evaluation plan in place prior to establishing the Digital Marketplace panel in February 2017. Documentation indicates a tender evaluation plan and probity plan for the Digital Marketplace panel were each signed on 20 April 2018, more than 12 months after the panel was established.<sup>132</sup>

3.37 The 2018 tender evaluation plan detailed the required technical, commercial and financial assessments. These included probity and planning assessments, and a risk assessment linked to the probity plan. In particular, the evaluation plan noted that:

an independent Legal and Probity Adviser has been appointed ... all Seller Evaluation Group participants and all Marketplace staff are required to: read the Probity Plan; attend a probity briefing; and adhere to probity protocols outlined in the Probity Plan ... and any conflict of interest must be managed in accordance with the DTA AAls and the Operational Guidelines and Probity Plan.

3.38 The probity plan clearly describes the probity principles applying to the process, the roles and responsibilities of designated participants such as the probity adviser and delegate, and the protocols for dealing with potential probity matters. DTA advised the ANAO that the assessment process workflow incorporates segregation of duties so no single person can assess and approve a seller's admission to the panel.

3.39 Typically, when panels are established all of the tenderers' responses are due by a particular date and once assessed, new suppliers cannot be added. Entities often establish specific procedures to manage risk and probity during the assessment process until its completion. As the Digital Marketplace panel is continuously open to new suppliers, DTA advised the ANAO that it manages probity through such processes as requiring all buyers, sellers and DTA employees to be bound by the contractual rules and mutual obligations of the Marketplace as well as the requirements of the Master Agreement. Employees and contractors also sign confidentiality agreements.<sup>133</sup>

3.40 DTA advised the ANAO that there has been one conflict of interest identified by a Digital Marketplace staff member. This was a contractor who was also an approved sole trader in a Marketplace category. DTA further advised this was managed by: limiting this staff member's access to information in the category they were approved in; precluding this staff member from completing seller assessments in the category they were approved in; and having this person's

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132 DTA advised the ANAO that prior to the development of the probity plan the team was directly briefed on responsibilities, and where required, direct advice was sought from DTA's internal legal and policy lead or probity advisor.

133 DTA further advised the ANAO that employees and contractors are bound by the *Public Service Act 1999*. This would apply equally to all entities whose officials are employed under that Act.

systems access limited to ensure they did not have access to commercial information in their approved category.

### *IBM Arrangement*

3.41 A probity plan was established for the negotiations with IBM in June 2017.<sup>134</sup> However, there was limited evidence of DTA actively managing probity risks. In particular, probity risks did not appear in DTA's risk assessments and DTA staff and contractors involved in the negotiations did not complete conflict of interest declarations, including declarations that no conflict of interest existed, despite it being a requirement of the probity plan. DTA advised the ANAO that no conflicts were identified.

#### Opportunity for improvement

3.42 Given the scale and scope of the procurement activities involved in establishing the IBM Arrangement, DTA should have developed more robust practices regarding the management of risk and probity commensurate with the nature, scale and scope of its procurement activity. This should be: done at the commencement of the procurement process; documented appropriately; and updated as necessary throughout the procurement process.

### **Did Infrastructure and DTA establish monitoring arrangements to enable them to assess whether the selected procurement arrangements met their objectives?**

Infrastructure did not conduct systematic monitoring to assess whether the panel objectives were met. The panel ceased operation in February 2020. DTA undertakes a range of monitoring activities in relation to the Digital Marketplace panel. Monitoring indicates that its objectives are largely being met. DTA's role in establishing and monitoring the ongoing use of the IBM Arrangement enabled it to ascertain that the arrangement is largely meeting its objectives. As the planned timeframe for establishing the IBM Arrangement was not achieved, planned savings have also not been achieved. As at June 2020, DTA was working with Finance to finalise arrangements for achieving anticipated savings from the IBM Arrangement.

3.43 Panels are established to increase efficiency and reduce cost and risk while supporting the achievement of value for money.

3.44 The CPRs state that:

The Australian Government promotes the proper use and management of public resources. Proper means efficient, effective, economical and ethical ... Effective relates to the extent to which intended outcomes or results are achieved. It concerns the immediate characteristics, especially price, quality and quantity, and the degree to which these contribute to specified outcomes.<sup>135</sup>

3.45 Monitoring whether a procurement arrangement is meeting its intended objectives assists entities to adopt more efficient ways to approach the market and achieve better value for money. Entities can adopt a range of approaches to assess whether procurements have been effective in meeting desired objectives. The ANAO assessed whether Infrastructure and DTA established

134 This plan applied to the negotiations with IBM as well as those with SAP and Oracle.

135 Finance, *Commonwealth Procurement Rules*, April 2019, paragraphs 6.1 and 6.3 [Internet].

monitoring arrangements to enable them to assess whether the selected procurement arrangements met their specified objectives.

## IT Services panel

3.46 As discussed in paragraph 2.11 the objective of the panel was to provide for reduced procurement timeframes, reduced administrative burden and repeatable processes through a central standing offer.

3.47 In recommending the establishment of the IT Services panel, Infrastructure advised the delegate in October 2016 that:

- the department's previous panel had 132 suppliers across 19 categories for either services or personnel;
- over the five years the previous panel had operated, the department had spent an estimated \$40 million, and \$194 million of goods and services had been procured by other agencies; and
- no other arrangement had the same scope and breadth of suppliers.

3.48 There was no documented analysis of utilisation of the previous panel to indicate whether or not it had met the department's objectives or to inform the procurement process to establish the IT Services panel. Infrastructure advised the ANAO that many of the procurements from both the previous panel and the IT Services panel involved procurement officials from a centralised area in the department<sup>136</sup>, so officials were familiar with the extent of its use and their knowledge informed the procurement process.

3.49 AusTender (as at 12 June 2020) indicated that since its establishment in 2017, the IT Services panel had been used 252 times by Infrastructure for procurements with a combined reported value of over \$45.7 million. In addition, 2604 contracts had been awarded, with an approximate value of \$909 million, by all users of the panel.<sup>137</sup> Infrastructure advised the ANAO in October 2019 that no systematic monitoring processes had been or would be implemented to monitor the panel arrangement and whether it was achieving its objectives, as the panel was going to expire in February 2020 and the department would not seek an extension, but would instead use the Digital Marketplace panel.<sup>138</sup>

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136 Infrastructure advised the ANAO that procurement is centralised in one branch which includes IT and procurement specialists who work with business areas to define procurement requirements. The branch also supports departmental and other entities' use of panel procurement by disseminating online guidance (for example, guidance titled *How to use the IT services panel*).

137 AusTender as at 12 June 2020. AusTender SON3403954 - *IT Services Panel Contract Dashboard*, [Internet], available from <https://contracts.disclosurelo.gs/displaySON.php?SONID=SON3403954> [accessed June 2020]. Note, these figures reflect the aggregated figures for the Department of Infrastructure and Regional Development, the Department of Infrastructure, Regional Development and Cities, the Department of Infrastructure, Transport, Cities and Regional Development and the Department of Infrastructure, Transport, Regional Development and Communications.

138 The IT Services panel expired in February 2020.

## Digital Marketplace panel

3.50 AusTender reporting indicates that as at 12 June 2020 there were 4704 contracts with a combined value of approximately \$1.776 billion under the Digital Marketplace panel.<sup>139</sup> As stated in paragraph 2.13, the objectives of the Digital Marketplace panel were to increase the participation of small to medium enterprises (SMEs) and start-ups by breaking down barriers to entry, delivering better procurement outcomes through increased competition and promoting innovation across government.<sup>140</sup> Prior to the establishment of the Digital Marketplace, information provided by Finance indicates that: SMEs represented 28 per cent by value (\$16.7 billion) of the \$59.4 billion value of contracts reported in 2014–15; and by volume, SMEs represented 59 per cent (41,151) of the total 69,236 contracts awarded during this period. DTA reported that in 2015–16, SMEs received approximately 30 per cent of the ICT procurement contract by value and 59 per cent by volume.<sup>141</sup> In subsequent years, Finance's data shows that the percentage of total contracts by value awarded to SMEs dropped and then rose again and the percentage of total contracts by volume awarded to SMEs dropped and has remained relatively constant at the lower level as outlined in Table 3.1 below.

**Table 3.1: Statistics on Australian Government Procurement Contracts**

	2016–17	2017–18	2018–19
Total value of contracts	\$47.3 billion	\$71.1 billion	\$64.4 billion
Value of contracts awarded to SMEs	\$9.95 billion	\$12.9 billion	\$16.7 billion
Percentage of total contract by value awarded to SMEs	21	18.1	25.9
Total number of contracts	64,092	73,458	78,150
Volume of contracts awarded to SMEs	34,621	38,739	41,341
Percentage of total contracts by volume awarded to SMEs	54	53	53

Note: These figures are based on AusTender and only include results for entities that use AusTender and for contracts that meet the reporting thresholds. Under paragraph 7.19 of the CPRs the reporting thresholds (including GST) are:

- a. \$10,000 for non-corporate Commonwealth entities; and
- b. for prescribed corporate Commonwealth entities,
  - i. \$400,000 for procurements other than procurement of construction services, or
  - ii. \$7.5 million for procurement of construction services.

Source: ANAO analysis of Finance data. Finance, *Statistics on Australian Government Procurement Contracts*, [Internet].

139 Numbers and values of contracts are provided at <https://contracts.disclosurelo.gs/displaySON.php?SONID=SON3413842> [accessed June 2020].

140 Australian Government, *National Innovation and Science Agenda*, p.15 [Internet].

141 DTA, Report of the ICT Procurement Taskforce, DTA p.18, [Internet], DTA, available from <https://www.dta.gov.au/help-and-advice/ict-procurement/digital-sourcing-framework-ict-procurement/ict-procurement-taskforce-report> [accessed June 2020]. SMEs are defined as businesses with 200 or less employees.

3.51 DTA reported in June 2020 that 63 per cent of the dollar value contracted through the Marketplace since 29 August 2016 has been awarded to SMEs<sup>142</sup>, which is significantly higher than the AusTender results for all procurements. From the monitoring undertaken by DTA it is not possible to determine whether or not this increase is due to the breaking down of barriers to entry or for other reasons. In June 2020 DTA advised the ANAO that there have been nearly 4000 opportunities to date and there were over 1600 sellers on the Digital Marketplace panel, 90 per cent of which are SMEs. Additionally, as at 12 June 2020, of the 703 sellers that had won contracts through the Digital Marketplace, 596 self-identified as SMEs, representing approximately 85 per cent of all contracts awarded to that date.<sup>143</sup>

3.52 Auditor-General Report No. 27 2019–20 *Australian Government Procurement Contract Reporting Update* reported that Finance is working with the Australian Bureau of Statistics to refine the methodology that is used to estimate the level of small and medium enterprise (SME) participation.<sup>144</sup>

3.53 In terms of delivering better procurement outcomes through increased competition, DTA reports on ‘how are we encouraging competition’ on the Marketplace website. In June 2020 DTA reported that since 29 August 2016, 33 per cent of opportunities have been open to all suppliers on the Digital Marketplace panel and advised that this has decreased over time. The Digital Marketplace provides buyers with an easy way to open any opportunity to all Marketplace sellers. If used, this has the potential to increase competition (in contrast, entities using traditional panels do not typically approach all suppliers on the panel).<sup>145</sup> However, realising these benefits relies on entities adopting this approach, as entities using the Digital Marketplace panel are not required to approach the market in this way. As discussed in Chapter 4 and as outlined in Appendix 2 of this report, many entities do not use this option and often approach only a small number of suppliers, or in some cases only one supplier — which does not encourage competition.<sup>146</sup>

3.54 In terms of promoting innovation across government, the Digital Marketplace panel is continuously open to new suppliers, which is not typical of procurement panels in the Australian Government sector. As discussed in paragraph 2.57, the process to join the panel is relatively simple,

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142 This figure is provided in DTA’s Digital Marketplace Insights for May 2020. DTA notes the information is sourced from AusTender and excludes contracts awarded by entities that do not report through AusTender and contracts under \$10,000. DTA also notes that contracts may take up to 42 days to be published on AusTender.

143 A direct comparison between the data reported by Finance and DTA is not possible. Finance reports procurement activity based on AusTender, which is used solely by Australian Government entities, whereas reports on the Digital Marketplace include procurement activity by local, state and national government entities. Differences in the classification of a business as a SME may also impact the comparability of results. Finance uses an estimate provided by the Australian Bureau of Statistics based on AusTender data and the ABS Business Register, whereas for the Digital Marketplace suppliers self-identify as SMEs. Some national or multinational suppliers can have subsidiaries that meet the requirements of a SME.

144 Auditor-General Report No.27 2019–20 *Australian Government Procurement Contract Reporting Update*, p. 10, [Internet].

145 The ANAO’s previous audit on panels identified scope for entities to seek multiple quotes more often when selecting a supplier to support the achievement of value for money, particularly for higher value procurements. See Auditor-General Report No.31 2011–12 *Establishment and Use of Procurement Panels*. [Internet], ANAO, available from <https://www.anao.gov.au/pubs/performance-audit> [accessed March 2020].

146 As outlined in paragraph 2.64 and discussed further in paragraph 4.23, the Digital Marketplace provides the option to search for suppliers based on a number of variables other than price.

making it easier for SMEs and start-up sellers to join. This has the potential to enable government to access new industry innovations and emerging technologies on an ongoing basis. The Digital Marketplace also has a specific emerging technology category to link government to new industry innovations<sup>147</sup>, and in February 2019 DTA launched an ‘ask the market’ feature on the Digital Marketplace that allows government buyers to engage with industry.<sup>148</sup> Further, DTA established the Digital Sourcing Network (DSN) to build government buyer and seller sourcing capability. The DSN aims to ‘help practitioners obtain information, form connections with the sourcing community, and discover new tools and resources’ although this relates more to DTA’s ongoing role rather than the Digital Marketplace specifically.<sup>149</sup>

3.55 DTA publishes various data monitoring and performance analyses on the Digital Marketplace website and the Digital Marketplace Performance Dashboard (the Dashboard), although not all monitoring directly relates to whether or not it is meeting its objectives. The Digital Marketplace website facilitates access to open opportunities, the seller catalogue and a summary of contracts. The website also reports on:

- total opportunities — 4066<sup>150</sup>;
- percentage awarded to SMEs — 68 per cent (in terms of number of contracts);
- percentage awarded to SMEs — 63 per cent (in terms of dollar value of contracts); and
- total value of work contracted via the Digital Marketplace — \$1.445 billion.<sup>151</sup>

3.56 From this site users can access the Dashboard, which reports monthly and provides annual performance analysis of key performance indicators (KPIs).<sup>152</sup> As at 15 June 2020 the Dashboard reported on:

- user satisfaction — 86 per cent<sup>153</sup>;

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147 This includes: block chain discovery; machine learning proof of concept; artificial Intelligence proof of concept; exploration of 3D technology; augmented reality posters; emerging technology design sprints; eSignature proof of concept; and robotic process automation.

148 DTA advised the ANAO that the ‘ask the market’ feature on the marketplace enables government buyers to invite expressions of interest or requests for information from sellers on the Digital Marketplace. DTA also advised that ‘ask the market’ is designed to allow buyers to tap into and leverage innovative solutions and ideas from industry and is suitable when buyer requirements are not clear or well defined, but buyers have a general understanding of the problem to be solved. DTA further advised the ANAO that 102 ask the market opportunities had been posted as at 18 June 2020.

149 DTA, Digital Sourcing Network; available from <https://www.dta.gov.au/help-and-advice/uplifting-digital-sourcing-capability/digital-sourcing-network> [accessed June 2020]. The DSN hosts events with speakers, panel discussions and roundtable events relevant to the digital sourcing community.

150 The Digital Marketplace panel is open to all Commonwealth, state, territory and local government entities. These figures include contracts awarded by entities that do not report through AusTender.

151 These figures are as at 15 June 2020. Current figures are available from <https://marketplace.service.gov.au/> [accessed June 2020].

152 All figures are as at 15 June 2020. DTA, *Performance Dashboard Digital Marketplace* [Internet], DTA, available from <https://dashboard.gov.au/dashboards/7-digital-marketplace> [accessed June 2020].

153 Buyers and sellers are asked to rate the level of difficulty after completing key transactions on the Digital Marketplace. Responses are scored as follows: Easy = 100, OK = 50, and Difficult = 0. The figure shown is the average of all responses for the month.



