



Australian Government
National Capital Authority

Ref: 553109

Mr Peter Pullen
Senior Researcher
Joint Committee of Public Accounts and Audit
PO Box 6021
Parliament House
CANBERRA ACT 2600

Via email: jcpaa@aph.gov.au

Dear Mr Pullen

Report 498: Inquiry into Commonwealth procurement

Thank you for your e-mail of 9 August 2023 regarding the report tabled by the Joint Committee of Public Accounts and Audit (Committee) entitled *Report 498: Commitment issues – An inquiry into Commonwealth procurement*.

Please find attached the National Capital Authority's response to recommendation 14 at Attachment A. Our report shows a significant improvement in procurement practices across a range of activities.

I would be pleased to discuss the strategies we have put in place and the results we have achieved with the Committee in more detail at their convenience. [REDACTED]

Yours sincerely

[REDACTED]
Sally Barnes
Chief Executive

8 February 2024

Attachment A: NCA response to recommendation 14, JCPAA Report 498

The National Capital Authority's Response

Report 498: 'Commitment issues' – An inquiry into Commonwealth procurement
Joint Committee of Public Accounts and Audit

The Australian National Audit Office (ANAO) conducted a performance audit (the Audit) of the National Capital Authority's (NCA) procurements undertaken over the course of the 2019-20 and 2020-21 financial years— *Auditor-General's Report No. 30 (2021-22) Procurement of the National Capital Authority*. The Audit highlighted some gaps and deficiencies in NCA's procurement processes. The Auditor-General made eight (8) recommendations, seven (7) of which were directed to the NCA.

The NCA accepted all recommendations of the Audit and has implemented a range of measures to ensure it delivers value for money in all procurement decisions. Measures include establishing a small specialist team of procurement and contract experts to guide procurement activities, compulsory procurement training for all NCA staff, a rolling spot check audit program of high-value, high-risk procurements, and the implementation of compulsory procurement plans for all activities. Actions taken to address the ANAO recommendations are set out at **Appendix A**.

In September 2022, the Joint Committee of Public Accounts and Audit (the Committee) held an inquiry into Commonwealth procurement, which included the *Auditor-General's Report No. 30 (2021-22) Procurement of the National Capital Authority*. The Committee tabled its report (*Report 498: Commitment issues – An inquiry into Commonwealth procurement*) on 9 August 2023.

The Report included one (1) recommendation directed specifically to the NCA (Recommendation 14) as follows:

“The Committee recommends that the National Capital Authority provide an update on the implementation of the reforms undertaken in response to the audit, including:

- *statistics on and analysis of its use of competitive procurement methods, especially when procuring through standing offers and panels*
- *statistics on and analysis of how its procurement methods have changed to encourage competition, particularly its request documentation and its tender evaluation processes*
- *changes to its management of probity and promotion of ethical and fair procurement, and*
- *changes to its record keeping practices and procedures.”*

The NCA's response to Recommendation 14 of the Report is outlined below.

1- Statistics on and analysis of its (the NCA's) use of competitive procurement methods, especially when procuring through standing offers and panels

Since the ANAO audit, the NCA has implemented important and significant improvements to its procurement activities to standardise and increase the use of competitive procurement methods, including through standing offers and panels. These include a requirement that all procurements include an approved procurement plan setting out how the procurement will be conducted, including the method of procurement.

The NCA has updated its guidelines and delegations, so staff are required to seek the Chief Operating Officer's approval of procurement plans above \$80,000. In addition, where a procurement is conducted through standing offers and panels, at least three (3) suppliers are to be approached to provide quotes, where this is possible.

Consistent with Department of Finance's (Finance) guidance, the NCA utilises mandatory coordinated procurement arrangements established for commonly used goods or services by the Commonwealth. Where available and fit-for-purpose, the NCA also considers existing standing offers and panels established by other Commonwealth entities when undertaking procurement. A list of procurements activities (over \$80,000) from panel arrangements is at **Appendix B**.

