

**SUBMISSION No. 4
Review of Auditor-General's
Report Nos 24 to 31 (2011-12)**



Australian Government
Department of Finance and Deregulation

Response to Question on Notice

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

Audit report No.31 – Procurement Panels

GENERAL COMMENTS

Nil

SPECIFIC QUESTIONS ON NOTICE

Question 1 (Written)

The ANAO report notes (paragraph 3.18) that “...agencies need to ensure that small and medium enterprises (SMEs) have appropriate opportunities to compete for business and are not unfairly discriminated against by agencies’ procurement processes”

What reporting is required and what review is made of agencies’ compliance with this requirement – “appropriate opportunities” and “not unfairly discriminated against”?

In particular, any reporting beyond that on the achievement of the 10 per cent share of business by value?

Could information be provided to the committee on the agency-by-agency figure for the SME share of business by value?

Response

SMEs are defined as Australian or New Zealand firms with fewer than 200 full-time equivalent employees.

Measures to improve the competitiveness of SMEs and access to Australian Government agency contracts include:

- A commitment to sourcing at least 10 per cent of purchases by value from SMEs. In 2010-11 Australian Government agencies entered into approximately 79,000 contracts valued at \$32.6 billion with some 13,000 suppliers. The SME share of those contracts awarded was 59% by volume and 33% by value.
- For ICT contracts with an expected value of \$20 million or more, agencies are to ensure that tenderers meet minimum SME participation levels of 10 per cent for hardware and 20 per cent for services.

- Information about selling to business available on the Department of Finance and Deregulation (Finance) website and in the Selling to the Australian Government – A Guide for Business booklet.
- AusTender, the Australian Government’s central procurement website at www.tenders.gov.au, allows any business can look at the contracts awarded, above \$10 000 in value.
- Availability of a basic contract suite for low-value, low-risk (less than \$80,000) procurements for use by Commonwealth agencies.
- The Australian Industry Capability (AIC) program in the Defence Materiel Organisation focuses on developing and utilising Australian industry to provide the best possible cost-effective support to Australian Defence Force operations.
- Australian Industry Participation Plans require companies bidding for major Commonwealth tenders (exceeding \$20 million) to develop plans that set out how they will offer opportunities for capable Australian firms.
- Exemptions to the mandatory requirements of the *Commonwealth Procurement Rules* (CPRs) when agencies engage with SMEs that are either indigenous owned or that primarily exist to provide the services of persons with a disability.

AusTender is the public entry point into the Government procurement market. As a centralised facility, it provides suppliers, including SMEs, awareness of, and access to, agencies’ procurement activities.

Under the CPRs all *Financial Management and Accountability Act 1997* (FMA Act) agencies and a number of *Commonwealth Authorities and Companies Act 1997* (CAC Act) agencies are required to publish their open approaches to market on AusTender. Based on self-defined business profiles, registered suppliers are automatically notified of agencies’ business opportunities (tender requests) and any significant planned procurements for each financial year, as they are published. In the case of planned procurements, any changes to scope or release date are also notified. In this way, suppliers’ business planning and procurement participation are better supported.

AusTender also provides suppliers access to most agencies’ tender documentation and associated addenda, together with online lodgement of bids. For businesses, this more time for bid development and can result in savings on printing, binding and delivery of physical documents.

Agencies are required to publish panels and contracts valued at \$10,000 and greater on AusTender. This information is valuable business intelligence to suppliers in terms of understanding their market and better positioning them to compete effectively.

Information on SME participation has been produced by Finance since 2009-10 as part of the annual Australian Bureau of Statistics (ABS) analysis of AusTender contract information. It is available at: <http://www.finance.gov.au/publications/statistics-on-commonwealth-purchasing-contracts/index.html>.

A list of SME participation by agency for 2010-11 is at **Appendix A**.

Question 2 (Written)

The representation of SMEs on panels is another area the Committee would like to explore:

What information can you provide on the percentages of SMEs represented on panels?

Why could this information not be regularly reported by agencies?

It is common I understand for SMEs to be hired by Tier 1 and Tier 2 companies taking on government business. Can figures be provided on the numbers of SMEs so engaged?

Response

At the end of each financial year, Finance, through the ABS, undertakes analysis on SME participation in Government procurement.

Information about SME participation on panels is not currently collected. Finance will investigate the possibility of collecting this information.