- cost per transaction — which DTA advises has fallen from approximately \$12 per transaction in December 2018 to \$5.39 in June 2020<sup>154</sup>;
- digital take up — 61 per cent<sup>155</sup>; and
- completion rate — no data.<sup>156</sup>

3.57 Users can also access the online Digital Marketplace monthly ‘Insights’, which provides a monthly summary report containing information on: top buyers; the number and type of opportunities posted on the Marketplace; the number of responses per opportunity; value of work contracted through the Marketplace; the value contracted to SMEs; and the daily rates that sellers have bid for specialist roles, by category.<sup>157</sup>

3.58 Monitoring and review of Marketplace activity has also included targeted analysis and reports, including:

- ‘The Digital Marketplace one year on’ — an internal document which reported success against the Digital Marketplace objectives of increasing SME participation, increasing competition and promoting innovation across government. It examined options for further development and made recommendations for improvement.
- DTA Buyer Marketplace Research (August 2018) — which sought feedback from 13 procurement staff from major entity buyers and five business areas to understand the issues preventing buyers from embedding their use of the Digital Marketplace and how important the issues were for buyers.
- DTA seller research — which combined data from online feedback (226 feedback points from July to December 2018), 213 Zendesk tickets<sup>158</sup>, a previous seller survey and Zendesk analysis to identify any transaction points that sellers identified as confusing, complex or restrictive.
- Government reporting — as part of the broader National Innovation and Science Agenda (NISA), in 2019 DTA reported on implementation progress to the Evaluation Unit within the Department of Industry, Innovation and Science, by responding to a questionnaire seeking information on outcomes, lessons learnt, unintended consequences, performance and governance.

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154 The Dashboard states cost is calculated using the number of sessions against the total cost of developing, supporting and iterating the Marketplace, including operations and management. The Marketplace is operating within a DevOps cycle where the team iterates features based on user feedback and continuously releases working software.

155 The Dashboard states digital take-up measures the percentage of Principal Entities in the Australian Government Organisations Register that have published an opportunity on the Digital Marketplace. This includes non-corporate Commonwealth entities, corporate Commonwealth entities and Commonwealth companies. The register can be found at <https://www.directory.gov.au/reports/australian-government-organisations-register>.

156 The Dashboard states completion rate measures the number of contracts awarded (as reported on AusTender) against the number of opportunities published by agencies that are required to report on AusTender. The number of contracts is the total count of contract notices on AusTender with standing offer numbers SON3364729 or SON3413842.

157 The daily rates that sellers have bid for specialist roles, by category, enables buyers to see rates charged for similar work.

158 Zendesk tickets are used to track domain and administrative exchanges between DTA and sellers in the Digital Marketplace.

3.59 DTA has also implemented a direct feedback portal on the Dashboard to seek comments from buyers and sellers to support site and process development.

## **IBM Arrangement**

3.60 As outlined in paragraph 2.65, DTA determined clear objectives for establishing the IBM Arrangement. These included: obtaining standardised pricing and terms and conditions; generating savings; reduced administrative burden for entities; flexibility in licensing arrangements; and incorporating the broader requirements of all non-corporate Commonwealth entities, with no entity to be worse off under a WoAG arrangement. DTA's role in establishing and monitoring the ongoing use of the IBM Arrangement enables it to ascertain that the arrangement is largely meeting its objectives.

3.61 As the entity with general responsibility for WoAG ICT procurement arrangements, DTA has a key role in monitoring the IBM Arrangement. This role is also captured in the IBM Arrangement Head Agreement, which states that DTA's role includes:

- administering the Head Agreement;
- approving changes to the Head Agreement proposed for a contract (where a term in the Head Agreement is to be materially changed for a given contract);
- monitoring the performance of contracts;
- collecting data relating to IBM's performance; and
- monitoring and reporting on the operation of the Head Agreement.

3.62 DTA has also established a governance structure for the arrangement, which assists in monitoring the arrangement.<sup>159</sup> DTA has further detailed its governance and monitoring role in a contract management plan (CMP), which it finalised in July 2019. DTA monitors contracts formed under the arrangement by generating monthly reports from AusTender and monitors contractual compliance requirements embedded into ELAs (the large work orders for ATO, Services Australia, Defence, Home Affairs and the ELA administered by DTA on behalf of ten other entities).

3.63 In July 2019 DTA completed a lessons learnt review of the negotiation and implementation of the IBM Arrangement. Feedback was sought from IBM and the five entities with the largest IBM spends (Services Australia, Defence, ATO, Health and Home Affairs) on the negotiation process, execution of agreements/contracts and what entities wished to see from the arrangement in the

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159 This involves an operational team (EL2 level and IBM Project Executive, which meets bimonthly) and a management team (SES Band 1 and IBM General Manager, which meets annually). Sponsor team meetings involving the DTA Chief Strategy Officer and IBM Federal Government Director were initially planned to occur annually, however these have not been held. Meetings of the operational and management teams are co-chaired by DTA and IBM and are attended by representatives from the four ELA entities (ATO, Home Affairs, Services Australia and Defence). DTA engages other entities using or considering using the IBM Arrangement on an as needed basis.

future. The entities gave feedback highlighting issues that arose in the negotiation process and how negotiations for future whole of government arrangements could be conducted.<sup>160</sup>

3.64 DTA also initiated a review of governance arrangements in August 2019, seeking feedback on existing arrangements and potential areas for improvement. DTA advised the ANAO that the extent of monitoring undertaken throughout the first year of the IBM Arrangement led to DTA and IBM agreeing to not undertake a planned annual review of the performance of the Head Agreement.

3.65 As noted in paragraph 2.19, one of the key objectives of establishing the IBM Arrangement was to achieve savings. At June 2020, DTA advised the ANAO that it had achieved \$11.1 million in savings from the IBM Arrangement. DTA further advised that delays in finalising the IBM Arrangement and other WoAG arrangements that were being established at the same time, with other suppliers, resulted in the original timetable for returning savings to the budget not being met.<sup>161</sup> At the time of preparing this audit report, DTA advised it was working with Finance to finalise arrangements for achieving anticipated savings from the IBM Arrangement.<sup>162</sup>

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160 Feedback highlighted issues related to: the coordination of negotiations across multiple Australian Government entities; the limited time at the end of the process to assess the final content of the Head Agreement and ELA work orders; and consideration of how the arrangement would work in practice. DTA identified a number of potential improvements, including:

- that future WoAG negotiation processes could be enhanced by developing a robust negotiation plan;
- establishing clearer negotiation guidelines for the vendor being negotiated with;
- early engagement with affected entities;
- obtaining a good understanding of how the vendor operates, including ensuring that experienced entity officials and contract negotiators are engaged along with specialised external advisors;
- maintaining continuity of officials involved in the process; and
- actively promoting the benefits of the new arrangement.

161 In April 2016, when Finance received approval to expand its WoAG ICT coordinated procurement arrangements to include WoAG arrangements with IBM, Oracle and SAP, it anticipated savings of up to \$30 million. Net savings over the next four years across the three arrangements was estimated to be \$13.74 million.

162 In July 2020 DTA advised the ANAO that planned savings have been delayed but are anticipated to be met.

## 4. Use of ICT related procurement panels and arrangements

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### Areas examined

This chapter examines whether the seven audited entities<sup>163</sup> complied with the Commonwealth Procurement Rules (CPRs) and related guidance<sup>164</sup> when using ICT related procurement panels and arrangements to support the achievement of value for money outcomes.

### Conclusion

In relation to the use of the selected arrangements, entities largely complied with the CPRs to support the achievement of a value for money outcome. For one procurement, documentation did not fully demonstrate that the conditions for limited tender were met. In two other procurements, there was limited evidence supporting value for money considerations. In these three cases it was difficult for entities to demonstrate that the procurements achieved a value for money outcome. There were instances of entities not meeting requirements regarding the approval of variations to contracts, record keeping and AusTender reporting. There was also scope for some entities to strengthen their consideration and management of risk and probity.

When procuring from panels the CPRs remove the requirement for procurements over the relevant threshold to be offered to the wider market. This occurs whether or not the arrangement provides buyers with sufficient information to be an effective substitute for going to the wider market. The ability to achieve value for money for individual procurements from a panel is therefore impacted by the robustness of the processes used to assess suppliers when establishing the panel. For example, where a panel includes suppliers with low technical ability or high risk, or buyers cannot use price to help select the suppliers to approach, it is difficult to obtain a high degree of assurance that value for money has been appropriately assessed and achieved. It is also difficult to obtain such assurance when entities only approach one or a small number of suppliers. Procurements from panels and similar arrangements are often perceived as requiring less time and effort to conduct, particularly when the cost and time involved in running an open approach to market is considered, or when engaging a new supplier. When using panels and similar arrangements, entities need to adopt processes that are not just technically compliant with the CPRs but are also consistent with their intent, which is to drive value for money through competition.

### Recommendations

The ANAO made one recommendation to both the Department of Home Affairs and the Department Industry, Science, Energy and Resources aimed at enhancing the level of competition applied when conducting panel procurement.

The ANAO made one recommendation to the Australian Taxation Office aimed at enhancing its compliance with the CPRs.

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- 163 The seven entities are the Department of Infrastructure, Transport, Regional Development and Communications (Infrastructure), the Digital Transformation Agency (DTA), the Australian Electoral Commission (AEC), the Australian Taxation Office (ATO), the Department of Home Affairs (Home Affairs), the Department of Industry, Science, Energy and Resources (Industry), and Services Australia.
- 164 Related guidance is guidance outlined in the CPRs and other guidance provided by the Department of Finance (Finance). References to the CPRs in this audit report refer to the version published on 20 April 2019. When assessing entities' compliance with the CPRs the ANAO has reviewed compliance against CPR requirements that applied at the time of undertaking the procurement.

**Areas for improvement**

The ANAO made one suggestion for improvement to Finance related to enhancing its guidance.

**Procurements assessed in the audit**

4.1 The ANAO examined seven entities' use of three procurement arrangements:

- the IT Services panel established by the Department of Infrastructure, Transport, Regional Development and Communications (Infrastructure);
- the Digital Marketplace panel established by the Digital Transformation Agency (DTA); and
- the IBM Arrangement established by DTA.

4.2 The ANAO selected a sample<sup>165</sup> of 15 contracts (five from each arrangement) that were published on AusTender with a contract commencement date between 1 July 2017 and 30 March 2019. The selected contracts ranged in reported value from \$700,000 to \$481 million. The 15 procurements were undertaken by seven entities:

- Australian Electoral Commission (AEC);
- Australian Taxation Office (ATO);
- DTA;
- Department of Home Affairs (Home Affairs);
- Department of Industry, Science, Energy and Resources (Industry);
- Infrastructure; and
- Services Australia.

4.3 Details of the procurements assessed by the ANAO are provided in Table 4.1 below.

**Table 4.1: Procurements assessed in the audit**

Entity and sample procurement number	Procurement arrangement	Contract number reported on AusTender	Total contract value (\$) reported on AusTender <sup>a</sup>	Contract description reported on AusTender	Contract start date recorded on AusTender
AEC Procurement 1	Digital Marketplace panel	CN3485456	3,570,000	AEC Mobile Application	20/02/2018
AEC Procurement 2	IT Services panel	CN3532131	3,700,000 3,841,229	Application Development — Self-Service Platform	17/07/2018

<sup>165</sup> The sample was derived from information reported on AusTender. Sample selection was based on judgement, having regard to: the value and nature of the procurements; the spread of procurements across entities; the need to have a mix of small and large entities; a desire to examine panel use at the same entities as panel establishment; and consideration of the total number of entities to include in the audit.

Entity and sample procurement number	Procurement arrangement	Contract number reported on AusTender	Total contract value (\$) reported on AusTender <sup>a</sup>	Contract description reported on AusTender	Contract start date recorded on AusTender
ATO Procurement 1	Digital Marketplace panel	CN3587606	5,158,089 5,363,815	Provision of Tax Practitioners Board Managed Services	15/03/2019
ATO Procurement 2	IBM Arrangement	CN3521699	130,416,866	IBM WofG Perpetual Licences, Support and Maintenance	28/06/2018
ATO Procurement 3	IBM Arrangement	CN3536872	67,441,816 79,062,757	IBM Whole of Government Arrangement	1/07/2018
DTA Procurement 1	Digital Marketplace panel	CN3480563	744,750	Whole of Government Google Analytics	1/01/2018
Home Affairs Procurement 1	IT Services panel	CN3530017	6,160,000 12,320,000	Business and Architecture Services	1/07/2018
Home Affairs Procurement 2	IBM Arrangement	CN3525962	58,424,851	Software & Software Support & Services	28/06/2018
Industry Procurement 1	IT Services panel	CN3584128	66,410,256 664,102	Purchase of Information Technology Services	27/03/2019
Industry Procurement 2	Digital Marketplace panel	CN3502881	2,670,000 4,380,000	Purchase of Information Technology Services	1/05/2018
Infrastructure Procurement 1	IT Services panel	CN3488275	2,675,167	Motor Vehicle Standards Reform Project	9/02/2018
Infrastructure Procurement 2	IT Services panel	CN3567723	700,000	Program Assurance Services	4/02/2019
Services Australia Procurement 1	Digital Marketplace panel	CN3488360	8,956,316 9,110,975	ICT Specialist Services	30/01/2018
Services Australia Procurement 2	IBM Arrangement	CN3531219	480,694,807	ICT Hardware Lease	28/06/2018

Entity and sample procurement number	Procurement arrangement	Contract number reported on AusTender	Total contract value (\$) reported on AusTender <sup>a</sup>	Contract description reported on AusTender	Contract start date recorded on AusTender
Services Australia Procurement 3	IBM Arrangement	CN3591096	7,384,728	IT Specialist Services	29/03/2019

Note a: The first value shows the reported value when the sample was derived in June 2019. Entities can amend values reported on AusTender to reflect necessary changes or correct errors. During the audit a number of contracts were amended. Where this occurred, the second value shows the reported contract value at June 2020. The largest variance relates to Industry Procurement 1 which was first reported on AusTender in April 2019 for approximately \$71,000, incorrectly reported for approximately \$66 million in May 2019, and subsequently amended in July 2019 to reflect the correct value of approximately \$664,000.

Source: AusTender data.

## Did the planning, determination of procurement method and approach to market for the selected procurements comply with the CPRs and related guidance?

For the sample of 15 procurements reviewed by the ANAO there were seven where entities had not met the requirement in the CPRs to estimate the value of the procurement prior to determining the procurement approach. In all seven cases this did not impact the selection or reporting of the procurement method — the operation of the CPRs means that these procurements are automatically required to be reported on AusTender as employing the same procurement method used to establish the initial arrangement, regardless of the value of the procurement.

All entities documented the objective of the procurement and the goods or services procured were within the scope of the respective arrangement. For one limited tender procurement with IBM, ATO documentation did not fully demonstrate that the conditions for limited tender were met. Request documentation was prepared for nine of the 10 procurements. The documentation conveyed the key requirements of the procurement and included evaluation criteria that would enable the entity to assess the financial and non-financial benefits of the procurement to achieve a value for money outcome.

## Planning, determination of procurement method and approach to market

### *CPR considerations*

4.4 Adequate planning assists in achieving the efficient, effective, ethical and economical procurement practices required under the CPRs. Simple procurements made under whole of Australian government (WoAG) arrangements would not generally require comprehensive planning, particularly when purchasers understand their requirements, the market and the capabilities of suppliers. Where these factors are not known and/or the scale, scope and risk profile of a procurement increases, more comprehensive planning may assist entities achieve a better procurement outcome.

4.5 Having clearly identified the procurement requirements, entities need to ascertain how best to meet them. Entities need to consider how the determination of procurement method and selection of suppliers can impact the achievement of value for money. The estimated value of the

procurement, potential risks and any entity-specific procedural requirements should shape the approach taken. Finance guidance encourages entities to determine the objectives for the procurement<sup>166</sup> at the planning stage and ensure the panel or arrangement is not used to purchase goods or services that fall outside the scope of the arrangement.<sup>167</sup> Finance guidance also encourages entities to ensure that the decision-maker (generally a delegate of the accountable authority) is: aware of the intended approach to market; and depending on the nature, complexity and risk of the procurement, is involved in the planning stages of the procurement.<sup>168</sup>

4.6 Procurements from existing panel arrangements and, where the conditions for limited tender are met, the IBM Arrangement, are not subject to the rules in Division 2 of the CPRs. However, these procurements must comply with the rules in Division 1, which requires that officials responsible for a procurement must be satisfied, after reasonable enquires, that the procurement achieves a value for money outcome.<sup>169</sup>

4.7 The requirements of Division 2 of the CPRs are designed to ensure that procurements with a value over the mandated thresholds<sup>170</sup> are made available to the open market, unless the procurement is exempt in accordance with Appendix A of the CPRs, or the conditions for limited tender listed in paragraph 10.3 of the CPRs apply. The CPRs state that officials should report the original procurement method used to establish the standing offer when they report procurements from standing offers.<sup>171</sup> Therefore, if a panel is established following an open tender — as was the case for the IT Services panel and Digital Marketplace panel — all subsequent procurements using that arrangement are required to be reported as an open tender, even when not all suppliers represented on the panel and/or category within a panel are invited to respond to the particular procurement opportunity. This means that under the CPRs, for procurements over the procurement threshold:

- if there is no pre-existing procurement in place such as a panel, buyers are required to undertake an open tender which is available to all potential tenderers in the market unless the procurement is exempt in accordance with Appendix A or one or more conditions for conducting a limited tender apply;
- if there is a pre-existing panel arrangement in place that was created by an open tender, the Division two rules of the CPRs that are designed to encourage competition no longer apply. Buyers can approach a single provider for a procurement and the procurement is also reported as an open tender. This applies whether or not the arrangement provides buyers with sufficient information to be an effective substitute for going to the wider market.

