



Australian Government
Department of Home Affairs



Department of Home Affairs submission to the Inquiry into the Procurement of the Permissions Capability

Joint Committee of Public Accounts and Audit
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Department of Home Affairs Submission to the Inquiry into the Procurement of the Permissions Capability

Thank you for your invitation to make a submission to the Joint Committee of Public Accounts and Audit Inquiry into the Procurement of the Permissions Capability (the **Inquiry**).

The Department of Home Affairs (the **Department**) is committed to conducting procurement activities that are consistent with the Commonwealth Procurement Rules (**CPRs**). The Department's Chief Operating Officer Group (**COO Group**), through its Chief Procurement Officer (**CPO**), is responsible for establishing procurement processes that are compliant with the CPRs and other legislative requirements and is the first point of contact for all procurement advice.

The COO Group provides procurement and contract management support across the Department (including Australian Border Force) to ensure that procurement processes are an efficient, effective, economical and ethical use of resources that encourage competition and are non-discriminatory to facilitate accountable and transparent decision-making that achieves a value for money outcome.

The Department welcomes the Inquiry.

The Department notes that while the title of the Inquiry refers to the procurement of the Permissions Capability, its Terms of Reference refers to a multi-stage process that commenced in 2017. The Department has therefore assumed that the referenced process is the Global Digital Platform (**GDP**) procurement that preceded the Permissions Capability procurement. Based on this assumption, this submission covers both the GDP and Permissions Capability procurement processes.

GDP Procurement Chronology

A program of immigration reform was announced on 9 May 2017 as part of Budget 2017/18. As announced by the then Minister for Home Affairs, The Hon Peter Dutton MP, this included \$35.4 million over the forward estimates for the then Department of Immigration and Border Protection (**DIBP**) to “...engage with the market to explore new technologies to help design and build a visa processing platform that will better manage risk, increase efficiency in processing and improve the visa applicant experience.”

Market consultation began with a paper released on AusTender by DIBP on 23 June 2017. Titled ‘*Delivering visa services for Australia*’, the paper sought feedback on a proposal to partner with the market to design, build and run key elements of the visa business, noting that DIBP would maintain sovereign functions including policy and manual visa decision making. The feedback sought was across eight proposed bundles, including the GDP and supporting systems to drive end-to-end processing workflow (**Bundle 1**).

DIBP planned for a multi-stage procurement process to ensure an iterative and methodical approach was taken to understanding market capabilities and technologies, designing requirements, and ensuring that any partnerships for outsourcing activities were sustainable from a commercial, joint engagement and innovation perspective. This was an important consideration of the proposed 10 year term of an Agreement for Bundle 1 and as it was expected to form the foundation for potential future bundles.

The stages were planned and implemented as per that below, requiring respondents and tenderers to be successful in a preliminary phase in order to progress to a subsequent phase.

- Request for Expression of Interest (**REOI**) stage comprised:
 - Phase 1: Paper-based REOI
 - Phase 2: Scenario Based Design and Evaluation
 - Phase 3: Co-design process.

- Request for Tender (RFT) stage comprised:
 - Phase 1
 - Phase 2.

A total of 36 responses to the market consultation paper were received and analysed, resulting in a decision to proceed to the REOI stage for the GDP. As outlined above, the REOI comprised three phases. The Phase 1 Paper-based REOI was released on AusTender on 22 September 2017 and closed on 27 October 2017. It was titled '*Delivering Visa Services for Australia – Global Digital Platform*'. A total of 16 responses were received with two responses not satisfying the initial screening criteria and 14 proceeding to the evaluation element of Phase 1.

Following evaluation of the 14 REOI submissions from Phase 1, six respondents were assessed as suitable for progression and invited to participate in Phase 2 – Scenario Based Design and Evaluation. Phase 2 comprised a group briefing with all successful respondents then individual panel of expert sessions and workshops held between 15 January 2018 and 7 February 2018 where scenarios on policy agility, commercial models and end-to-end client experience were discussed with each respondent. Care was taken during this process to ensure consistency of messaging and engagement in accordance with procurement probity principles. This engagement provided respondents with the opportunity to further understand the Department's requirements and to demonstrate their ability to develop innovative solutions. Prior to the workshops, two of the respondents withdrew their individual participation and instead joined other respondent entities – forming consortiums. Workshops were held with the four respondents that remained.

Following an evaluation of workshop outcomes, two respondents were invited to participate in Phase 3 of the REOI – Co-Design on 9 March 2018. Phase 3 Co-Design spanned the period March 2018 to July 2018 and involved the respondents working collaboratively with Department teams and subject matter experts to design end-to-end visa process maps. Upon completion of REOI Phases 1 to 3, in September 2018, the Australian Government agreed to proceed with the two-stage RFT process for the platform to be co-designed with the Department, and funded, built, owned, maintained and operated by a private sector provider.