Question 3 (Written)

Are there significant variations in the way Chief Executives implement and promulgate the model instructions provided by Finance? If so, why?

Has there been any assessment of the extent to which such variation could work to the detriment of the effective operation of the Government Procurement Rules?

Has there been any assessment and evaluation of the success of Chief Executives in conveying the Government's requirements and guidelines, both in relation to procurement and the broader financial framework requirements?

How will the success or otherwise of the model CEIs be evaluated?

Response

The Model Chief Executive's Instructions (CEIs) were issued on 7 July 2011. They provide a summary of the key requirements of the financial management framework. The Model CEIs were designed so they could be used by all 111 FMA Act agencies, which vary greatly in size, complexity and purpose. They include instructions that should be used in full, but allow agencies to tailor them to meet their requirements by providing the option to issue additional guidance commensurate with an agency's needs and risks.

The Model CEI on Procurement was not released with the Model CEIs, due to the update of the Commonwealth Procurement Guidelines. Finance has been working with agencies to develop and issue the Model CEI on Procurement. The latest version has been circulated for comment with a view to issuing the Model CEI in August 2012.

Feedback from agencies on the Model CEIs has been positive. In May 2011 a survey was sent to the Chief Financial Officers of all FMA Act agencies. Of the 69 agencies that responded to the survey, 65 agencies stated they are either using or planning to use the Model CEIs. Agencies also included comments in the survey that the Model CEIs were a very useful resource.

Question 4 (Written)

Do the model Chief Executive Instructions take into account the findings of the ANAO from this audit?

Response

Finance has collaborated with other FMA Act agencies to develop a Model CEI on Procurement. The draft Model CEI on Procurement reflects the requirements of the CPRs and provides clear instructions of the key requirements of the procurement and broader financial management framework.

The recommendations of *Audit Report 31 2011-12: Establishment and Use of Procurement Panels*, and other audit reports have been incorporated into the Model CEIs where relevant.

Question 5 (Written)

How many whole-of-government procurement panels exist (including clustering arrangements that allow for WoG piggybacking)?

What services do these cover?

Response

Multi Agency Access (MAA) is the term used to describe procurement arrangements that may be shared by one or more agencies. As at 6 July 2012, agencies had reported 1,112 standing arrangements to AusTender. Of these, 438 (40%) were flagged as MAA arrangements.

Information on the services provided under these shared arrangements can be sourced directly from AusTender:

1. Go to the website at www.tenders.gov.au
2. Click on “Standing Offer Notices” from the navigation panel on the left
3. In the Advanced Search section, click “Current”
4. For “Multi Agency Access”, select Yes from the drop-down box
5. Click the “Search” button at the bottom of the page
6. All notices on panels that indicate shared arrangements will be returned and can be downloaded from the website into a spreadsheet.

Question 6 (Written)

How has Finance taken into account the findings and recommendations of the audit in its revision of the Commonwealth Procurement Rules, given it had access to the draft audit before the Rules were finalised?

Response

The Commonwealth Procurement Rules (CPRs) were launched in early April 2012, was prior to the tabling of *Audit Report 31, 2011-12: Establishment and Use of Procurement Panels* on 1 May 2012. The April launch was necessary to provide time for agencies to prepare for the implementation of the CPRs on 1 July 2012.

However, Finance is updating the procurement related guidance material on its website which supports the CPRs. In particular, updated guidance material on panels and multi-use lists will take the findings and recommendations from this audit into account. The findings and recommendations of *Audit Report 11, 2010-11: Direct Source Procurement* were taken into account in developing the CPRs. Specifically, the CPRs were developed as a rule set with clear and consistent terminology, and redefined procurement methods.

To enhance the procurement capability of agencies, recommendations made by the ANAO are regularly raised by Finance through its various procurement forums. Finance also invites the ANAO to present its audit reports at these forums. The ANAO presented on *Audit Report 31, 2011-12* at a Procurement Discussion Forum on 30 May 2012 attended by 275 procurement officials and at a meeting of the Senior Procurement Officials Reference Group on 31 May 2012 to approximately 50 agencies.

Question 7 (Written)

How will Finance evaluate the impact of the change from the Commonwealth Procurement Guidelines to the Commonwealth Procurement Rules?