4.8 Under both of these approaches, contracts are required to be publicly reported on AusTender as open tender. However, this does not reflect that providers could have been subject

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166 Finance, *Procurement Process Considerations Practice* [Internet].

167 Finance, *Buying for the Australian Government—How Panel Arrangements Operate* [Internet], Finance, available at <https://www.finance.gov.au/government/procurement/buying-australian-government/panel-arrangements> [accessed June 2020].

168 Finance, *Procurement Process Considerations Practice* [Internet].

169 Finance, *Commonwealth Procurement Rules*, April 2019, paragraphs 4.4 and 9.12 [Internet].

170 For details of the procurement thresholds, see footnote 32.

171 Finance, *Commonwealth Procurement Rules*, April 2019, paragraph 9.13 [Internet].



to vastly different competitive pressure. Entities should ensure their approach to using panel arrangements supports the intent of the CPRs<sup>172</sup> by encouraging competition to drive value for money, and is not limited to doing the minimum necessary — such as always seeking a single quote<sup>173</sup> — to achieve technical compliance.<sup>174</sup>

4.9 For procurements made under existing panel arrangements, or procurements under the IBM Arrangement where the conditions for limited tender are met, the only mandatory requirement in the CPRs related to planning, determining the procurement method and approaching the market, is to estimate the procurement value before a decision on the procurement method is made. However, as discussed in paragraphs 4.6 to 4.8, procurements made under an existing panel arrangement and the IBM Arrangement are required to be reported as having the same method as the original procurement method used to establish the arrangement. Therefore, if an entity did not estimate the procurement value, this did not impact the selection or reporting of the procurement method as all procurements were already required to be reported as the same procurement method used to establish the initial arrangement. The operation of the CPRs in this respect in relation to panel established following an open tender is summarised in Box 1 below.

**Box 1: Operation of the CPRs when procuring from a panel arrangement that was established following an open tender**

The CPRs require officials to estimate the value of a procurement before a decision on the procurement method is made. By following this requirement officials know which procurement method is allowable under the CPRs.

When officials are selecting from a panel that was established using an open tender approach, the procurement method used has in effect already been determined, notwithstanding the value of the procurement from the panel. Therefore officials are not using the estimate of procurement value to determine what the procurement method from a panel should be.

*Entities' administration of the selected procurements*

4.10 For a sample of 15 procurements, the ANAO assessed whether the audited entities complied with the CPRs and related Finance guidance. Specifically, the ANAO reviewed whether the audited entities:

- documented the objective of the procurement and whether the goods or services procured were within the scope of the arrangement, and estimated the procurement value prior to determining the procurement method;
- approached the market in a way that encouraged competition; and

<sup>172</sup> Achieving value for money is the core rule of the CPRs.

<sup>173</sup> See the Finance advice referenced at paragraphs 4.15 and 4.16 below, and Box 1.

<sup>174</sup> For AusTender reporting purposes, all contracts with IBM are required to be reported under the IBM Arrangement as limited tender irrespective of whether a limited tender or open approach to market was used to select IBM. For example, if the conditions for limited tender did not apply and an entity undertook an open tender, with IBM selected as the preferred supplier, the contract with IBM must be reported on AusTender under the IBM Arrangement Head Agreement.

- prepared request documentation that conveyed the key requirements of the procurement.<sup>175</sup>

4.11 For each of the 15 procurements examined by the ANAO, all entities documented the objective of the procurement, and the goods or services procured were within the scope of the relevant arrangement. For 11 procurements the objectives of the procurements were documented prior to approaching the market, and for the remainder the objectives were documented subsequent to approaching the market as part of the approval process.

4.12 As part of procurement planning, Finance guidance encourages entities to:

- document relevant decisions and justifications relating to the procurement;
- consider the opportunities for cooperative procurement; and
- undertake detailed research of the market if appropriate.<sup>176</sup>

4.13 Not all entities documented why the particular procurement panel or arrangement used was selected.<sup>177</sup> Although this is not a requirement, documenting why an arrangement was selected (particularly when there are multiple alternatives) assists the delegate to make an informed decision regarding the procurement approach.

4.14 Of the 15 procurements examined by the ANAO, eight estimated the procurement value prior to approaching the market (as required by the CPRs).<sup>178</sup> Of the seven procurements where entities did not estimate the procurement value, two were from each of the IT Services and Digital Marketplace panels and three related to the IBM Arrangement.<sup>179</sup> In all cases, the failure to estimate the value did not impact the selection or reporting of the procurement method. This is because procuring directly from the IT Services and Digital Marketplace panels is automatically required to be reported as open tender on AusTender. Similarly, procuring directly from the IBM Arrangement is automatically required to be reported as limited tender on AusTender.<sup>180</sup>

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175 This includes scope of services, evaluation criteria and dates for submission. Evaluation criteria should enable the entities to consider the financial and non-financial costs and benefits associated with procurement.

176 Finance, *Procurement Process Considerations Practice* [Internet].

177 For the three procurements relating to the establishment of the ELAs under the IBM Arrangement there was no alternative arrangement.

178 The procurements for which no estimate of procurement value was documented prior to approaching the market were: ATO Procurement 2; DTA Procurement 1; Home Affairs Procurement 2; Industry Procurements 1 and 2; Infrastructure Procurement 2; and Services Australia Procurement 2. Home Affairs advised the ANAO that 'the IBM procurement was a renewal of existing IBM software licences along with a transition to the new mandatory whole of government arrangement. Procurement planning activities were conducted with an expectation that the value of the new arrangement would be based on the existing contract commitments. Planning activities included reviewing the Bill of Materials for in-service software. The Department continues to review and refine processes to ensure procurement planning is better documented particularly in relation to high value procurements.'

179 These three related to the establishment of ATO, Home Affairs and Services Australia arrangements with IBM as part of an IBM Arrangement which had been initiated by Finance as a limited tender process.

180 As discussed in footnote 174, even if an entity undertook an open tender, with IBM selected as the preferred supplier, the contract with IBM must be reported on AusTender under the IBM Arrangement Head Agreement as a limited tender.

Approached the market in a way that encouraged competition

4.15 Having determined which panel or arrangement to procure from, entities need to decide how many, and which, suppliers to approach. Finance guidance states that:

For procurements against a standing offer arrangement you may directly approach one or more supplier(s). Note that you will still need to justify value for money when evaluating a potential supplier's response ... One quote may be sufficient, but you may need more if the market or requirement is unfamiliar to you or if you are unsure of the capabilities of the suppliers.<sup>181</sup>

4.16 Finance guidance further states that:

Always seeking a single quote for a panel may not represent value for money. Seeking more than one quote or allowing for the quoting of firm prices for work segments can allow for competitive tension, and should be allowed under the relevant panel arrangement.<sup>182</sup>

4.17 Tables 4.2 and 4.3 (below) provide information on the number of suppliers awarded contracts under the two open tender panel arrangements examined in this audit. Table 4.2 details the number of suppliers from each arrangement that have been awarded at least one contract. Table 4.3 details the proportion of suppliers awarded 80% or more of the panel's total value.

**Table 4.2: Number of suppliers awarded at least one contract for the selected arrangements**

Arrangement	Total number of suppliers recorded on AusTender	Total number of suppliers that have been awarded contracts
IT Services panel	302	186
Digital Marketplace panel	1,309	411

Source: ANAO analysis of AusTender data as at 12 March 2020.

**Table 4.3: Proportion of suppliers awarded 80% or more of each panel's total value**

Arrangement	Total value awarded under arrangement (\$million)	All suppliers registered to the standing offer notice on AusTender	Number of suppliers accounting for 80% or more of each panel's total value	Percentage of suppliers accounting for 80% or more of each panel's total value
IT Services panel	448	302	58	19
Digital Marketplace panel	470	1,309	107	8

Source: ANAO analysis of AusTender data from the date of establishment of the panel until 30 June 2019.

4.18 As outlined in paragraph 1.7, Auditor-General Report No. 27 2019–20 *Australian Government Procurement Contract Reporting Update* reported that it is common for a relatively small proportion of suppliers on a panel to be awarded the majority of contract value.

181 Finance, *Using an Existing Standing Offer* [Internet], Finance, available from <https://www.finance.gov.au/government/procurement/buyright/using-existing-standing-offer> [accessed June 2020].

182 Finance, *Panel Arrangements—Traps*, [Internet], Finance, available from <https://www.finance.gov.au/government/procurement/buying-australian-government/panel-arrangements> [accessed June 2020].

## IT Services panel

4.19 The IT Services panel closed on 17 February 2020. Buyers accessing the panel could view a list of all suppliers, the specialist categories in which they had been approved, and their contact details via GovTEAMS.<sup>183</sup> As at 15 February 2020, there were 299 suppliers registered on the panel in 19 categories, with multiple suppliers in each category. Capacity for buyers to search electronically on the GovTEAMS site was limited but prospective buyers could search by category and location by working through an individual supplier's contact details. Buyers could also view the minimum, maximum and average prices by category and each supplier's deed which included their individual maximum prices. As discussed in paragraph 2.48, the absence of strong thresholds in relation to price, quality and risk resulted in suppliers assessed low in terms of technical ability and/or high in terms of risk being included on the panel — which could affect a buyer's ability to achieve a value for money outcome when using the panel.

4.20 Once buyers determined which supplier(s) to approach, they could send a request for quote (RFQ) directly to suppliers by email or via the Dynamic Sourcing for Panels (DS4P) within AusTender.<sup>184</sup> Suppliers could either email the buyer directly or respond via DS4P. The GovTEAMS site also provided buyers with access to templates developed by Infrastructure and other information to assist them in using the panel.<sup>185</sup>

## Digital Marketplace panel

4.21 To access the Digital Marketplace panel, buyers must first become members by registering online. Prior to registration, potential buyers can access a variety of information including guidance on: how to join the Digital Marketplace; the operation of the Digital Marketplace; how to approach the market with an opportunity; guidance for sellers and the seller catalogue; an explanation of category types; and the range of daily rates sellers have been awarded for specialist roles in various categories.<sup>186</sup> They are also able to see the opportunities<sup>187</sup> posted by other buyers. The Digital Marketplace website also provides a range of templates to assist users and details of how to contact DTA for assistance.<sup>188</sup>

4.22 Once registered, buyers can search for suppliers electronically using one or more combinations of the 15 categories, in addition to one or more business identifier factors.<sup>189</sup> Alternatively, buyers can use the search function to identify sellers offering particular applications or technologies. For each supplier identified, buyers can see: a brief summary of the nature of the

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183 GovTEAMS is a digital collaboration and networking tool for government. Through an online workspace, teams across government can connect, share and work together.

184 DS4P is an AusTender function that provides government buyers with a standard and streamlined approach to sourcing their goods and services from panels. Buyers can identify panels that match their requirements, search for and shortlist relevant suppliers, access panel documents and templates, and run a request for quote process.

185 This included: access to the deeds of standing offer with each supplier; request for quote templates; official order templates; and a notice of inclusion template which is the mechanism by which other entities gained access to Infrastructure's IT Service panel.

186 Examples of the price information available on the Digital Marketplace are provided in Appendix 3.

187 The Digital Marketplace refers to procurements posted online as 'opportunities'. An opportunity can relate to a buyer: requesting proposals for digital outcomes; asking the market for an expression of interest; hiring a digital specialist; or obtaining training to build digital skills.

188 DTA's website also includes other guidance in relation to ICT procurement.

189 These are whether the seller is an Australian disability enterprise, Indigenous business, a not-for-profit/social enterprise, a recruiter, a regional seller, a small to medium enterprise, or a start-up.

supplier's business; a link to the supplier's website; a link to the supplier's profile on LinkedIn; the category/ies for which the supplier has been approved; brief details of how the supplier works, including the tools and technologies they use; company details; location; details of awards received; links to the master agreement and the date it was agreed; and notification that necessary documents have been provided to DTA (financial statements, public liability insurance and workers compensation insurance) and their expiry dates if applicable. Buyers are also advised to contact DTA to view seller documents. Buyers then post opportunities as appropriate, outlining the:

- type of opportunity — which can include seeking proposals and quotes for specialist goods or services; asking the market for approaches to developing a solution; or IT training in which the buyer can include a maximum or total price;
- location — by state, remote or a combination for delivery; and
- status of the opportunity — open to all sellers or select suppliers, with suppliers nominated.

4.23 As at 14 June 2020 there were 1654 suppliers registered on AusTender to offer digital and ICT services in the Digital Marketplace.

4.24 As outlined in paragraph 4.21 and illustrated in Appendix 3, the Digital Marketplace website provides indicative price information. It does not provide pricing information for individual suppliers. Buyers can ask DTA to provide the seller's approved (maximum) price, the case studies provided to DTA for the seller's assessment and referee contacts. Various factors will influence price for buyers and sellers, such as the number of resources required, specialist skill level, project schedules, and work location. As the scope of work and skills needed by buyers varies with each opportunity listed, the price range provides a guide for buyers to determine whether the price offered is at the higher or lower end of seller prices.<sup>190</sup> Sellers can price above their approved maximum daily rate, based on buyer requirements. The buyer may also have a requirement for the provision of services above the Skills Framework for the Information Age level 5, in which case a seller could price above the maximum price they provided when they received approval under a Marketplace category.<sup>191</sup> Buyers also have the option of indicating a maximum price for their requirement and other requirements, such as security clearance or ability to work offsite. These requirements would be published as part of the approach to market on the Marketplace.<sup>192</sup>

4.25 Users of Infrastructure's IT Services panel and DTA's Digital Marketplace panel are not required to obtain more than one quote for services, which has the potential to reduce competition. Information on the number of suppliers approached per procurement was not centrally maintained for the IT Services panel, but this data is recorded by DTA for procurements from the Digital Marketplace panel.

4.26 The ANAO obtained data from DTA for the seven entities included in this audit. The number of opportunities published by each entity (excluding withdrawn opportunities) and the number of sellers the entity invited to respond for each opportunity is provided in Table 4.4. Appendix 2

190 DTA advised the ANAO that it is planning to add buyer access to the maximum price provided by sellers upon joining the Digital Marketplace. Once implemented, buyers will see the maximum daily rate submitted by sellers that was accepted, compared to the price put forward for a specific opportunity.

191 Sellers would need approval from DTA as outlined in paragraph 2.61.

192 The buyer ultimately decides the rate they will accept for their published requirement based on their own evaluation methodology and process.

provides the same details for other entities that have used the Digital Marketplace for 10 or more procurements.

**Table 4.4: Number of published opportunities by entity and the number of sellers invited to respond to each opportunity**

Entity	Number of opportunities published on the Digital Marketplace	Number and percentage of suppliers invited to respond to each opportunity (rounded)											
		1	%	2	%	3	%	4	%	5+	%	All <sup>a</sup>	%
Infrastructure	2	0	0	0	0	0	0	0	0	2	100	0	0
DTA	293	10	3.4	2	0.7	5	1.7	5	1.7	8	2.7	263	90
AEC	15	3	20	0	0	2	13.3	1	6.7	2	13.3	7	46.7
ATO	62	17	27.4	1	1.6	3	4.8	5	8.1	16	25.8	20	32.3
Home Affairs <sup>b</sup>	79	48	61	0	0	13	16.5	2	2.5	6	7.6	10	12.7
Industry <sup>c</sup>	96	21	21.9	2	2.1	10	10.4	6	6.3	25	26	32	33.3
Services Australia	287	40	13.9	5	0.7	59	20.6	19	6.62	100	34.8	64	22.3
<b>Total<sup>d</sup></b>	<b>834</b>	<b>139</b>	<b>16.7</b>	<b>10</b>	<b>1.2</b>	<b>92</b>	<b>11</b>	<b>38</b>	<b>4.6</b>	<b>159</b>	<b>19.1</b>	<b>396</b>	<b>47.5</b>

Note a: 'All' indicates the opportunity was available to all approved sellers in the Digital Marketplace.

Note b: Includes figures for Australian Border Force, which is part of the Department of Home Affairs.