Phase 1 of the RFT was released on 7 December 2018 on AusTender and closed on 20 February 2019. The RFT was limited to the two respondents that successfully completed the REOI stage – representing a continuation of the competitive procurement process. The purpose of Phase 1 of the RFT was to assess the extent to which each tenderer was able to meet the Department's requirements and to demonstrate a culture which delivers high levels of service and a commitment to continuous improvement in respect to both the Department and users of the platform, over the term of an agreement.

Following the evaluation of Phase 1 of the RFT, Phase 2 of the RFT was released on AusTender on 5 April 2019 and closed, for technical elements of the submission, on 28 June 2019 and, for commercial elements of the submission, on 10 September 2019. The objective of Phase 2 of the RFT was to select a preferred tenderer (if any) based on an evaluation of which tenderer represented best overall value for money. Following initial evaluation of Phase 2 responses, the Department proceeded to an Offer Definition and Improvement Activities (ODIA) process through an invitation to both tenderers on 22 November 2019.

On 04 May 2018, the Australian Government established an independent panel (the panel) to undertake a review of the APS. In its Report of 20 September 2019, titled '*Our Public Service Our Future*', the panel recommended that the funding, structure and management of digital functions across the Australian Public Service be improved with an emphasis on the seamless integration of capabilities across agencies. A Senate Inquiry on the impact of changes to service delivery models on the administration and running of government programs was also announced on 1 August 2019. In its report of February 2020, the Legal and Constitutional Affairs References Committee recommended, amongst other matters, that "...the Australian government does not proceed with the Request for Tender (RFT) *Delivering Visa Services for Australia – Global Digital Platform*."

On 10 March 2020, the Australian Government made a decision to pursue a new policy for the acquisition and development of an Enterprise Workflow Processing Capability. The then Secretary made a decision to terminate the GDP procurement process on public interest grounds in light of the Australian Government's policy decision. The decision to terminate the procurement was communicated to both tenderers on 18 March 2020 and subsequently publicly announced by the then Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, the Hon Alan Tudge MP, on 20 March 2020.

Permissions Capability Procurement Chronology

The 20 March 2020 announcement of the termination of the GDP procurement also covered the Australian Government's new policy approach to the acquisition and delivery of a workflow processing capability. This approach sought an integrated, enterprise-scale capability that could be utilised across government in recognition of the efficiencies that can be generated from large-scale investment in technology and the re-use of capability across agencies.

Subsequently, on 13 August 2020, the Australian Government directed the Department and the Digital Transformation Agency (**DTA**) to approach the market to source and deliver a Permissions Capability that could be reused across government for permissions-based services. The work undertaken during the GDP procurement was adapted to inform the Permissions Capability procurement.

On 17 October 2020, then Acting Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs, The Hon Alan Tudge MP, issued a joint announcement with then Minister for Government Services (which at the time included responsibility for the DTA), The Hon Stuart Robert MP, regarding an impending RFT for Permissions Capability. On 17 October 2020, the Department released the Permissions Capability Industry Information paper (homeaffairs.gov.au) and published an Intent to Procure on AusTender. The Industry Information Paper outlined the high-level approach to developing a modern Permissions Capability consistent with the Whole-of-Australian-Government architecture.

The RFT was published on AusTender on 23 October 2020 and titled '*Request for Tender (RFT) for Permissions Capability (HOMEAFFAIRS/2054/RFT)*'. The RFT was open for eight weeks and closed on 18 December 2020. Eight tenders were received. Three of these failed to meet one or more of the Conditions for Participation and Minimum Content and Format Requirements and on this basis were excluded from further consideration on 24 December 2020. An unsolicited proposal was received on 11 February 2021 and was deemed a late tender and also excluded from further consideration. Five tenders proceeded to evaluation.

The evaluation of tenders commenced on 13 January 2021. On 6 July 2021, the Department's Delegate approved the Tender Evaluation Report stipulating that one tenderer, the preferred tenderer, be invited to enter into contract negotiations and that the second preferred provider be invited to complete further verification activities.