Response

Finance will monitor feedback from agencies received through a number of media such as the procurement agency advice inbox and the various procurement related forums hosted by the Department. To date, feedback from agencies in relation to the transition from the Commonwealth Procurement Guidelines to the CPRs has been overwhelmingly positive. Finance will also monitor external scrutiny of Government procurement processes by the JCPAA, the ANAO, and the media.

The CPRs are one mechanism for improving procurement capability. In addition, Finance provides a range of support to agencies to help improve capability, including procurement discussion forums, targeted training and information sessions, and the Senior Procurement Officers Reference Group.

Question 8 (Written)

Recommendation 2 suggested that Finance require agencies to make reference on AusTender to the relevant standing offer when reporting contracts resulting from a panel arrangement, and that agencies ensure their internal guidelines reflect this requirement. Has Finance implemented this recommendation, and have the other agencies incorporated this advice into their procurement practices?

Response

Current procurement policy advises that officials should reference the relevant standing offer when reporting contracts from panels. This requirement will be incorporated in the updates to the guidance material on panels and multi-use-lists and subsequently reflected in AusTender operational guidance.

Question 9 (Written)

The audit report noted there was scope for Finance to revisit and reinforce its centrally available advice to agencies, suggesting the Buying for Government guidance could be enhanced. Have steps been taken to improve guidance in this area? How does this fit into the update of the Commonwealth Procurement Rules?

Response

As mentioned in response to Question 6, following the release of the CPRs, Finance is updating the supporting guidance material available from its website. A significant focus of the revised guidance is on panel procurement. The guidance material on panels and multi-use lists, being developed in conjunction with procurement officials in agencies, will include value for money considerations when establishing and accessing panels and assessing the effectiveness of panels over their lifecycle.

Question 10 (Written)

What steps has Finance taken to implement the suggestion made by the ANAO that Finance reinforce and further clarify the requirement for agencies to obtain an appropriate Regulation 9 approval before entering into a deed of standing offer?

Response

The CPRs reiterate that the FMA Regulations require that proposals to spend public money must be approved and that *Regulation 9 requires an approver to be satisfied, after making reasonable enquiries, that the spending proposal is an efficient, effective, economical and ethical use of public money that is not inconsistent with the policies of the Commonwealth.* The guidance material on panels and multi-use lists will specify that the requirement to obtain Regulation 9 approval applies to the engagement of panel providers through a deed of standing offer.

2010-11 SME Participation by Agency

Appendix A

Agency Name	Value (\$)	Value (\$) percentage	Number	Number percentage
Administrative Appeals Tribunal	\$1,831,031.00	31%	44	54%
Attorney-General's Department	\$101,089,871.00	45%	555	62%
AusAid	\$1,562,131,345.00	61%	1,093	64%
Austrade	\$18,711,128.00	43%	207	50%
Australian Antarctic Division	\$40,225,956.00	56%	339	60%
Australian Bureau of Statistics	\$672,053,035.00	81%	413	59%
Australian Centre for International Agricultural Research	\$1,713,887.00	4%	47	42%
Australian Commission for Law Enforcement Integrity	\$1,145,328.00	33%	25	56%
Australian Communications and Media Authority (ACMA)	\$38,630,743.00	54%	234	59%
Australian Competition and Consumer Commission	\$39,247,029.00	69%	279	59%
Australian Crime Commission	\$13,563,408.00	50%	209	63%
Australian Customs and Border Protection Service	\$142,418,474.00	70%	420	66%
Australian Electoral Commission	\$61,496,929.00	59%	402	63%
Australian Federal Police	\$157,025,549.00	21%	1,345	60%
Australian Fisheries Management Authority	\$10,168,079.00	41%	105	58%
Australian Human Rights Commission	\$27,863,448.00	96%	24	55%
Australian Institute of Family Studies	\$1,048,301.00	15%	12	46%
Australian National Audit Office (ANAO)	\$19,308,756.00	91%	211	83%
Australian Office of Financial Management	\$10,955,670.00	79%	25	63%
Australian Organ and Tissue Donation and Transplantation Authority	\$6,371,229.00	53%	58	76%
Australian Pesticides and Veterinary Medicines Authority	\$445,277.00	65%	24	71%
Australian Prudential Regulation Authority (APRA)	\$10,664,716.00	49%	122	53%
Australian Public Service Commission	\$12,198,556.00	66%	280	73%
Australian Radiation Protection and Nuclear Safety Agency (ARPANSA)	\$3,380,189.00	50%	87	61%
Australian Research Council	\$19,120,871.00	54%	146	35%
Australian Securities and Investments Commission	\$94,167,050.00	54%	765	63%
Australian Taxation Office	\$178,205,916.00	12%	822	67%
Australian Transaction Reports and Analysis Centre (AUSTRAC)	\$10,658,731.00	73%	85	64%
Australian Transport Safety Bureau	\$737,786.00	32%	28	55%
Bureau of Meteorology	\$26,298,983.00	39%	289	50%
Centrelink	\$300,629,855.00	52%	1,564	65%
Comsuper	\$21,487,709.00	95%	113	78%
CrimTrac	\$6,545,141.00	65%	42	50%
CRS Australia	\$13,319,780.00	70%	176	81%
Defence Materiel Organisation	\$1,501,933,305.00	22%	8,475	51%
Department of Agriculture Fisheries and Forestry	\$81,447,248.00	64%	711	57%
Department of Broadband Communications and the Digital Economy	\$63,804,413.00	61%	376	59%