Note c: The figures for Industry include those under previous names for the department.

Note d: Due to limitations in supporting documentation regarding how data is captured, stored and extracted within the Digital Marketplace website, the ANAO could not provide assurance over the completeness and accuracy of the information provided by DTA.

Source: Data provided by DTA.

4.27 Table 4.4 provides an indication of the audited entities' use of competitive processes when procuring from the Digital Marketplace panel. For example, the number of approaches made to one supplier was as high as 61 per cent for Home Affairs<sup>193</sup>, as low as 3.4 per cent for DTA, and zero for Infrastructure. Approaching only one supplier eliminates competition and reduces the ability of entities to demonstrate the achievement of value for money. Approximately 67 per cent of all approaches made to suppliers by the audited entities was to five or more suppliers, and DTA approached all suppliers on the Marketplace 90 per cent of the time — a much higher percentage than the other entities.

4.28 When using the Digital Marketplace panel, buyers have to determine which suppliers to approach to provide a quote, even though they are not provided with the price that individual sellers will offer. In terms of the technical capability of suppliers on the Digital Marketplace, buyers are likely to assume that all panel members have been assessed as being capable of undertaking the work. However, as discussed in paragraph 2.64, the process to become a panel member is not particularly robust. To become a supplier on the panel, a supplier's case studies are assessed in terms of technical capability on the basis of having satisfied a limited number of criteria, and if unsuccessful the seller can reapply multiple times to be approved. In consequence, the Digital Marketplace panel largely relies on the competitive tension applied at the time an entity conducts a procurement to drive value for money — as competitive tension is not particularly robust at the time suppliers join the panel. DTA has used the panel in this way.<sup>194</sup> However, as indicated by Table 4.4 and discussed in paragraph 4.27, other entities are not using the panel in this manner. Table 4.5 indicates that of a total of 2724 opportunities posted on the Digital Marketplace, only 38 per cent of opportunities were open to all suppliers and 14 per cent involved approaches to only one supplier.

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193 Home Affairs advised the ANAO that it 'has been working towards transitioning individual ICT contractors from expiring panels onto the Digital Marketplace. There are also instances where individual contractors are re-engaged via a different seller. A portion of the Marketplace approaches would consist of these contracts. In these instances, the justification is documented and typically includes a review of vendor performance that indicates services were delivered to a high standard and the contractor has a strong understanding of the Department's IT architecture and environment. The Department agrees that it will continue to approach more than one supplier to provide services and the Department will actively consider ways to enhance competitive tension in procurements, particularly in relation to high value procurements. The Department continues to review and refine processes to ensure its procurement processes are documented in a robust manner. This includes recently introduced instructions to business areas around direct sourcing to ensure the justifications are better evidenced and specific risks assessed.'

194 As outlined in paragraph 4.27, DTA has approached all suppliers on the Digital Marketplace for approximately 90 per cent of its procurements.



**Table 4.5: Number of opportunities on the Digital Marketplace open to one and multiple suppliers**

	Number	Percentage (rounded)
Number of opportunities open to all suppliers <sup>a</sup>	1,032	38
Number of opportunities open to one supplier	376	14
Number of opportunities open to some suppliers (more than one but less than all) <sup>b</sup>	1,316	48
<b>Total</b>	<b>2,724</b>	<b>100</b>

Note a: Includes all sellers in the Marketplace approved in the category nominated by the buyer and where a category is not specified sellers approved in at least one category.

Note b: Opportunities where the buyer has invited two or more sellers directly. Only the invited sellers are able to respond through the Marketplace website.

Due to limitations in supporting documentation regarding how data is captured, stored and extracted within the Digital Marketplace website, the ANAO could not provide assurance over the completeness and accuracy of the information provided by DTA.

Source: Data provided by DTA.

4.29 The Digital Marketplace website also provides users with information on how many suppliers typically respond to opportunities. The website states that:

‘open to all’ opportunities encourage competition in the market. This promotes better value for money. In most cases:

- 15 sellers compete for every specialist opportunity [and]
- 8 sellers compete for every outcome opportunity.<sup>195</sup>

4.30 Of the five approaches to both the IT Services panel and Digital Marketplace panel examined by the ANAO, all except two involved approaching more than one supplier.<sup>196</sup> The number of suppliers approached and the number of suppliers who responded for each procurement are outlined in Table 4.6.

**Table 4.6: Number of suppliers approached and number of suppliers who responded — procurements under the IT Services and Digital Marketplace panels**

	Panel	Number of suppliers approached	Number of suppliers who responded
AEC Procurement 1	Digital Marketplace panel	All were approached for a request for information (RFI)	28 responded to the RFI and eight were asked for a quote. Two responded to the request for a quote.
AEC Procurement 2	IT Services panel	11	2
ATO Procurement 1	Digital Marketplace panel	6	3

195 ‘Specialist’ refers to procurement where the services of one or more people are required and ‘outcome’ refers to when a particular result is sought irrespective of how many suppliers may be required. DTA, *Why use the Digital Marketplace, competitive market prices* [Internet], available from <https://marketplace1.zendesk.com/hc/en-gb/articles/115011380648-Why-use-the-Digital-Marketplace-> [accessed June 2020].

196 As discussed, under the CPRs there is no requirement to obtain more than one quote for the IT Services panel or the Digital Marketplace panel.

	Panel	Number of suppliers approached	Number of suppliers who responded
DTA Procurement 1	Digital Marketplace panel	All	7
Home Affairs Procurement 1	IT Services panel	1 <sup>a</sup>	1
Industry Procurement 1	IT Services panel	1	1
Industry Procurement 2	Digital Marketplace panel	All	6
Infrastructure Procurement 1	IT Services panel	19	10 responses were shortlisted to 8, of which 3 provided full quotes.
Infrastructure Procurement 2	IT Services panel	15	10
Services Australia Procurement 1	Digital Marketplace panel	4	4

Note a: Home Affairs advised the ANAO that 'in instances when a single supplier is approached under a panel arrangement a competitive process usually precedes the direct source. This was the case with the Home Affairs Procurement 1 contract, in which the original contract was formed following a competitive RFQ process through the Digital Marketplace in 2017. The justification for a subsequent direct approach is documented and includes a review of performance indicating if the supplier previously delivered a similar service to a high standard, whether the supplier holds the necessary clearances and if the supplier has a strong understanding of the Department's IT architecture and environment.' As indicated in paragraph 4.31 below there was no evidence provided to support these statements.

Source: ANAO analysis of entity documentation.

#### 4.31 One supplier was approached for:

- Home Affairs Procurement 1 relating to ICT architecture and business analyst services (initial contract value approximately \$6.1 million but extended to \$12.3 million). Reasons given in supporting documentation for the direct approach to a single supplier included: the supplier already provided professional services to the department; the supplier's resources had extensive corporate knowledge; no other company was considered suitable during the original request for quote process in 2016; resources provided previously by the supplier were fit for purpose, experienced and did not require upskilling; and the rates provided in the previous contract were in line with the department's bandwidth and commensurate with other vendors providing value for money.<sup>197</sup> There was no evidence provided to support the statements made.
- Industry Procurement 1 relating to the supply and installation of cabling (initial contract value approximately \$71,000 with the potential, subject to funding, to be approximately \$664,000). The approval documentation stated that one supplier would be approached 'based on their ability to meet the minimum requirements to quote. This process satisfies

197 The evaluation report for the procurement states that: 'The RFQ was issued to the relevant panel members under Category - Enterprise, Information and Application Architects. A total of one response was received, and has been evaluated'. The RFQ was sent to one supplier. Home Affairs advised the ANAO that this was an error. The approving delegate was also involved in the planning and Home Affairs advised the ANAO that it 'acknowledges the evaluation report was not clear, however the delegate-approved Procurement Plan makes clear that the RFQ was issued to one panel member.'

the requirements of the Commonwealth Procurement Rules and ensures best value for money for the Department.’ There was no evidence provided to support the statements made. In addition, the documentation stated that:

Due to the nature of the work, the department requires vendors’ [sic] resources to be baseline cleared. Further, vendors [sic] are required to undertake the works as either weekend or night works to ensure staff are not impacted. Lastly, they must be able to complete level 4 within the next 3 weeks and the remaining levels before end of financial year.

4.32 In relation to Industry Procurement 1, Industry advised the ANAO that the supplier was on site carrying out other work when it was identified that functional capacity had been reached and existing work could not be completed. The supplier viewed existing cabling and provided advice to Industry as to the requirement. Cabling works were to be completed for one floor and then, subject to approval, ten floors. In total for all floors the anticipated cost was approximately \$664,000. Industry documentation indicated the exact requirements were not known and the department relied on advice from the supplier on the work required. Industry also advised the ANAO that previous market tests with other providers from this panel were either significantly over the supplier’s quotes or suppliers did not respond. There was no further documentation provided to support this statement. Twenty suppliers were approved to provide cabling personnel or services under the IT Services panel and there was time for Industry to obtain another quote as the contract to commence work on the initial floor was signed approximately six weeks after receipt of the supplier’s quotation.

4.33 It would have been consistent with the intent of the CPRs, which is to use competition to drive value for money, for Home Affairs and Industry to obtain more than one quote given the potential value of these two procurements. Further, in the case of Industry Procurement 1, a competitive approach was appropriate as the exact requirements were not known and Industry was dependent on the supplier’s advice regarding the extent of work required. If suppliers know that entities are likely to approach multiple suppliers for quotes, competitive tension can work in the taxpayer interest and deliver lower prices. Securing additional quotes as a basis for comparison can also assist purchasing officials gain greater assurance that the selection of a particular supplier is likely to achieve a value for money outcome on behalf of the taxpayer.<sup>198</sup>

4.34 Panels are a common procurement mechanism in the Australian Government sector and procurements from panels and similar arrangements are often perceived as requiring less time and effort, particularly when compared to the cost and time required to undertake an open approach to market. However, panels should not be used to eliminate competition. In addition, as discussed in paragraph 4.6, the CPRs state that procurements from standing offers (which most panels are) are not subject to the rules in Division 2 of the CPRs.<sup>199</sup> As the Division 2 rules (which require high

198 In a previous submission to a Parliamentary inquiry, the ANAO has stated that entities need to ensure that procurement approaches continue to deliver best value for taxpayers’ money and that corners are not cut simply for the convenience of the public sector. See Joint Select Committee on Government Procurement, Parliament of Australia, *Buying into our Future: Review of amendments to the Commonwealth Procurement Rules* (2017) [Internet], available from [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Former\\_Committees/Government\\_Procurement/CommProcurementFramework/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/Government_Procurement/CommProcurementFramework/Submissions) [accessed June 2020].

199 Finance, *Commonwealth Procurement Rules*, April 2019 paragraph 9.12 [Internet]. These procurements must comply with the rules in Division 1.

value procurements to be available to the open market unless certain conditions are met) no longer apply, buyers can approach a single provider from a panel and still comply with the CPRs. This occurs irrespective of the procurement value, provided the officials responsible for the procurement are satisfied, after reasonable enquires, that the procurement achieves a value for money outcome. It is essential to bear in mind that when using a panel, each use of the panel is a separate procurement and entities need to ensure they adopt processes that are not only technically compliant with the CPRs but are also consistent with the intent of the CPRs, which is to drive value for money through competition (Box 2).

#### **Box 2: Each use of the panel is a separate procurement**

Finance guidance relating to the use of panels states that panels:

allow entities to enter into contracts with panel members without a further procurement process. ... A contract is formed under a standing offer each time an entity purchases goods or services under the panel arrangement.<sup>200</sup>

Finance guidance also states that:

For procurements against a standing offer arrangement you may directly approach one or more supplier(s). Note that you will still need to justify value for money when evaluating a potential supplier's response, [and]

While value for money was assessed when establishing the panel, value for money must also be assessed for each subsequent procurement from the panel.<sup>201</sup>

4.35 In light of their experience with Home Affairs Procurement 1 and Industry Procurement 1, Home Affairs and Industry should give greater consideration to the application of competitive processes when selecting suppliers from a panel, particularly in the case of high value procurements or where there is likely to be a substantial increase in the value of a procurement.

4.36 There is also an opportunity for Finance to enhance its guidance in relation to panel procurement, to further emphasise that each use of a panel is a procurement that must achieve a value for money outcome, and encourage entities to fully consider the role of competition in driving value for money outcomes when undertaking panel procurement.

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200 Finance, *Panel Arrangements* [Internet].

201 Finance, *Using an Existing Standing Offer* [Internet].

### Recommendation no.3

4.37 The Department of Home Affairs and the Department of Industry, Science, Energy and Resources give greater consideration to competition when selecting suppliers from a panel, particularly in the case of high value procurements or where there is likely to be a substantial increase in the value of a procurement, to drive value for money.

**Department of Industry, Science, Energy and Resources response:** *Agreed.*

4.38 *The department undertakes its procurement processes in accordance with the requirements of the Commonwealth Procurement Rules. These are reflected in the department's procurement policy and guidance material, including its Procurement Toolkit. The department regularly reviews these materials, revising and reissuing them as appropriate to ensure officials give appropriate consideration to value for money and the proper use of Commonwealth resources. This includes guidance to officials on ways to help ensure they give appropriate consideration to competition. The department most recently updated and reissued its procurement policy in May 2020.*

**Department of Home Affairs response:** *Agreed.*

4.39 *The Department will continue to consider approaching more than one supplier to provide services and will actively consider ways to enhance competitive tension in procurements when selecting suppliers from a panel, particularly in relation to high value procurements.*

4.40 The five limited tender procurements in the ANAO's sample were sole source approaches to IBM. There was limited planning documentation for three of these procurements, relating to the establishment of Enterprise Licensing Agreements (ELAs) with IBM<sup>202</sup> — ATO Procurement 2, Home Affairs Procurement 2 and Services Australia Procurement 2. While these procurements were all largely extensions or renewals of existing ELAs in place between the respective entities and IBM, and were assessed by entities as low or moderate risk<sup>203</sup>, the scale, scope and risk of each procurement was such that more comprehensive documentation of planning was warranted. In addition, and as discussed further in paragraph 4.88, there was no documentation showing that risk management was considered during the planning for the three procurements.

4.41 The two other limited tender procurements with IBM were:

- Services Australia Procurement 3, for goods and services related to the third phase of implementing specified IBM capability. IBM was the sole supplier of the goods and services

202 ELAs are typically multi-year arrangements covering software licenses and associated support services, and in the case of the Department of Defence and Services Australia, mainframe hardware. Under ELAs, a bundle of goods and services is provided at a fixed (often significantly discounted) price.

203 ATO rated the risk associated with the procurement as moderate, Home Affairs rated the risk associated with the procurement as low and Services Australia identified five risks related to the IBM Arrangement and rated these as either low or medium. The risk ratings were included in documents provided to delegates as part of the final approval process.

and Services Australia appropriately documented the conditions that permitted limited tender<sup>204</sup>; and

- ATO Procurement 3 (initial contract value approximately \$67.4 million amended to \$79 million), for standard business reporting enabled software. ATO had a contract with IBM for the provision of these services since 2013 and the contract was due to expire in September 2018 with no extension options available.

4.42 Documentation prepared in early 2018 indicated that the ATO planned to conduct an open approach to market for the services relating to ATO Procurement 3. In May 2018 the ATO decided to conduct a limited tender solely with IBM. ATO documentation stated that a limited tender approach was selected because the conditions contained in CPR paragraph 10.3.e were met.<sup>205</sup> The limited tender endorsement was sought for:

a short term (no more than 2 years) arrangement with the incumbent provider (IBM) to continue maintaining SBR2.<sup>206</sup> This is to allow time to take the required capability to market and for any transition required if that market test results in a different supplier, different underlying technology solution, or both.

4.43 The reasons given by the ATO for a limited tender with IBM included the following:

- the current solution was based on an IBM product and ATO market research showed there was very limited expertise available from suppliers other than IBM;
- the high potential costs and risks associated with transition to a new service provider who would have to support a solution based on a product built by IBM;
- the likelihood that it would be extremely challenging to select a replacement provider and successfully complete a transition process before the current IBM contract expired at the end of September 2018;
- the amount of disruption and cost inefficiency involved in potentially undertaking two transition processes in two years; and
- significantly lower risk and overall cost effectiveness in continuing with the incumbent provider while an appropriately planned and executed procurement process and transition (if necessary) were conducted.

4.44 There was no evidence of market research provided to the ANAO. Other ATO documentation stated that limited tender was proposed as there was no value changing the incumbent — given plans to replace the current platform in two years — rather than market research indicating that only one supplier was able to provide the service.

4.45 A risk assessment undertaken for ATO Procurement 3 documented risks relating to the achievement of value for money, but there is no evidence that this document was provided to the

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204 The condition, as outlined in paragraph 10.3.e of the CPRs, is '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.' Finance, *Commonwealth Procurement Rules*, April 2019 paragraph 10.3.e [Internet].