On 4 September 2021, the Delegate determined that further verification activities with the second preferred tenderer were no longer required on the basis of successful contract negotiations with the preferred tenderer, Accenture. On 6 September 2021, the Department executed a Deed of Standing Offer with Accenture for the delivery of the Permissions Capability. Four Work Orders were executed at the same time for Discovery and Co-Design, Base Capability, Digital Passenger Declaration (**DPD**) and Reseller Arrangements. The four initial work orders were designed to establish the base capability of the system and to initiate the first use case in the form of the DPD – a priority given the expected reopening of Australia's international borders. Visa related functionality development was slated for subsequent development, subject to the successful establishment of the deliverables of the first four work orders.

A key driver of the Permissions Capability procurement was the Australian Government's intent to support the bio-secure re-opening of Australia's international border through the introduction of the DPD. The DPD allowed the collection of COVID-related health and quarantine information from travellers and replaced the Australian Travel Declaration. It was also intended to replace the Incoming Passenger Card.

On 3 July 2022, the Minister for Home Affairs, the Hon Clare O'Neil MP, announced that travellers to Australia no longer needed to complete the DPD or Maritime Travel Declaration (**MTD**) following health advice from the Chief Medical Officer and subsequent changes to the *Biosecurity Act 2015* (Cth).

In August 2022, the Department concluded its contractual arrangements with Accenture regarding the Permissions Capability Program and agreed to a mutual separation. Delays encountered in achieving the planned objectives were a factor in this decision. Accenture's services ceased on 31 August 2022. In December 2022, the Australian Government requested that the Department terminate the Permissions Capability procurement as it was no longer a priority.

Procurement Planning and Process

Both the GDP and Permissions Capability procurements were thoroughly planned, designed and conducted with integrity, transparency and value for money as the driving factors. The Department conducted both the GDP and Permissions Capability procurements in accordance with the Commonwealth's Resource Management Framework, including the CPRs. Both procurements were also conducted in line with the Department's High Risk High Value (**HRHV**) Procurement process. This process is outlined in the 2021 *High Risk High Value Procurement Procedural Instruction (HRHV PI)* made pursuant to Part 3 of the *Accountable Authority Instructions (AAs) – Resource Management Framework 2020-21*. The HRHV PI was preceded by the HRHV Procedure which was implemented in 2017 and comprised similar requirements.

The HRHV PI applies an additional level of governance oversight to procurements valued at \$50 million or more and/or which may carry a high level of risk for the Department. Delegation for HRHV procurements must be at the Deputy Secretary, Deputy Commissioner or Group Manager level.

In accordance with the HRHV PI, qualifying procurements must be overseen by a Steering Committee responsible for endorsing all relevant documentation. The Steering Committee must be Chaired by an SES Band 2 officer and comprise the following non-delegable members: Chief Risk Officer; Chief Finance Officer; First Assistant Secretary, Disputes and Corporate Law Division (as an advisory role) and the Chief Procurement Officer. Procurement Steering Committees (**PSCs**) were established for both the GDP and Permissions Capability Procurements. The GDP PSC was chaired by the former Deputy Secretary, Corporate and Enabling Group and the Permissions Capability PSC was chaired by the Chief Operating Officer / Deputy Secretary of the former Corporate and Enabling Group. Both comprised the non-delegable members required by the HRHV PI as well as primarily SES Band 2 representatives from key departmental areas. In the case of the Permissions Capability PSC, membership also included senior officers from the DTA and the Department of Finance.

Multi-disciplinary Evaluation Committees were established in the case of both procurements. The GDP procurement Evaluation Committee comprised eight departmental members and was chaired by the First Assistant Secretary of the former Digital Channels and Transformation Division. It was supported in its assessment by two teams of subject matter experts: a Technical Evaluation Team and a Commercial Evaluation Team.

In relation to the Permissions Capability procurement, noting the whole-of-government intent, the Evaluation Committee comprised eight members and was chaired by First Assistant Secretary of the former Service Delivery and Transformation Division. Its membership also included SES Band 1 representation from the Department of Agriculture, Water and the Environment, the Department of Finance and the DTA. The Evaluation Committee was supported in its assessment by a Technical Evaluation Team and a Commercial Evaluation Team.

The evaluation teams undertook a comprehensive assessment of the submissions lodged. Evaluation members had access to appropriate technical/subject matter skills and knowledge to enable them to properly assess the suitability and viability of the tendered solutions. Evaluation committee members maintained probity, ethics and accountability throughout the evaluation process. Evaluations were undertaken in accordance with the procedures and criteria outlined in the RFT and the Evaluation Plan.