From 1 July 2023 to 31 December 2023, the NCA undertook 51 procurements, worth \$24.6 million. There were 15 procurement activities (\$23.3 million) above \$80,000. Overall, 14 activities, or 93 per cent (\$23.1 million) of procurements above \$80,000, were conducted through an open tender process, including nine (9) activities (\$2.2 million) procured using standing offers and panels

established via an open tender process. This compares to financial year 2022-2023, where 70 per cent of the NCA's procurements above the \$80,000 threshold were via an open tender process, in comparison to the 23 per cent via open tender reported in the ANAO audit findings.

These results are well above 63 per cent (by count) reported by all other non-corporate Commonwealth entities noted by the ANAO at the time of the Audit.

2- Statistics on and analysis of how NCA's procurement methods have changed to encourage competition, particularly the request documentation and tender evaluation processes

The NCA procurement practices encourage competition by increasing its open market approaches—all procurements must be supported by a procurement plan that sets out how the procurement will be conducted and evaluated. Templates have been developed to standardise processes and procedures across the organisation to facilitate compliance with Commonwealth Procurement Rules (CPRs).

Updated templates to guide procurement processes and require staff to document and record the selection of the supplier(s) and value-for-money assessments have also been developed.

Consistent with the CPRs, the NCA utilises the mandatory Commonwealth Contracting Suite (CCS) Approach to Market (ATM) documentation. The NCA has developed templates for procurement of construction services in line with the CCS and relevant procurement guidance from Finance's website. Use of these template documents ensure standardised procedures across the organisation and improves consistency during the evaluation processes.

All procurements undergo a value-for-money assessment and decisions are documented, regardless of the procurement method, including whether through standing offers, panels or via an alternate open market process.

Internal audit findings of improvements to internal documentation supporting improved tender evaluation processes indicate gaps in documentation for procurements over \$80,000 (planning, evaluation and value for money, approval, contracts) have improved as follows;

- 1 July 2022 to 31 December 2022 – 9 (25%)
- 1 July 2023 to 31 December 2023 – 0 (0%)

Examples of reforms implemented particularly in relation to request documentation and tender evaluation processes include:

- **Use of Commonwealth Contracting Suite (CCS) templates and documentation**—These are developed by Finance and widely used across the Commonwealth. These documents are also well known and understood by potential suppliers making responding to requests simple and streamlined.
- **Full disclosure of evaluation criteria**—The NCA requires that procurement documentation incorporate a complete description of the evaluation criteria to be applied during the evaluation process. This gives potential respondents greater clarity about how to respond to requests for tenders and how their responses will be evaluated.
- **Control mechanisms around the use of conditions for participations**—As a standard practice, NCA procurements do not include conditions for participations. On rare exceptions where a procurement is proposed to include conditions of participation, this is reviewed by the Director of Procurement to ensure it is consistent with the CPRs.
- **Guidance to staff and template documents for tender evaluation plan and tender evaluation report** ensuring consistency in procurement processes.

- **Guidance to staff and template documents to ensure minimal use of mandatory requirements** such as minimum format and content requirements designed to assure that the activity does not unnecessarily limit competition.

3- Changes to management of probity and promotion of ethical and fair procurement

The NCA has invested in improving procurement performance and bolstered its procurement capability with the appointment of the NCA Director of Procurement (May 2022), and the NCA Commercial Counsel (February 2023). These officers support all procurement processes and contracts in the NCA to ensure probity is upheld and perceived or real conflicts are managed appropriately. They guide the engagement of external probity advisers and the implementation of probity advice, where relevant. The team is approachable and readily available, and are an easily accessed source of advice and guidance for staff.

As well as providing this source of expert and practical advice, the NCA has implemented detailed guidance for staff regarding the management of probity and overall governance when undertaking procurement activities. As an example, the NCA has put in place a probity declaration form for staff to complete as part of each procurement activity. These form part of the procurement documentation and must be included when seeking delegate approval to enter a contract. The NCA Director of Procurement also conducts spot checks to ensure these forms are in place.