205 The condition was 10.3.e which is the same as footnote 204 above.

206 ANAO comment: this refers to standard business reporting as this procurement was for the second iteration of the standard business reporting solution referred to as SBR2.

delegate. The risk assessment indicated that lack of competitive tension was identified as a risk to achieving value for money and 'there is the potential that other available solutions could provide similar or better business benefits for equal or less cost, or that another service provider could provide all or some of the services currently provided by IBM at a more competitive price'.

4.46 Value for money is enhanced through proper procurement planning that supports the selection of an appropriate procurement method consistent with the CPRs. As outlined in paragraph 4.5, entities need to consider how the determination of procurement method and selection of suppliers can impact the achievement of value for money. In the case of ATO Procurement 3, no evidence of market research undertaken by the ATO, indicating that only one supplier was able to provide the service, was provided to the ANAO. The documentation provided to the ANAO did not fully demonstrate that the conditions for limited tender as outlined in CPR paragraph 10.3.e were met.<sup>207</sup>

### Recommendation no.4

4.47 The Australian Taxation Office ensure limited tender is used only where the conditions for limited tender outlined in the CPRs are met.

**Australian Taxation Office response: Agreed.**

4.48 *The ATO fully supports the principles of efficient, effective, ethical, and economic procurement that underpin the CPRs. The ATO is firmly of the view that, in relation to Procurement 3, the conditions for limited tender - specifically CPR 10.3e - were met.*<sup>208</sup>

Prepared request documentation that conveyed the key requirements of the procurement.

4.49 When procuring from an established panel or WoAG arrangement, the requirements for request documentation outlined in Division 2 of the CPRs (summarised in Table 2.2 of this report) do not apply.<sup>209</sup> However, request documentation should convey the key requirements of the procurement, including the scope of services, evaluation criteria and submission dates. This enables: suppliers to develop and lodge competitive and compliant submissions; and entities to

207 The ATO believed its application of limited tender was appropriate in the circumstances and consistent with the principles of the CPRs. The ATO advised the ANAO that achievement of value for money is not solely reliant on conducting an open procurement. The CPRs outline in section 4 a number of factors entities need to take into consideration to determine if a procurement will deliver best value for money. These include:

- the scale and scope of the procurement;
- resourcing and budget;
- the market capacity to respond;
- the use of public resources in an efficient, effective, economical and ethical manner;
- appropriate engagement with risk.

The ATO also advised the ANAO that in 'consideration of value for money in this procurement, sufficient weight should be given to the priority of ensuring continuity of services to the community. Critically, given the specialised and proprietary nature of some of the SBR2 key features, there was only one provider with the proven ability to deliver a compatible solution to the scale needed. Utilisation of another provider would have resulted in compatibility issues and high transition costs, presenting significant risks to both the continuity of services and containment of costs.'

208 ANAO comment: as discussed in paragraphs 4.42 to 4.46, the ANAO considers that ATO documentation does not fully demonstrate that the CPR conditions for limited tender were met.

209 See paragraph 4.6 for a discussion on why procurements from panel arrangements and, where the conditions for limited tender are met, the IBM Arrangement, are not required to comply with Division 2 of the CPRs.



assess the financial and non-financial benefits of the procurement to achieve a value for money outcome.

4.50 Of the 15 procurements examined by the ANAO, five were limited tender with IBM and request documentation was not prepared as the entities engaged with IBM directly. As part of this process the entities documented consideration of how the procurement would provide value for money. Of the remaining ten procurements, all except one (Industry Procurement 1) prepared request documentation. As mentioned in paragraphs 4.31 and 4.32, Industry advised the ANAO that the supplier was on site carrying out other work when the need for new work was identified. Given the nature of the procurement, not having request documentation was reasonable.

### **Did the evaluation of suppliers and value for money consideration for the selected procurements comply with the CPRs and related guidance?**

Fourteen of the 15 procurements reviewed by the ANAO documented the evaluation of suppliers and consideration of value for money to meet the minimum requirements of the CPRs and related Finance guidance. For the one remaining procurement, documentation provided did not fully demonstrate that the conditions for limited tender were met. Given this, there is no assurance that the procurement achieved value for money. In the case of two of the 14 procurements, the limited available documentation supporting value for money considerations makes it difficult for entities to demonstrate that these procurements represented value for money.

Where there was request documentation, the evaluation of suppliers was consistent with the criteria contained in the request documentation. For most of the sampled procurements, buyers were not able to compare the prices suppliers provided in response to requests for quote with the suppliers' prices under the arrangement. This applied particularly to procurements made under the Digital Marketplace panel as buyers are not provided with the price suppliers provided to DTA when applying for inclusion on the panel.

Given that buyers procuring from the Digital Marketplace panel cannot see individual panellists' approved prices (to inform their decisions on which suppliers to approach) the degree of assurance available to them as to whether any procurement from a panel truly represents value for money is diminished, as the buyer is only able to select the best value for money of those suppliers approached (rather than the market as a whole). Assurance regarding the value for money of a procurement is improved by having access to meaningful pricing information.<sup>210</sup>

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210 Buyers using the Digital Marketplace can see a summary of rates bid in response to all opportunities posted on the Digital Marketplace for the previous six months and the range and frequency of daily rates sellers have bid for specialist roles for each category captured over a 12-month period, but not a supplier's individual rates unless they request them from DTA. See paragraphs 2.64 and 4.55, footnote 221 and Appendix 3.



4.51 Paragraphs 4.4 and 4.5 of the CPRs state that:

Achieving value for money is the core rule of the CPRs. Officials responsible for a procurement **must** be satisfied, after reasonable enquiries, that the procurement achieves a value for money outcome. Procurements should:

- a. encourage competition and be non-discriminatory;
- b. use public resources in an efficient, effective, economical and ethical manner that is not inconsistent with the policies of the Commonwealth;
- c. facilitate accountable and transparent decision making;
- d. encourage appropriate engagement with risk; and
- e. be commensurate with the scale and scope of the business requirement

Price is not the sole factor when assessing value for money. When conducting a procurement, an official **must** consider the relevant financial and non-financial costs and benefits of each submission including, but not limited to:

- a. the quality of the goods and services;
- b. fitness for purpose of the proposal;
- c. the potential supplier's relevant experience and performance history;
- d. flexibility of the proposal (including innovation and adaptability over the lifecycle of the procurement);
- e. environmental sustainability of the proposed goods and services (such as energy efficiency, environmental impact and use of recycled products); and
- f. whole-of-life costs.<sup>211</sup>

4.52 To meet the accountability and transparency requirements of the CPRs, it is important that entities select the best value for money proposals, and document the reasons and processes by which they arrived at their decision.

4.53 In respect to panels, Finance guidance also states that:

while value for money was assessed when establishing the panel, value for money must also be assessed for each subsequent procurement from the panel ... [and] prices contained in most Deeds of Standing Offer ... will be maximum capped prices. You must ensure that the prices quoted by suppliers do not exceed these levels however they may be less.<sup>212</sup>

4.54 Similarly, procurements made under the IBM Arrangement must achieve a value for money outcome. The IBM Arrangement Head Agreement contains maximum prices for different goods and services.<sup>213</sup>

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211 Finance, *Commonwealth Procurement Rules*, April 2019, paragraphs 4.4–4.5 [Internet].

212 Finance, *Using an Existing Standing Offer (G.5. Evaluate responses)* [Internet].

213 Pricing under the IBM Arrangement can include bundling and value add-ons that are not individually priced.

4.55 The way a panel or WoAG Arrangement is established and operates, the number of suppliers approached for each procurement, and the request documentation issued to suppliers when seeking to use such arrangements, can all impact the evaluation of submissions and the achievement of value for money outcomes. For example:

- When establishing the IT Services panel, no required standard or benchmark was specified to guide suppliers when describing and pricing the skills/experience/technical capability of their resources. In response suppliers provided position titles such as ‘manager’ or ‘director’ linked to hourly and/or daily rates.<sup>214</sup> Where Infrastructure assessed these rates as being value for money, the position titles and the associated rates were included in the individual supplier’s contract. Buyers wishing to compare roles and prices between suppliers could not be confident that they were comparing like with like in terms of quality, technical ability and rate. For example, Infrastructure has no role specification for a manager or director. These terms are defined by the supplier and may refer to a diversity of skill levels and experience.
  - As the IT Services panel specifies the maximum rates to be charged for various roles in each supplier’s deed of standing offer, where quotes contain details of individual rates for roles, buyers are able to confirm that rates being offered in the quote are equal to or below the maximum rates allowable under the arrangement. Under the rules of operation for this panel, Infrastructure and other entities may have conducted competitive processes (but were not required to) by seeking quotes from one or more panel members<sup>215</sup>, and quotes must not have exceeded the agreed rates in each supplier’s deed of standing offer. In addition (as discussed in the evaluation section in Chapter 2 of this audit report) Infrastructure included suppliers on the panel who were rated as poor on aspects of their technical performance and suppliers that were identified as high risk.
- Since July 2018 DTA has required tenderers to provide a maximum daily rate for a role at or below level five of the Skills Framework for the Information Age for each category for which they nominated.<sup>216</sup> As outlined in footnote 114, sellers are obligated not to go above that rate unless DTA has approved a higher rate in accordance with the process discussed in paragraph 2.61. Buyers using the Digital Marketplace can see a summary of rates bid in response to all opportunities posted on the Digital Marketplace for the previous six months, categorised as low (25%), median (middle rate point) and high (75%). Buyers can also see the range and frequency of daily rates sellers have bid for specialist roles for each category captured over a 12-month period.<sup>217</sup>
  - However, as discussed in paragraph 2.64, buyers cannot see individual panellists’ approved prices to inform their decisions regarding which suppliers to approach.

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214 Infrastructure’s consideration of price in the evaluation of value for money for individual supplies is discussed in Chapter 2 of this audit report.

215 The IT Services panel does not require any other entity using the panel to seek more than one quote. Other entities may have their own procurement requirements relating to quoting.

216 Registration and approval of the seller at this price point does not prevent an increase in rates based on the specific requirements of the buyer.

217 Examples of the price information available on the Digital Marketplace website are provided in Appendix 3.

This is significant as buyers are likely to assume that all suppliers have been assessed as technically capable in the categories for which they have been approved, and would usually look to price as another factor to help guide their selection of suppliers, but are unable to do that.<sup>218</sup> Buyers are not required to approach more than one supplier and, as indicated in paragraph 4.29, buyers are advised that the 'open to all' opportunities encourages competition in the market and promotes better value for money.

- As outlined in paragraph 3.53, the Marketplace website reports that since 29 August 2016, 33 per cent of all opportunities posted on the website have been 'open to all' and as outlined in Appendix 2, many Australian Government entities typically approach a relatively small number of suppliers. If entities do not approach all suppliers in a category when requesting quotes, they may only select suppliers at the low end of the price spectrum, the high end or a mix of the two. The degree of assurance as to whether the procurement truly represents value for money is diminished as the buyer is only able to select the best value for money of those suppliers approached.
- IBM can be selected as the preferred supplier under a limited tender or an open approach to market including via a pre-existing panel arrangement.<sup>219</sup> In either case, contracts with IBM must be formed under the IBM Arrangement Head Agreement. This creates a degree of complexity for open tender procurements where multiple suppliers are approached, because the terms and conditions of the IBM Arrangement Head Agreement will be different to those contained in pre-established contract terms and conditions such as deeds of standing offer for panels.<sup>220</sup>
  - Pricing under the IBM Arrangement can also include bundling and value add-ons that are not individually priced. This means that buyers cannot necessarily compare prices quoted by IBM with the maximum prices contained in the Head Agreement.

4.56 Under the three selected arrangements, suppliers can submit a price to meet the identified procurement need. This price might not specify discrete rates for specific roles or components of goods or services but rather provide a total price for the requested outcome. Receipt of submissions

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218 As outlined in paragraph 4.22 buyers using the Digital Marketplace panel can also search electronically on a number of variables to assist them in selecting suppliers.

219 In terms of procuring with IBM:

- where the conditions for limited tender apply, entities may solely approach IBM and negotiate a contract under the terms and conditions of the IBM Arrangement; and
- where the conditions for limited tender do not apply and when an exemption under Appendix A of the CPRs does not apply, entities must undertake an open tender and if IBM is determined to be the preferred supplier, a contract with IBM must be established under the IBM Arrangement Head Agreement. In both cases the resultant contract will be reported on AusTender as a limited tender procurement.

220 To assist buyers in this circumstance, DTA has provided entities with suggested clauses for use when undertaking an approach to market that could involve suppliers with whom there is a mandatory whole of government arrangement in place.

in such formats prevents evaluating officials from ascertaining whether prices to be charged are at or below the rates provided by the supplier at the time of establishing the panel or arrangement.<sup>221</sup>

4.57 Finance guidance states that:

if only one quote is received:

evaluate whether the quote meets your requirement and is priced reasonably. This will form the basis of your VFM justification.<sup>222</sup>

4.58 The guidance does not outline the basis upon which price should be considered reasonable. The guidance also states that:

If multiple quotes are received consider:

... which quote best meets your requirement (e.g. quality, fit for purpose, delivery times etc.) ...

... which quote represents the best price relative to their ability to meet your requirements (value for money).<sup>223</sup>

4.59 As the scale, scope and risk profile of a procurement increases, adopting a robust process — such as seeking detailed offers/quotes from suppliers to determine the best value for money option — is crucial. Approaching multiple suppliers makes it easier for entities to demonstrate which quote best meets the entity's requirements (having regard to factors such as ability, quality, fitness for purpose and timeframes) and which quote represents the best price relative to the supplier's ability to meet the requirements. A robust approach enables buyers to more clearly demonstrate that a value for money outcome has been achieved.

#### *Entities' administration of the selected procurements*

4.60 For the sample of 15 procurements examined as part of this audit, the ANAO assessed whether:

- entities' evaluation of supplier submissions considered value for money and demonstrated consideration of relevant financial and non-financial costs and benefits of each submission;
- entities' evaluation of supplier submissions was consistent with request documentation; and
- there was evidence that rates outlined in quotes were equal to or less than the maximum rates allowed under the arrangement (where applicable).

Entities' evaluation of supplier submissions considered value for money and demonstrated consideration of relevant financial and non-financial costs and benefits of each submission

4.61 As outlined in Table 4.6, of the 15 procurements examined by the ANAO, eight involved approaching multiple suppliers. For each of the eight, entity documentation indicates that

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221 For the IT Services panel, the maximum rates suppliers could charge were outlined in each supplier's deed of standing offer available on the IT Services panel GovTEAMS website. As discussed in paragraph 4.55, buyers using the Digital Marketplace can see a summary of rates bid in response to all opportunities posted on the Digital Marketplace for the previous six months and the range and frequency of daily rates sellers have bid for specialist roles for each category captured over a 12-month period, but not a supplier's individual rates unless they request them from DTA. For the IBM Arrangement, the maximum rates IBM can charge are outlined in the Head Agreement.

222 Finance, *Using an Existing Standing Offer G.5. Evaluate responses* [Internet].

223 *ibid.*

comparisons were undertaken between suppliers, having regard to the relevant financial and non-financial costs and benefits of each submission. This included consideration of price, technical capability, experience, fitness for purpose and, in some cases, risk.

4.62 As outlined in paragraph 4.31, for two of the eight open tender procurements, the procuring entity only approached one supplier but considered the procurement would achieve value for money and documented the reasons for that assessment. For example, in the case of:

- Home Affairs Procurement 1 — the approval documentation stated that the evaluation team assessed value for money on the supplier taking into consideration technical ability<sup>224</sup>, price<sup>225</sup> and risk (assessed as low).
- Industry Procurement 1 — the approval documentation indicated that the supplier was considered value for money for this procurement having regard to cost, experience, reputation, fitness for purpose and risk (assessed as low).<sup>226</sup> Industry advised the ANAO that the costs quoted were within the estimated 'ball park', which was based on previous works and the fact that the works would be carried out after hours. There was no evidence provided to support the statements made.

4.63 Without evidence of further analysis — for example through benchmarking, comparison with previous procurements, or comparison of the quote with alternative suppliers — the limited available documentation supporting value for money considerations makes it difficult for Home Affairs and Industry to demonstrate that these procurements represented value for money.

4.64 Value for money assessments were documented for ATO Procurement 2, Home Affairs Procurement 2 and Services Australia Procurement 2 — which were limited tender procurements for IBM ELAs undertaken in the context of the IBM Arrangement negotiations. For ATO Procurement 2, advice to the delegate did not directly refer to value for money or the condition that justified limited tender.<sup>227</sup> However, there is evidence to show that ATO undertook analysis of its requirements and IBM's commercial offers to determine which proposed inclusions to procure. Advice provided to the delegates for Home Affairs Procurement 2 and Services Australia Procurement 2 directly addressed value for money, and made specific reference to overall savings and additional inclusions compared to the existing IBM ELAs.