The GDP procurement had further layers of oversight in the form of an Interdepartmental Committee (**IDC**) on Reforming the Migration and Visa Framework which met a total of ten times between 11 May 2016 and 27 April 2018. The IDC was established in the context of the program of immigration reform that was announced as part of Budget 2017/18. Its purpose was to provide senior leadership, guidance and oversight of the Australian Government's intent to reform the migration and visa framework. This extended to the policy and legislative design elements as well as to the associated service delivery arrangements. The IDC was chaired by the Deputy Secretary of Policy Group of the then DIBP and comprised SES Band 2 and/or 3 representation from another twelve agencies including the Department of the Prime Minister and Cabinet, Treasury, the Department of Finance, and the then Department of Human Services. A further four agencies had a standing invitation.

The IDC oversaw the development of submissions relating to the program of immigration reform, considered the draft market consultation paper titled '*Delivering visa services for Australia*', including its outcomes, and was briefed on the progression to a multi-stage procurement process for the GDP.

An Immigration Reform Steering Committee (**IR Steering Committee**), chaired by the then Deputy Secretary of Visa and Citizenship Services in the Department, was also established to make decisions and provide advice and oversight in relation to the management of all major reform implementation and delivery activities. Supported by an Immigration Reform Implementation Office, the IR Steering Committee monitored the progress of reform activities, including in relation to the REOI for the GDP.

The Department used a range of specialised external and internal procurement, probity and legal advisors at different stages to assist it in administering transparent and defensible procurement processes.

This resourcing approach is consistent with projects of this scale.

Probity Management

The Department has robust mechanisms for the management of probity as reflected in the publication: '*Probity in Procurement – Better Practice Guide*', available to all staff in the Department. Both the GDP and Permissions Capability procurements were conducted with integrity, fairness and transparency.

The HRHV PI specifies that a probity advisor is to be appointed for high risk and/or high value procurements. McGrathNicol was appointed as Probity Advisor to the GDP market consultation process in June 2017. Maddocks was subsequently engaged as Probity Advisor for the remainder of the GDP procurement process in May 2018. Maddocks was also appointed as Probity Advisor to the Permissions Capability procurement on 12 October 2020.

Probity Plans were developed and implemented for both procurements, setting out protocols for the participation of all personnel. In relation to the Permissions Capability procurement, protocols covered fairness and transparency, consistency of information, conflicts of interest, gifts and hospitality, offers of employment, business meetings, social functions and confidentiality. The Probity Plan for the GDP procurement applied to all Department personnel and external contractors. The Probity Plan for the Permissions Capability procurement applied to all personnel with access to non-public information about the procurements, including Department personnel, external advisors, other Commonwealth personnel and portfolio ministers and their offices.

Prior to obtaining access to non-public procurement information, personnel with potential involvement in, or in physical proximity to procurement activity were required to participate in a probity briefing delivered by the Probity Advisor, and to sign Confidentiality Acknowledgement and Conflict of Interest Declaration forms. A probity register was established to record the completion or otherwise of these steps. All declared conflicts of interest were also recorded in the register. Declared conflicts of interest were referred to the Probity Advisor for assessment. Advice from the Probity Advisor, as well as action taken by the Department in response, were also recorded in the probity register.

Probity advice was regularly sought throughout the procurement processes. Probity measures were taken during both procurements to mitigate against confidentiality breaches. Robust measures were also put in place to mitigate against harm from potential Conflicts of Interest. For example, a number of personnel were advised, and agreed, to avoid both personal and work-related contact with individuals associated with tenderers.

Alleged breaches of the probity plan were addressed promptly and thoroughly. For example, a complaint was made in March 2021 that the Department's Commercial Advisor for the Permissions Capability procurement, Deloitte Touche Tohmatsu (**Deloitte**), was also involved in the provision of advice to a tenderer. Deloitte was suspended while the complaint was investigated. It was found that Deloitte had an actual conflict of interest in alignment with the complaint that it had failed to disclose at the time of engagement by the Department. This was found to be a breach of the Probity Plan and Deloitte's engagement was terminated on 18 May 2021.

A Management Initiated Review (**MIR**) was further undertaken by the Department's contracted internal auditor into the matter with a focus on reviewing tender documentation relating to those aspects of the procurement that were supported by Deloitte in order to ascertain whether any anomalies or areas for concern were evident. Conducted by the Department's contracted organisation-wide Internal Auditor, the aim of the MIR was to determine if the integrity of the procurement had been impacted by the breach of the Probity Plan by Deloitte. The MIR found that the conflict of interest was at the organisational level – the Deloitte personnel working on the project had not been aware of it. The MIR determined that Deloitte personnel acting in the commercial advisor capacity for the procurement had performed their role in accordance with the Tender Evaluation Plan and that there were no anomalies or areas of concern identified that required further investigation.