Department of Climate Change and Energy Efficiency	\$72,571,430.00	25%	464	62%
Department of Defence	\$2,097,724,314.00	25%	10,714	58%
Department of Education Employment and Workplace Relations	\$768,415,346.00	48%	1,760	70%
Department of Families, Housing, Community Services and Indigenous Affairs	\$117,598,153.00	49%	876	67%
Department of Finance and Deregulation	\$213,605,735.00	54%	664	63%
Department of Foreign Affairs and Trade	\$144,760,324.00	49%	967	61%
Department of Health and Ageing	\$220,133,363.00	35%	1,196	62%
Department of Human Services	\$189,782,984.00	29%	275	64%
Department of Human Services Retired	\$34,875,963.00	32%	327	54%
Department of Immigration and Citizenship	\$536,583,141.00	39%	1,889	70%
Department of Infrastructure and Transport	\$21,930,340.00	46%	277	57%
Department of Infrastructure Transport Regional Development and Local Government	\$7,863,152.00	42%	111	44%
Department of Innovation Industry Science and Research	\$70,094,612.00	23%	816	63%
Department of Parliamentary Services	\$42,791,370.00	59%	431	68%
Department of Regional Australia, Regional Development and Local Government	\$19,312,651.00	45%	166	54%
Department of Resources Energy and Tourism	\$74,300,996.00	72%	298	61%
Department of Sustainability, Environment, Water, Population and Communities	\$29,971,744.00	51%	311	58%
Department of the Environment Water Heritage and the Arts	\$31,266,186.00	48%	194	53%
Department of the House of Representatives	\$2,057,298.00	50%	37	51%
Department of the Prime Minister and Cabinet	\$24,747,880.00	51%	243	53%
Department of the Senate	\$999,507.00	66%	20	67%
Department of the Treasury	\$22,461,759.00	57%	307	57%
Department of Veterans' Affairs	\$63,810,788.00	23%	348	72%
Fair Work Australia	\$4,203,556.00	48%	135	56%
Family Court of Australia	\$8,175,631.00	59%	79	62%
Federal Court of Australia	\$6,243,461.00	59%	31	74%
Future Fund Management Agency	\$2,065,474.00	40%	25	37%
Geoscience Australia	\$81,918,495.00	67%	575	61%
Great Barrier Reef Marine Park Authority	\$4,791,578.00	22%	95	51%
Insolvency and Trustee Service Australia (ITSA)	\$9,699,159.00	54%	169	58%
IP Australia	\$211,157,998.00	89%	336	62%
Medicare Australia	\$134,660,684.00	71%	680	61%
Migration Review Tribunal and Refugee Review Tribunal (MRT-RRT)	\$7,051,325.00	55%	128	54%
Murray-Darling Basin Authority	\$13,789,610.00	67%	107	58%
National Archives of Australia	\$20,213,477.00	84%	154	70%
National Blood Authority	\$28,940,325.00	19%	44	35%
National Capital Authority	\$6,476,313.00	53%	64	85%
National Health and Medical Research Council	\$5,075,222.00	61%	69	58%
National Native Title Tribunal	\$1,608,535.00	38%	22	43%
National Offshore Petroleum Safety Authority	\$2,579,537.00	85%	11	41%
National Water Commission	\$13,059,384.00	81%	53	66%