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224 The approval documentation stated that: the supplier meets the criteria for the required services and provides services to many Government agencies including the department; four of the specified resources had verifiable and proven history supporting business architecture services within the department; and the supplied candidate resumes represent a wide ranging set of experience and capabilities from which the department can successfully draw upon in its upcoming capability delivery program. The supplier's response to the request for quote and candidate resumes generally supported the statements made.

225 The approval documentation stated that: the supplier was highly suitable and the current contract and rates have been maintained in this submission, which has previously been accepted by the department as value for money; the supplier's rates compare favourably with resourcing rates from similar panel arrangements in use and combined with the abilities of resources supplied represent strong value for money. There was no evidence provided to support the statements made.

226 The supplier's quote was assessed as follows: commensurate with market rates for this type and other similar types of services; the supplier having exceptional skills and experience within government and for electrical and cabling services; the supplier having a good reputation for providing goods and services to the department and having extensive knowledge, skills and experience across federal government; and being able to meet all of the department's needs in full and being assessed as fit for purpose.

227 This is discussed further in Table 4.7.

4.65 Internal ATO approval for ATO Procurement 3 was provided on 28 June 2018, at the same time as approval for ATO's ELA (ATO Procurement 2). Advice provided to the delegate did not explicitly refer to value for money for either of these procurements.<sup>228</sup> The expected total value of engaging with IBM for another two years for the services was not expected to exceed \$63 million. An ATO internal email stated that:

due to the tight timeframes (less than 2 weeks) to evaluate and negotiate the DWS Services offering, the team has only conducted a high level assessment to determine value, but has incorporated rights within the Contract to allow for service adjustments prior to commencement and as part of a quarterly review during the contract term.

4.66 While the ATO's approval documentation outlined reasons for proposing a limited tender with IBM and a number of procurement risks, none of the specified risks referred to possible impacts on achieving a value for money outcome. As discussed in paragraph 4.45, a separate risk assessment undertaken for ATO Procurement 3 documented risks relating to the achievement of value for money, but there is no evidence that this document was provided to the delegate. In addition to identifying lack of competitive tension as a risk to achieving value for money, the risk assessment stated that:

due to the complexity of the pricing submitted by IBM, substantiating VFM [value for money] was more difficult, especially in the timeframe, with a risk that ATO could have negotiated a better price or obtained more appropriate resourcing for the price.

4.67 The ATO advised the ANAO that:

the ATO CIO [Chief Information Officer], who was the delegate for this procurement, has regular meetings with key stakeholders to discuss and plan the portfolio of significant IT work in progress, including SBR2. Through these he receives regular briefings on the current status of the various projects and also provides direction on those projects. Although the proceedings of each meeting are not documented in detail, the key decision points in each procurement process are documented.

A risk assessment by nature considers all potential risks and strategies to mitigate or reduce these risks. As was the case the with Procurement 3 the mitigations included:

- robust negotiation and the inclusion of success measures in the contractual framework to ensure identified business benefits are achieved, and
- independent value for money analysis was undertaken on the costings.

4.68 Given the documentation provided to the ANAO regarding ATO Procurement 3 did not fully demonstrate that the conditions for limited tender were the met and indicated that 'due to the tight timeframes ... the team ... only conducted a high level assessment to determine value', ATO documentation does not provide adequate assurance that the procurement achieved value for money.

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228 Further, the advice to the delegate did not reference the condition for limited tender as required by the CPRs. This is discussed further in Table 4.7. The ATO advised the ANAO that although there was no explicit reference to value for money (VFM) in the approval documentation, the key elements of VFM were addressed as follows: 'significantly lower risk and more cost effective'. The documentation also made it clear that this VFM assessment was for a short-term extension of the current solution pending a procurement for a replacement, 'future-oriented' solution.

4.69 For Services Australia Procurement 3 (\$7.3 million), Services Australia negotiated with IBM over a period of months to determine inclusions and pricing. This was a limited tender procurement with IBM as it was the sole provider of the product. The value for money evaluation provided to the delegate detailed financial and non-financial costs and benefits and included consideration of risk. Services Australia advised the ANAO that comparative unit pricing was not available in the IBM Arrangement Head Agreement and the total cost included bundling of inclusions and 'co-investment' from IBM.

Entities' evaluation of supplier submissions was consistent with request documentation

4.70 In the sample reviewed by the ANAO, none of the five limited tender procurements with IBM had request documentation. All the procurements effectively related to the continuation of existing/similar services. Of the remaining ten procurements reviewed by the ANAO, nine had request documentation and the evaluation of suppliers was consistent with request documentation in all cases.<sup>229</sup>

Evidence that rates outlined in quotes were equal to or less than the maximum rates allowed under the arrangement

4.71 For most of the sampled procurements, buyers were not able to compare the prices provided in response to requests for quote with the prices that suppliers provided at the time of becoming a panel member. This resulted from how the selected arrangements were established. It was only possible to assess whether the rates offered in quotes were equal to or lower than rates established under the initial agreement for procurements under the IT Services panel.<sup>230</sup> For those five procurements, the way prices were provided in supplier submissions for three of the procurements meant that this could not be assessed.<sup>231</sup> For the remaining two procurements (Home Affairs Procurement 1 and Infrastructure Procurement 2), there was evidence that proposed rates were equal to or less than maximum rates outlined in the relevant supplier deed.

## Did approvals, records and AusTender reporting for the selected procurements comply with the PGPA Act and CPRs and related guidance?

All of the 15 procurements examined by the ANAO had appropriate evidence of approval for the initial procurement. Amendments relating to all but one procurement had appropriate records of approval. Record keeping requirements and AusTender reporting requirements were mostly met.

229 Industry Procurement 1 did not have request documentation. As outlined in paragraph 4.32, Industry advised the ANAO that the supplier was onsite carrying out other work when it was identified capacity had been reached and the existing work could not be completed. The supplier viewed existing cabling and provided advice to Industry as to what was required. The supplier then provided a quote for one floor and subsequently provided another quote for ten floors.

230 Refer to paragraph 4.55 for details.

231 This included cases where titles and rates for some roles were not the same as titles in the supplier's deed of standing offer with Infrastructure and where costs were provided for pieces of work rather than broken down into hourly or daily rates.

## Approval to enter into an arrangement

4.72 As outlined in paragraphs 3.3 to 3.5, subsection 23(3) of the PGPA Act empowers the accountable authority of a non-corporate Commonwealth entity to approve a commitment of relevant money for which the accountable authority is responsible. Subsection 23(1) of the PGPA Act provides that an accountable authority may, on behalf of the Commonwealth, enter into an arrangement (which includes a contract, agreement, deed or understanding) under which relevant money will be payable by the entity. An accountable authority may delegate these powers to officials in the entity. Under section 18 of the PGPA Rule, where an accountable authority or official (ie. a delegate) approves the commitment of relevant money, that person must record the approval in writing as soon as practicable after giving the approval.<sup>232</sup>

4.73 For the 15 selected procurements, the ANAO reviewed whether entities were able to provide evidence of appropriate approval. The ANAO identified that all of the 15 procurements had appropriate evidence of approval for the initial contract. Eight of the 15 procurements were varied, some multiple times. Appropriate approval was obtained for all amendments except for Services Australia Procurement 1. For this procurement, two variations were approved after the contract had expired, with one variation approved more than five months after the contract had expired. This is not consistent with Finance guidance, which states that:

Contracts should not be extended by variation due to a failure to appropriately plan procurement needs, continue supplier relationships, or with the intention of discriminating against a supplier, avoiding competition, or to avoid obligations under the CPRs.<sup>233</sup>

## Record keeping

4.74 Paragraphs 7.2 to 7.4 of the CPRs state that:

7.2 Officials must maintain for each procurement a level of documentation commensurate with the scale, scope and risk of the procurement.

7.3 Documentation should provide accurate and concise information on:

- a. the requirement for the procurement;
- b. the process that was followed;
- c. how value for money was considered and achieved;
- d. relevant approvals; and
- e. relevant decisions and the basis of those decisions.

7.4 Relevant entities must have access to evidence of agreements with suppliers, in the form of one or a combination of the following documents: a written contract, a purchase order, an invoice or a receipt.<sup>234</sup>

4.75 Where a procurement has been undertaken through limited tender, the CPRs state that:

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232 Public Governance, Performance and Accountability Rule 2014, [Internet], available from <https://www.legislation.gov.au/Details/F2017C00704> [accessed June 2020].

233 Finance, Contract End Dates, [Internet], Finance, available from <https://www.finance.gov.au/government/procurement/buying-australian-government/contracts-end-dates> [accessed June 2020]

234 Finance, *Commonwealth Procurement Rules*, April 2019 paragraphs 7.2-7.4 [Internet].



an official must prepare and appropriately file within the relevant entity's records management system a written report that includes:

- a. the value and type of goods and services procured;
- b. a statement indicating the circumstances and conditions that justified the use of limited tender; and
- c. a record demonstrating how the procurement represented value for money in the circumstances.<sup>235</sup>

4.76 In addition, Finance guidance states that officials undertaking an evaluation process should: provide sufficient documentation and information to the delegate to enable them to make an informed decision.<sup>236</sup>

4.77 For the 15 selected procurements examined, the ANAO reviewed whether entities were able to provide sufficient and appropriate records of approval. In particular, the ANAO reviewed whether entities:

- maintained a level of documentation commensurate with the scale, scope and risk of the procurement;
- had evidence of agreements with suppliers, in the form of a written contract/official order;
- provided the delegate with sufficient information to make an informed decision regarding approval; and
- for procurements made under the IBM Arrangement, whether entities maintained records for limited tender as outlined in paragraph 4.75 above.

4.78 The results of the ANAO's assessment are provided in Table 4.7.

**Table 4.7: Entity compliance with record keeping requirements**

CPR requirement or guidance	Audit findings
<p>Maintain documentation commensurate with the scale, scope and risk of the procurement.</p> <p>Documentation should provide accurate and concise information on:</p> <ol style="list-style-type: none"> <li>a) the requirement for the procurement;</li> <li>b) the process that was followed;</li> <li>c) how value for money was considered and achieved;</li> <li>d) relevant approvals; and</li> <li>e) relevant decisions and the basis of those decisions.</li> </ol>	<p>Of the 15 procurements examined, all met this requirement.</p> <p>For the three limited tender procurements involved with the establishment of the IBM Arrangement, documentation relating to planning and risk management could have been improved. See further discussion in paragraph 4.88.</p> <p>Where contracts were amended, entities met this requirement.</p>
<p>Have a contract with the supplier.</p>	<p>Of the 15 procurements examined, all met this requirement.</p> <p>The requirement was also met for all amendments to initial contracts.</p>

<sup>235</sup> *ibid.*, paragraph 10.5.

<sup>236</sup> Finance, *Procurement Process Considerations* [Internet].

CPR requirement or guidance	Audit findings
<p>For limited tender procurement prepare a report that includes:</p> <ul style="list-style-type: none"> <li>a) the value and type of goods and services procured;</li> <li>b) a statement indicating the circumstances and conditions that justified the use of limited tender; and</li> <li>c) a record demonstrating how the procurement represented value for money in the circumstances.</li> </ul>	<p>Of the five limited tender procurements included in the audit sample:</p> <ul style="list-style-type: none"> <li>• Home Affairs Procurement 2 met this requirement.</li> <li>• Services Australia Procurement 2 had evidence of criteria a) and c) and Services Australia Procurement 3 met this requirement although documentation could have been more explicit.<sup>a</sup></li> <li>• For ATO Procurements 2 and 3, supporting documentation provided evidence of criteria a). In relation to criteria b) and c), there were no explicit references to the conditions that justified the use of limited tender. However, supporting documentation addressed factors that would go towards indicating how the procurement represented value for money for both procurements.</li> </ul>

Note a: The supporting documentation did not explicitly refer to the CPR condition but does provide two reasons for the sole source justification which address the CPR criteria. These are that: the good can only be supplied by IBM and there is no reasonable alternative or substitute due to an absence of competition for technical reasons; and IBM was delivering software and services that were replacements, extensions or continuing services for existing equipment or services, and a different supplier would result in Services Australia procuring software and services that did not meet the department's requirements for compatibility with existing equipment or services. These criteria reflect CPR conditions 10.3.d and 10.3.e. Services Australia reported the 10.3.e condition on AusTender.

Source: ANAO analysis of entity records.

## Reporting contract notices on AusTender

4.79 Accurate and timely reporting of contracts on AusTender provides for transparency in the use of public money. Under the CPRs, contracts and amendments valued at or above the reporting threshold<sup>237</sup> must be reported on AusTender within 42 calendar days of the contract or amended contract being entered into.<sup>238</sup>

4.80 When reporting procurements made under a panel arrangement, the CPRs state that officials should report the original procurement method used to establish the standing offer when they report procurements from standing offers.<sup>239</sup> Therefore procurements made under the IT Services panel and the Digital Marketplace panel should all be reported as open tender as that was the procurement method used to establish the panel. For limited tender procurements, paragraph 9.11 of the CPRs requires that the relevant exemption or limited tender condition be reported on AusTender.<sup>240</sup>

4.81 For the 15 selected procurements, the ANAO reviewed whether contract details were reported correctly on AusTender within 42 days of entering into the contract or amendment. For the limited tender procurements in the sample, the ANAO examined whether the relevant

237 Under paragraph 7.19 of the CPRs the reporting thresholds (including GST) are:

- a. \$10,000 for non-corporate Commonwealth entities; and
- b. for prescribed corporate Commonwealth entities,
  - i. \$400,000 for procurements other than procurement of construction services, or
  - ii. \$7.5 million for procurement of construction services.

238 Finance, *Commonwealth Procurement Rules*, April 2019, paragraph 7.18 [Internet].

239 *ibid.*, paragraph 9.13.

240 *ibid.*, paragraph 9.11.

exemption or limited tender condition was reported on AusTender. The results of the ANAO's assessment are outlined in Table 4.8.

**Table 4.8: Entity compliance with AusTender reporting requirements**

CPR requirement or guidance	Audit findings
Details of contracts and amendments were reported correctly on AusTender.	<p>Of the 15 sampled procurements, 14 were reported correctly.</p> <p>For DTA Procurement 1, the procurement value was reported in United States dollars instead of Australian dollars. This error was addressed when the amendment was reported on AusTender.</p> <p><b>Amendments</b></p> <p>Of the eight contracts that contained amendments, five were reported correctly. Two had minor errors where the amount was reported incorrectly. For Services Australia Procurement 1 there were six variations. Approval documentation for these amendments contained a number of errors. Three amendments are shown on AusTender, with the third amendment rectifying previous inaccuracies.</p>
Contracts and amendments reported on AusTender within 42 days of entering into (or amending) a contract if they are valued at or above the reporting threshold.	<p>Of the 15 sampled procurements, 12 were reported within the required time. The three that were not were:</p> <ul style="list-style-type: none"> <li>• ATO Procurement 1 at 45 days;</li> <li>• ATO Procurement 3 at 64 days; and</li> <li>• Services Australia Procurement 3 at 46 days.</li> </ul> <p><b>Amendments</b></p> <p>Of the eight procurements that contained amendments, all amendments relating to six of these procurements were reported on AusTender within the required timeframes.</p> <p>ATO Procurement 1 had two amendments. Neither was reported on AusTender within the required timeframe.</p> <p>Services Australia Procurement 1 had four amendments that required reporting on AusTender. Only two were published within the required timeframe.</p>
When conducting a limited tender in accordance with paragraph 9.10 of the CPRs, the CPRs require that the relevant exemption or limited tender condition be reported on AusTender.	<p>For the five limited tender procurements examined by the ANAO, all entities reported the relevant exemption on AusTender.</p>

Source: ANAO analysis.

## Did the management of risk and probity for the selected procurements comply with the CPRs and related guidance?

All entities had established processes to identify, analyse, allocate and treat risk when conducting procurements. For the 15 procurements examined by the ANAO, supporting documentation referenced the consideration of risk, although there was scope for some entities to strengthen their management and consideration of risk.

There was documentation indicating consideration of probity for 12 of the 15 procurements examined by the ANAO. There was evidence of all unsuccessful tenderers being advised for six of the eight relevant procurements examined that involved more than one supplier.