The Department also implemented probity measures to better enable equity between potential tenderers for the Permissions Capability procurement. In recognition of the advantage that two potential tenderers already had by virtue of their role in GDP Co-Design, the Department sought probity advice and implemented measures that included detailed, individual industry briefings, the establishment of a data room for sensitive information, the release of a pre-RFT industry information paper available to all potential tenderers, an RFT open-to-market period of eight weeks and a dedicated website page for the provision of market information, including the original GDP RFT documentation. A range of public announcements made between March 2020 and October 2020 by the Australian Government also alerted potential tenderers to the future procurement.

For both the GDP and Permissions Capability procurements, probity was managed and recorded through a manual register in Microsoft Excel. Being large procurements, the significant volume of material that required probity management proved challenging to administer due to occasional human error and the inefficiencies of manual data entry and information management – leading to delays in the provision of advice. This system has now been improved through the implementation of a Digital Probity Administration Capability (**DPAC**) which has provided demonstrable efficiencies over previous manual probity administration by greatly reducing the risk of human error. It also provides faster access to information, improved record keeping and reporting and more timely and accurate management of probity briefings.

Expenditure

Global Digital Platform

The Department was allocated and subsequently expended \$91.9 million (inclusive of the \$35.4 million announced by the then Minister for Home Affairs) for the design and procurement of the GDP, including: co-design and development of business requirements; tender processes, probity, legal and assurance. This funding was included in the following measures:

- 2017-18 Budget – *Immigration Reform – changes to Australia's visa processing arrangements* - \$41.8 million;
- 2018-19 MYEFO – *Immigration Reform – continued changes to visa services arrangements* - \$45.1 million; and
- 2019-20 MYEFO – *Immigration Reform - continued improvements to visa service arrangements* - \$5.0 million.

The successful implementation of the Visa and Migration Reform, including the GDP, was anticipated to result in \$180 million in future efficiencies. This funding was harvested from the Department's appropriation as part of the 2016-17 Budget measure Reforming the Visa and Migration Framework.

The GDP process was ceased by the Department following a policy shift of the Australian Government and the efficiencies were recast across years in anticipation of achieving similar savings under the new Permissions Capability process.

Permissions Capability

The Department was allocated, and subsequently expended \$74.9 million for the design and procurement of the Permissions Capability in the 2020-21 Mid-Year Economic and Financial Outlook (MYEFO). 2021-22 MYEFO funding for the Permissions Capability DPD measure is not for publication due to commercial-in-confidence sensitivities. The cessation of work on the DPD resulted in unspent appropriation of \$121.4 million over three years from 2022-23 onwards.

The total value of the contracts awarded was \$61.5 million (GST inclusive). The total amount paid to Accenture for the work orders completed up to the conclusion of contractual arrangements on 31 August 2022 was \$16.5 million (GST inclusive).

The \$121.4m of savings over three years from 2022-23 was acquitted through the 2023-24 Budget. In addition, in the same budget, as the \$180 million in total anticipated efficiencies to flow from the proposed program were unable to be achieved, the Government returned \$163.2 million of previously harvested savings to the Department, with the differential absorbed within existing Departmental resources.

Auditor-General Report

The Australian National Audit Office (ANAO) tabled its report titled '*Auditor-General Report No. 34 2022-23 Performance Audit: Procurement of the Permissions Capability*' on 7 June 2023 (the **Report**).

The Department partially agreed to the single recommendation made by the ANAO, namely:

'When undertaking procurements, the Department of Home Affairs clearly identify in its request documentation whether responses that depart from its preferred contracting approach will be accepted and, if so, identifying in its tender evaluation plan how those departures will be addressed in the evaluation and ranking of competing tenders.'

The Department agreed that it would consider how to optimise communications with tenderers in relation to the acceptance or otherwise of alternative commercial models and would ensure that Tender Evaluation Plans are clear on how alternative commercial models proposed would be assessed. To this end, the Department has fully implemented the recommendation in the Report and has updated its Approach to Market (**ATM**) documentation to highlight to procurers that, when planning to source complex requirements, they should consider whether the Department would benefit from alternative solutions to that specified in the Statement of Requirement. Should procurers decide to allow the supply market to tender alternative solutions, they must consult with the Department's central procurement area for advice to ensure that appropriate provisions are made in the ATM documentation, including the pricing structures, evaluation criteria and process, prior to issuing the documentation.

The Department did not agree that potential tenderers were confused as to whether alternative commercial models would be assessed. The fact that a number of tenderers proposed alternative commercial models, combined with the absence of any tenderer clarification questions on this matter, indicate the market clearly understood that alternative models would be considered in the Permissions Capability RFT.

The Department's full response to the Report is included in the tabled version of the Report.