4.82 As outlined in paragraphs 3.18 to 3.20, the CPRs include requirements and sound practices for entities to adopt in relation to risk management and probity. These include: ensuring that the effort directed to risk assessment and management is commensurate with the scale, scope and risk of the procurement; recognising and dealing with conflicts of interest; and dealing with potential suppliers, tenderers and suppliers equitably.<sup>241</sup> Finance guidance states that if questions are received from potential suppliers in relation to a request for quote, entities should answer them promptly in writing to all suppliers, without identifying the source of the question.<sup>242</sup> The CPRs also state that:

Following the rejection of a submission or the award of a contract, officials must promptly inform affected tenderers of the decision. Debriefings must be made available, on request, to unsuccessful tenderers outlining the reasons the submission was unsuccessful. Debriefings must also be made available, on request, to the successful supplier(s).<sup>243</sup>

4.83 Finance guidance also encourages entities to document consideration of probity, for example through conflicts of interest declarations and probity plans.

4.84 For the 15 selected procurements, the ANAO assessed whether there was evidence of entities:

- having established processes to identify, analyse, allocate and treat risk when conducting a procurement;
- managing risk, commensurate with the scale and scope of the procurement;
- considering probity; and
- advising unsuccessful tenderers promptly following the rejection of a submission or the award of a contract.

### Risk management

4.85 All entities had established processes to identify, analyse, allocate and treat risk when conducting a procurement. This was generally in the form of accountable authority instructions (AAIs), other policies or guidance and risk assessment templates relating to procurement.

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241 Finance, *Commonwealth Procurement Rules*, April 2019, paragraphs 6.6 and 8.2 [Internet].

242 Finance, *Using an Existing Standing Offer G.5. Evaluate responses* [Internet].

243 Finance, *Commonwealth Procurement Rules*, April 2019 paragraph 7.17 [Internet].

4.86 Supporting documentation for all procurements included reference to risk. However, in some entities there was scope to strengthen the consideration of risk commensurate with the scale and scope of the procurement. For some procurements there was no or limited documentation to support assertions made, identified risks were generic in nature rather than tailored to the individual procurement, and/or the risks were not managed commensurate with the scale and scope of the procurement. For example, in the case of:

- Industry Procurement 2 (originally for \$2.6 million but subsequently varied to \$4.3 million) — risks were considered, but notwithstanding an Industry requirement that all procurements over \$1 million have a risk management plan, a risk management plan was not implemented until the arrangement had been in place for over a year.
- ATO Procurement 1 (\$5.3 million) — the ATO did not document risks identified at the planning stage and did not provide evidence of risk monitoring or mitigation.<sup>244</sup>
- Infrastructure Procurement 2 (\$700,000) — no risk assessment was undertaken.

4.87 In the case of Services Australia Procurement 1 (originally for \$1.4 million but varied to \$8.9 million), risks relating to potential suppliers were considered as part of the evaluation process.<sup>245</sup> However, the contract value increased significantly over time, suggesting the need for a more robust consideration of risk during the planning stage of the procurement. The contract was varied six times — including twice, inappropriately, when the contract had already expired (as discussed in paragraph 4.73).<sup>246</sup>

4.88 ATO Procurement 2, Home Affairs Procurement 2 and Services Australia Procurement 2 were associated with the establishment of the IBM Arrangement and largely related to the acquisition and maintenance of software and support that the entities already had in place. Issues identified by the ANAO related to:

- ATO Procurement 2 (\$130 million) — there was no documented consideration of risk other than the overall risk assessment of the procurement being identified as moderate in the approval documentation.<sup>247</sup>
- Home Affairs Procurement 2 (\$58 million) — the risk rating for the procurement was assessed as low and the risk assessment provided to the delegate as part of the final

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244 ATO advised the ANAO that no formal risk assessment was undertaken.

245 The procurement was for ICT specialist services and risk was considered as part of the evaluation of resources to be provided by the supplier.

246 The contract commenced on 30 January 2018 and was varied six times until its expiry on 30 June 2019.

247 ATO advised the ANAO that no formal risk assessment was undertaken for the software component of the IBM WoAG procurement because the overwhelming majority of what was procured under the arrangement was the continuation of support on existing software products, still required by ATO.

approval included generic risks rather than those tailored to the individual procurement. There was no documented evidence of risk management prior to this time.<sup>248</sup>

- Services Australia Procurement 2 (\$480 million) — a risk assessment (which assessed five risks associated with this procurement as either low or medium) was prepared but not until the final approval process.<sup>249</sup>

4.89 Risk management relating to ATO Procurement 3 (originally for \$69 million and varied to \$79 million), particularly in relation to approaching the market, was discussed in paragraphs 4.45 and 4.66 of this audit report.

## **Probity and equitable treatment of suppliers**

4.90 For 12 of the 15 procurements examined by the ANAO, there was documentation indicating consideration of probity. This included conflict of interest declarations signed by officials involved in the procurement process<sup>250</sup>, certifications of conflict of interest by contractors working for entities, and probity plans or advice being sought from internal probity advisors.

4.91 There was no documented consideration of probity risks or control measures for ATO Procurement 2, ATO Procurement 3 or DTA Procurement 1.<sup>251</sup> For Industry Procurement 1, conflict of interest declarations were made at the end of the evaluation process. Completing declarations prior to an evaluation process enables entities to more effectively manage actual and perceived conflicts of interest.

4.92 For Industry Procurement 2, clarifications sought from suppliers were initially posted on the Digital Marketplace in response to the original approach to market, providing all suppliers with access to the same information at the same time. Following shortlisting, where clarifications were sought from suppliers, Industry responded to individual suppliers via email without copying other shortlisted suppliers. To ensure entities deal with potential suppliers equitably, as required by the CPRs, entities should ensure information is provided to all suppliers.

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248 Home Affairs advised the ANAO that it had a 'fall-back' Enterprise Licensing Agreement (ELA) in the event the IBM Arrangement did not eventuate on time and that 'developing a 'fall-back' ELA was viewed as a low risk activity as it would have effectively been a contract renewal under similar if not identical terms and conditions'. This approach was not documented, and given the commercial and operational risks involved, risks were not managed commensurate with the scale and scope of the procurement. Home Affairs further advised the ANAO that 'the IBM procurement is viewed in the context of a software renewal activity that included a transition to the mandatory Whole of Government IBM agreement. This took place with regard to the Department's established risk management requirements. The Department continues to review and refine processes to ensure risks are adequately addressed during procurement planning particularly for high value procurements.'

249 Identifying risks early in the procurement process allows for better management of risk. Services Australia also conducted a gap analysis to identify differences between its existing contract with IBM and what was proposed under the proposed IBM Arrangement to inform its decision making and mitigate the risk of it being worse off compared to its previous IBM ELA.

250 In some cases this was an annual certification. For example, Infrastructure Senior Executive Service officers complete an annual disclosure of interests and Home Affairs maintain a register of contractor interest disclosures.

251 DTA advised the ANAO that advice was sought as necessary from the internal and policy lead or probity advisor. In addition, all DTA employees are required to act in accordance with the Digital Marketplace Master Agreement which covers: privacy obligations, conflict of interest and alternative dispute resolution.

4.93 For five out of eight procurements that involved more than one supplier, there was evidence of all unsuccessful tenderers being advised promptly following the rejection of a submission or the award of a contract.<sup>252</sup> The three procurements where this was not done were:

- AEC Procurement 2 — the AEC was unable to provide evidence of when the unsuccessful supplier was informed of its unsuccessful tender and whether or not a debrief was offered.
- DTA Procurement 1 — DTA provided a template of advice to unsuccessful tenderers but there was no evidence of advice having been sent.
- Infrastructure Procurement 2 — the department has records of only three out of nine unsuccessful tenderers being advised of the procurement outcome. One supplier was advised just over a month after the contract was awarded.

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Grant Hehir  
Auditor-General

Canberra ACT  
31 August 2020

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252 Of the 15 procurements examined, seven involved approaching only one supplier so the CPR requirement to promptly advise unsuccessful tenderers did not apply.





## **Appendices**

## Appendix 1 Entity responses



**Australian Government**

**Department of Infrastructure, Transport,  
Regional Development and Communications**

**Secretary  
Simon Atkinson**

Mr Grant Hehir  
Auditor-General for Australia  
Australian National Audit Office  
19 National Circuit  
BARTON ACT 2600  
Via email: [OfficeoftheAuditorGeneralPerformanceAudit@anao.gov.au](mailto:OfficeoftheAuditorGeneralPerformanceAudit@anao.gov.au)

Dear Mr Hehir

**Auditor-General Proposed Audit Report on the Establishment and Use of ICT Related  
Procurement Panels and Arrangements**

Thank you for providing the Department of Infrastructure, Transport, Regional Development and Communications (the Department) the opportunity to provide comments on the Auditor-General Proposed Audit Report on the Establishment and Use of ICT Related Procurement Panels and Arrangements.

The Department welcomes the report and acknowledges the overall conclusions that the Department complied with the Commonwealth Procurement Rules when establishing the IT Services Panel, obtained relevant approvals and complied with reporting requirements.

The IT Services Panel ceased operation on 17 February 2020, however, the Department will consider the findings of the audit report, particularly in regard to strengthening the consideration of price, quality, risk and monitoring of objectives for any future ICT related procurement panels and arrangements.

Please contact Ms Maxine Ewens, Chief Information Officer, on 02 6274 8080 or via email at [Maxine.Ewens@infrastructure.gov.au](mailto:Maxine.Ewens@infrastructure.gov.au), if you would like to discuss this response.

I would like to thank the Australian National Audit Office for the cooperation of the audit team and the professional manner in which the audit was conducted.

Yours sincerely

Simon Atkinson

24 July 2020

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

Dear Mr Hehir

**Response to the Australian National Audit Office (ANAO) Proposed Audit Report on Establishment and Use of ICT Related Procurement Panels and Arrangements**

Thank you for the opportunity to comment on the Proposed Report (the report) arising from the ANAO performance audit of Establishment and Use of ICT Related Procurement Panels and Arrangements, dated 29 June 2020.

The DTA welcomes and agrees with the ANAO's findings and recommendations 1 and 2.

**Attachment A** to this letter details our overall response to the proposed report and to ANAO's Recommendations no. 1 and no. 2.

**Attachment B** outlines some further comments for the attention of the Auditor-General. This attachment is not intended for publication in the final report.

If you would like to discuss the DTA response, please to contact Mr Pete Alexander, Chief Digital Officer, on 0423 783 027 or [peter.alexander@dta.gov.au](mailto:peter.alexander@dta.gov.au).

Yours sincerely

Randall Brugeaud  
Chief Executive Officer

24 July 2020

## Electoral Commissioner

Ref: A537940

Mr Grant Hehir  
Auditor-General for Australia  
Australian National Audit Office

By email: [OfficeoftheAuditorGeneralPerformanceAudit@anao.gov.au](mailto:OfficeoftheAuditorGeneralPerformanceAudit@anao.gov.au)

Dear Mr Hehir

**Subject: AEC letter of reply to ANAO Proposed Audit Report on the Establishment and Use of ICT Related Procurement Panels and Arrangements**

Thank you for providing the proposed audit report on the Establishment and Use of ICT Related Procurement Panels and Arrangements, prepared by the Australian National Audit Office (ANAO), pursuant to section 19 of the *Auditor-General Act 1997* (Auditor General Act).

The AEC strives to continually improve procurement processes, including those that use the mentioned ICT panel arrangements. The findings in the audit report indicate that the AEC's current processes are generally sufficient in satisfying all reporting requirements, however the AEC acknowledges that continual emphasis on recording appropriate evidence relating to communications with unsuccessful suppliers is required.

The AEC is committed to achieving value for money in all procurement processes, and this includes assessing financial and non-financial considerations. The AEC has implemented a number of initiatives to provide ongoing education to all staff, promoting compliance with Commonwealth Procurement Rules and covering many of the 'Key messages to Australian Government entities' noted in the report.

I trust this assists with the finalising of the ANAO's report. If you have any further questions regarding this subject, please contact Ms Joanne Reid, Assistant Commissioner, Disclosure, Assurance and Engagement at [Joanne.Reid2@aec.gov.au](mailto:Joanne.Reid2@aec.gov.au).

Yours sincerely



Tom Rogers  
Electoral Commissioner  
28 July 2020

50 Marcus Clarke Street, Canberra ACT 2600 P 02 6271 4411 F 02 6215 9999

[www.aec.gov.au](http://www.aec.gov.au)



Australian Government  
Australian Taxation Office

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

Dear Mr Hehir

**ANAO AUDIT ON THE ESTABLISHMENT AND USE OF ICT RELATED PROCUREMENT PANELS AND ARRANGEMENTS**

Thank you for your letter dated 29 June 2020 and for the opportunity to provide comments on the proposed report on the *Establishment and use of ICT related procurement panels and arrangements*.

The ATO has a robust procurement framework in place. Where limited tender is used, we ensure it complies with the Commonwealth Procurement Rules and achieves value for money. We confirm this was the case for the relevant ATO procurements covered by this audit.

Noting this, the ATO agrees with Recommendation no. 4 (paragraph 4.45) as presented in the section 19 report.

Attached is the ATO summary of our comments to be included in the report (Annexure 1) and ATO response to Recommendation no. 4 (Annexure 2).

I would like to thank the Australian National Audit Office audit team for the cooperative and professional manner they have adopted in working with us on this matter.

If you require further information on this matter, please contact Parker Brigg on (03) 8632 5467.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Jacqui Curtis'.

Jacqui Curtis  
Chief Operating Officer  
Australian Taxation Office

28 July 2020



**Australian Government**

**Department of Defence**

**PO Box 7900 CANBERRA BC ACT 2610**

**Mr Grant Hehir**  
Auditor-General  
PO BOX 707  
CANBERRA ACT 2601

EC20-002506

Dear Mr Hehir *Grant*

**Australian National Audit Office Section 19 Proposed Report Extract: Establishment and Use of ICT Related Procurement Panels and Arrangements**

Thank you for your correspondence of 29 June 2020, containing the proposed report extract for the ANAO performance audit – *Establishment and Use of ICT Related Procurement Panels and Arrangements*. Defence acknowledges the findings contained in the extract and appreciates the opportunity to review and comment.

In relation to the finding regarding Defence's compliance with the moratorium, we note that the Department of Finance provided written and verbal permission for Defence to approve the creation of new and extension of existing IBM contracts during the moratorium. Defence considers that new contracts or contract change proposals that Defence entered into with IBM during the moratorium aligned with this advice.

Defence sought an exemption from the moratorium to mitigate potential operational risks to the Australian Defence Force. Defence also received legal advice that if the contractual relationship with IBM was not maintained during this period, there was a risk of significantly increased program costs and delivery delays for government approved programs within Defence. Legal advice also indicated that Defence should not change provider during delivery of a capability as Defence would not be able to rely on protections such as warranties and intellectual property rights afforded under extant contracting mechanisms.

Defence did not engage with Ministers' offices regarding the approach taken as the Department of Finance advised that it would brief the Finance Minister with a view to adjusting the delegation to allow small contracts and second extensions to be agreed by the Department of Finance, rather than the Finance Minister.

Attached to this letter are Defence's proposed amendments, editorials and comments (Annex A) and the Defence summary response (Annex B). These constitute Defence's formal response to the proposed report.

2

Our point of contact is ANAO Liaison Officer, Nicole Fry, who can be contacted by telephone on 02 6266 3103 or email: [nicole.fry@defence.gov.au](mailto:nicole.fry@defence.gov.au).

Defence remains committed to assisting you with the successful completion of this audit. We look forward to the upcoming tabling of the final report.

Yours sincerely



**Katherine Jones**  
Acting Secretary

29 July 2020



**David Johnston, AO**  
Vice Admiral  
Acting Chief of the Defence Force

29 July 2020

Annexes:

- A) Defence's Proposed Amendments, Editorials and Comments
- B) Defence Summary Response



Australian Government  
Department of Home Affairs

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 *Establishment and Use of ICT Related Procurement Panels and Arrangements*. 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.

We are pleased the ANAO found the Department has established processes to identify, analyse, allocate and treat risk when conducting a procurement, and that the two selected procurements examined for the Department:

- documented the objective of the procurement and the services procured were within scope of the respective arrangement
- provided the delegate with sufficient information to make an informed decision regarding approval, being:
  - a level of documentation commensurate with the scale, scope and risk of the procurement
  - evidence of agreements with suppliers, in the form of a written contract/official order, and
  - records for limited tender that include the value and type of goods procured, circumstances justifying the use of limited tender and demonstration of value for money.
- documented the evaluation of suppliers and consideration of value for money to meet the requirements of the Commonwealth Procurement Rules and related Finance guidance, and
- complied with AusTender reporting requirements.

The Department will continue to consider approaching more than one supplier to provide services and will actively consider ways to enhance competitive tension in procurements when selecting suppliers from a panel, particularly in relation to high value procurements. The Department continues to review processes to ensure procurement processes are documented in a robust manner.

We note that in instances when a single supplier is approached under a panel arrangement, a competitive process usually precedes the direct source. This was the case with Home Affairs Procurement 1, in which the original contract was formed following a competitive request for quotation process through the Digital Marketplace in 2017. The justification for a subsequent direct approach is documented and includes a review of performance indicating if the supplier previously delivered a similar service to a high standard, whether the supplier holds the necessary clearances and if the supplier has a strong understanding of the Department's IT architecture and environment.

I would like to thank you and your officers for the collaborative approach taken in conducting this audit.

Yours sincerely

Ben Wright  
Chief Audit Executive  
28 July 2020





**Australian Government**  
**Department of Industry, Science,**  
**Energy and Resources**

**OFFICE OF THE SECRETARY**  
**DAVID FREDERICKS PSM**

EC20-001168

Mr Grant Hehir  
 Auditor General  
 Australian National Audit Office  
 19 National Circuit  
 Barton ACT 2600

*Grant*  
 Dear Mr Hehir

Thank you for your correspondence of 28 June 2020 seeking comment from the Department of Industry, Science, Energy and Resources on the proposed audit report for the performance audit of Establishment and Use of ICT Related Procurement Panels and Arrangements.

The department notes the audit's results, including that the majority of procurements from ICT related procurement panels and arrangements supported the achievement of value for money outcomes.

The department acknowledges the audit's recommendation that relates to the department, as well as key messages for all Australian Government entities.

The department is committed to continued compliance with the Australian Government's Financial Framework, including the Commonwealth Procurement Rules (CPRs), and has processes in place to guide our practices. The audit's recommendations and key messages will be considered in any future updates to departmental processes and practice, to ensure they are appropriately incorporated.

Attached is the department's response to the relevant recommendation.

Lastly, I acknowledge the work of the Australian National Audit Office and thank you and your staff for providing independent insights set out in the report.

Yours sincerely

David Fredericks

21 July 2020



**Australian Government**  
**Services Australia**

Our Ref: EC20-003496

Chief Executive Officer  
Rebecca Skinner

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

Dear Mr Hehir *Grant*

**Service Australia's response to the ANAO proposed report on  
Establishment and use of ICT related procurement panels and arrangements**

Thank you for your email of 29 June 2020 in which you provided Services Australia (the agency) with the opportunity to comment on the Australian National Audit Office's (ANAO) proposed report on *Establishment and use of ICT related procurement panels and arrangements*.

Services Australia welcomes the ANAO's findings and notes that no recommendations have been made in relation to our agency. Our proposed response is at [Attachment A](#).

I would like to thank the ANAO for its cooperative and professional approach throughout the audit process.

Yours sincerely

Rebecca Skinner

16 July 2020



**Australian Government**  
**Department of Finance**

**Matt Yannopoulos PSM**  
**Acting Secretary**

Our Ref: EC20-000339

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

Dear Mr ~~Hehir~~ *Grant,*

I refer to your correspondence dated 29 June 2020 providing the proposed Audit Report, *Establishment and Use of ICT Related Procurement Panels and Arrangements* pursuant to section 19 of the *Auditor-General Act 1997* and seeking a response from the Department of Finance (Finance).

Thank you for the opportunity to respond to matters raised in the proposed report. Finance will review its guidance for relevant Commonwealth entities on the establishment and use of panel arrangements, taking into consideration the findings in the proposed report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Matt Yannopoulos'.

Matt Yannopoulos  
Acting Secretary

27 July 2020

## Appendix 2    Number of opportunities on the Digital Marketplace by the number of sellers invited to respond

The following shows the number of published opportunities by entity and the number of sellers invited to respond to each opportunity as recorded by DTA for Australian Government entities.

Agency	Total <sup>a</sup>	1	%	2	%	3	%	4	%	5+	%	All	%
Digital Transformation Agency	293	10	3.41	2	0.68	5	1.71	5	1.71	8	2.73	263	89.76
Department of Human Services	287	40	13.94	5	1.74	59	20.56	19	6.62	100	34.84	64	22.30
National Disability Insurance Agency	164	44	26.83	5	3.05	6	3.66	12	7.32	49	29.88	48	29.27
Department of Defence	141	49	34.75	5	3.55	14	9.93	9	6.38	18	12.77	46	32.62
Department of Jobs and Small Business	123	6	4.88	1	0.81	19	15.45	3	2.44	9	7.32	85	69.11
Department of Industry Innovation and Science	96	21	21.88	2	2.08	10	10.42	6	6.25	25	26.04	32	33.33
Australian Transaction Reports and Analysis Centre	95	14	14.74	2	2.11	11	11.58	4	4.21	15	15.79	49	51.58
Bureau of Meteorology	92	3	3.26	4	4.35	4	4.35	7	7.61	58	63.04	16	17.39
Department of Health	89	21	23.60	1	1.12	10	11.24	5	5.62	29	32.58	23	25.84
Department of Finance	87	19	21.84	7	8.05	16	18.39	5	5.75	24	27.59	16	18.39

Agency	Total <sup>a</sup>	1	%	2	%	3	%	4	%	5+	%	All	%
Department of the Environment and Energy	81	13	16.05	0	0.00	23	28.40	14	17.28	18	22.22	13	16.05
IP Australia	64	7	10.94	0	0.00	8	12.50	4	6.25	16	25.00	29	45.31
Australian Tax Office	62	17	27.42	1	1.61	3	4.84	5	8.06	16	25.81	20	32.26
Department of Home Affairs	62	42	67.74	0	0.00	12	19.35	1	1.61	5	8.06	2	3.23
Department of Foreign Affairs and Trade	59	7	11.86	1	1.69	6	10.17	3	5.08	16	27.12	26	44.07
Department of Agriculture	55	17	30.91	1	1.82	2	3.64	1	1.82	17	30.91	17	30.91
Australian Securities & Investments Commission	50	9	18.00	1	2.00	4	8.00	0	0.00	23	46.00	13	26.00
Australian Maritime Safety Authority	48	0	0.00	0	0.00	4	8.33	0	0.00	9	18.75	35	72.92
Australian Digital Health Agency	47	7	14.89	0	0.00	13	27.66	5	10.64	9	19.15	13	27.66
Department of Education	43	12	27.91	1	2.33	2	4.65	1	2.33	3	6.98	24	55.81
Department of Social Services	36	13	36.11	1	2.78	4	11.11	1	2.78	11	30.56	6	16.67
Civil Aviation Safety Authority	31	1	3.23	0	0.00	8	25.81	3	9.68	16	51.61	3	9.68
Austrade	28	4	14.29	0	0.00	2	7.14	4	14.29	3	10.71	15	53.57

Agency	Total <sup>a</sup>	1	%	2	%	3	%	4	%	5+	%	All	%
National Health and Medical Research Council	27	7	25.93	1	3.70	4	14.81	1	3.70	2	7.41	12	44.44
Administrative Appeals Tribunal	26	2	7.69	0	0.00	0	0.00	1	3.85	7	26.92	16	61.54
Future Fund Management Agency	25	17	68.00	0	0.00	3	12.00	1	4.00	3	12.00	1	4.00
Attorney-General's Department	24	3	12.50	1	4.17	0	0.00	2	8.33	16	66.67	2	8.33
Comcare	23	7	30.43	0	0.00	4	17.39	1	4.35	11	47.83	0	0.00
Fair Work Ombudsman	23	3	13.04	0	0.00	2	8.70	3	13.04	7	30.43	8	34.78
Clean Energy Regulator	22	1	4.55	1	4.55	4	18.18	1	4.55	0	0.00	15	68.18
Australian Public Service Commission	21	11	52.38	0	0.00	0	0.00	1	4.76	2	9.52	7	33.33
Australian National University	20	0	0.00	0	0.00	5	25.00	0	0.00	5	25.00	10	50.00
Tax Practitioners Board	19	12	63.16	0	0.00	0	0.00	0	0.00	1	5.26	6	31.58
Department of Veterans Affairs	18	2	11.11	0	0.00	2	11.11	0	0.00	0	0.00	14	77.78
Geoscience Australia	18	5	27.78	0	0.00	1	5.56	1	5.56	4	22.22	7	38.89
Parliament of Australia	18	6	33.33	0	0.00	0	0.00	1	5.56	7	38.89	4	22.22
Australian Border Force	17	6	35.29	0	0.00	1	5.88	1	5.88	1	5.88	8	47.06

Agency	Total <sup>a</sup>	1	%	2	%	3	%	4	%	5+	%	All	%
Australian Communications and Media Authority	15	0	0.00	0	0.00	1	6.67	0	0.00	10	66.67	4	26.67
Australian Electoral Commission	15	3	20.00	0	0.00	2	13.33	1	6.67	2	13.33	7	46.67
Treasury	15	5	33.33	0	0.00	2	13.33	1	6.67	1	6.67	6	40.00
Department of the Prime Minister and Cabinet	13	3	23.08	0	0.00	0	0.00	1	7.69	4	30.77	5	38.46
Murray Darling Basin Authority	13	0	0.00	1	7.69	3	23.08	3	23.08	5	38.46	1	7.69
Australian Federal Police	12	7	58.33	1	8.33	0	0.00	2	16.67	1	8.33	1	8.33
Department of Communications and the Arts	11	2	18.18	1	9.09	2	18.18	2	18.18	4	36.36	0	0.00
Australian Criminal Intelligence Commission	10	1	10.00	0	0.00	1	10.00	3	30.00	5	50.00	0	0.00
Australian Energy Regulator	10	5	50.00	2	20.0	0	0.00	0	0.00	1	10.00	2	20.00
<b>Total</b>	<b>2,548</b>	<b>484</b>	<b>19.00</b>	<b>48</b>	<b>1.88</b>	<b>282</b>	<b>11.07</b>	<b>144</b>	<b>5.65</b>	<b>596</b>	<b>23.39</b>	<b>994</b>	<b>39.01</b>

Note a: The table only includes Australian Government entities recorded as having more than 10 procurements and excludes withdrawn opportunities. Due to limitations in supporting documentation regarding how data is captured, stored and extracted within the Digital Marketplace website, the ANAO could not provide assurance over the completeness and accuracy of the information DTA provided.

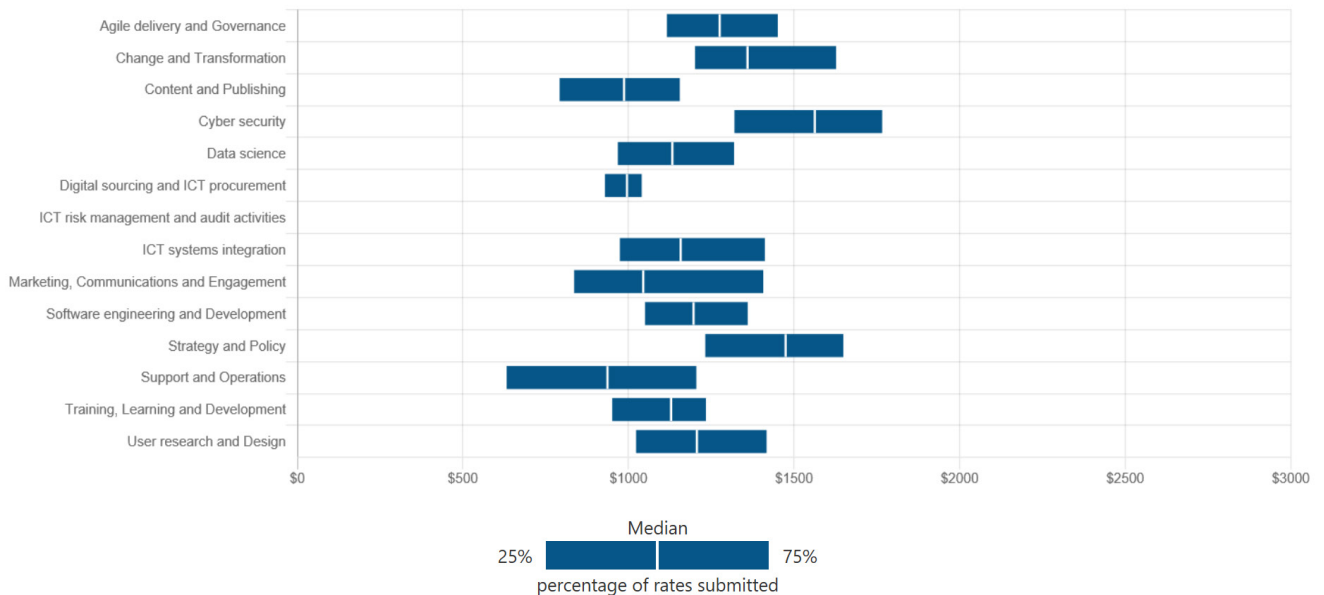
Source: Data provided by DTA extracted 16 December 2019.

## Appendix 3 Examples of price information available to buyers using the Digital Marketplace

The following figures are examples of pricing information available on the Digital Marketplace website.

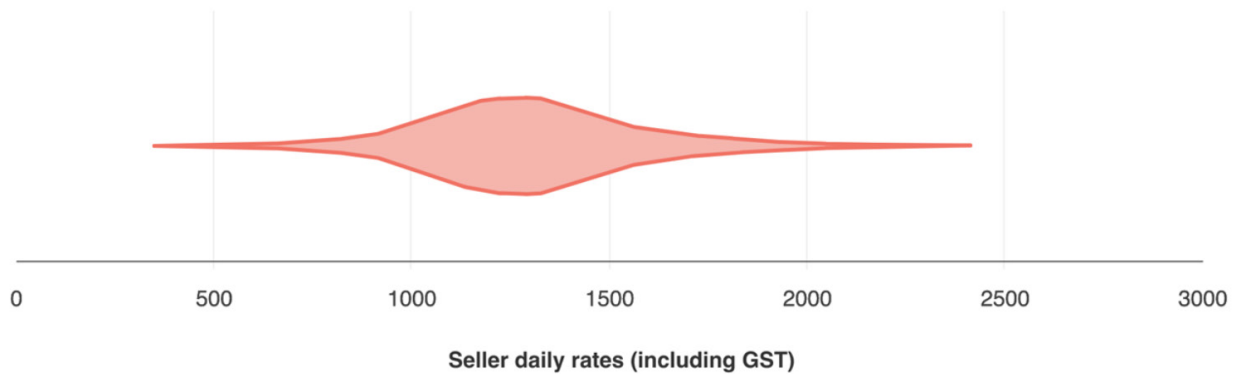
**Figure A.1: Daily rates submitted for specialist roles from the Digital Marketplace website**

**Range of daily rates submitted for specialist roles (includes GST)**



Source: DTA, Digital Marketplace Insights March 2020 [Internet], available at <https://marketplace.service.gov.au/2/insights> [accessed March 2020].

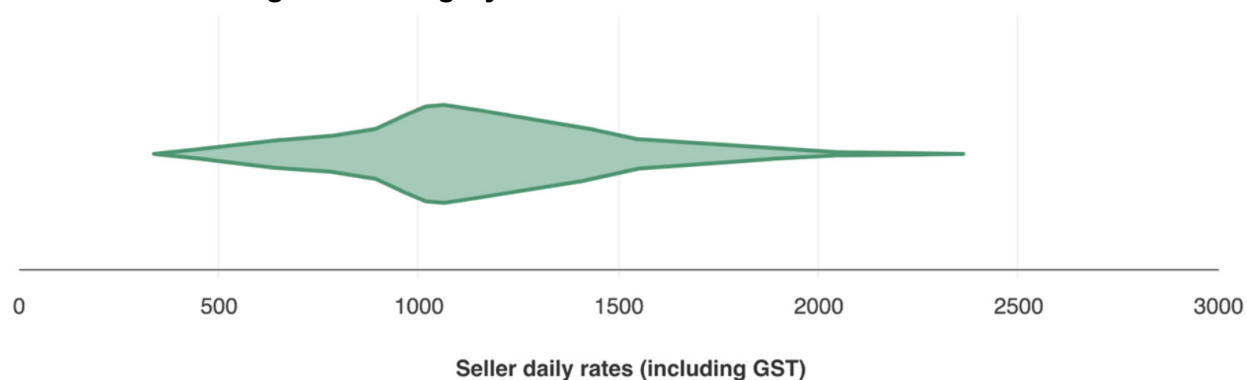
**Figure A.2: Daily rates sellers have bid for specialist roles in the agile delivery and governance category**



Source: DTA, Digital Marketplace *Categories and rates* [Internet], available at <https://marketplace1.zendesk.com/hc/en-gb/articles/360000556476#deliverygov> [accessed June 2020].



**Figure A.3: Daily rates sellers have bid for specialist roles in the data science and management category**



Source: DTA, Digital Marketplace Categories and rates [Internet], available at <https://marketplace1.zendesk.com/hc/en-gb/articles/360000556476#deliverygov> [accessed June 2020].