The probity form is designed as a continuous reminder to staff of their obligations in relation to probity principles and is consistent with the website guidance from Finance. It also includes a conflict of interest declaration to ensure ethical and fair procurement.

Positive procurement research and processes that deliver improved value for money for the public are regularly highlighted by the Chief Executive to staff through staff meetings and the internal staff newsletter. Staff are encouraged to share learnings and positive procurement outcomes. Staff involved in both complex and simple procurement processes are regularly recognised in NCA awards, including Chief Executive awards.

For high-value and high-risk procurements, the NCA may appoint external legal and probity advisers ensuring compliance with the CPRs. When external advisers are appointed, a procurement process sign-off is obtained as part of the deliverables to provide assurance to the delegate that the correct process has been followed. This sign-off is presented to the delegate when seeking approval to commit expenditure and enter into contracts with suppliers. The NCA also requires advisers to complete a probity and conflict of interest form.

4- Changes to record keeping practices and procedures

The ANAO audit of 2022 found gaps in the NCA's records of the planning and conduct of procurements. To address this, the NCA has put in place detailed procurement guidance and templates to ensure consistency of procedures and improve record keeping practices. One of the templates implemented by the NCA includes a step-by-step checklist outlining the required documentation from procurement planning to contract approvals and AusTender reporting.

In 2022, the NCA commissioned an external provider to conduct procurement audits of high-value and high-risk procurement activities. So far, two (2) procurement activities have been audited, showing "*...the NCA complied in full or in part with all compliance obligations, key control points or recommendations from the ANAO...*". The external auditor further concluded that "*...the NCA took a considered and controlled approach to the procurement and its obligations under the CPRs.*"

For increased monitoring and assurance, the NCA Board and Audit and Risk Committee are provided with regular updates and reports of procurement activities. These reports include information on spot audit checks completed by the Director of Procurement to ensure relevant documents are in place and available on the NCA's record management system.

To further demonstrate the NCA's commitment to improve in this area, it recently conducted a procurement activity to appoint an external auditor to conduct an audit of its record keeping practices across the organisation. Recommendations from this audit will further strengthen the reforms that have already been implemented.

Since the ANAO audit of 2022, the NCA has implemented a program of procurement improvements and made significant inroads to address its recommendations. Measures include:

- **Skilled dedicated resources**—the appointment of the Director of Procurement in May 2022 to provide an increased level of support and training for staff undertaking procurement, monitoring and reporting to NCA Executives and the Accountable Authority (the NCA Board), implement standardisation of procurement processes, and address the recommendations of the ANAO report.

The appointment of a Commercial Counsel in February 2023 to provide further improvements in the NCA's contract management practices and assist staff in ensuring contracts at engagement are fit-for-purpose and meet relevant requirements.

- **Training** – Procurement training for all NCA staff, including Senior Executives. The NCA facilitated a Procurement Essentials and Contract Management training that was delivered by the APS Academy. This is aimed at improving overall understanding and application of the relevant rules, regulations and legislation when undertaking a procurement activity.

Procurement training as a mandatory requirement for new starters within the organisation as part of the onboarding process. The Director of Procurement also regularly encourages staff members to attend procurement related training facilitated by Commonwealth entities such as Finance, the Digital Transformation Agency and the Department of Climate Change, Energy, the Environment and Water.

- **A rolling audit program** of high value and/or risk procurement activities by an external provider to bring independent scrutiny and compliance of the NCA against the ANAO's recommendations and the Commonwealth Procurement Rules (CPRs).
- **Development of detailed internal procurement guidance** to ensure compliance with the CPRs and Finance's Resource Management Frameworks.
- **Development of procurement templates and checklist** from planning to final approvals. This ensures consistency across the organisation and assures improvement into the NCA's record management practices.
- **Monthly Active Contracts Reminders**—a tool to assist staff better monitor and plan for future procurement requirements.
- **Monitoring of Procurement Activities**—ongoing review of procurement activities to ensure compliance with the CPRs. A quarterly summary of procurement activities and compliance is provided to the Executive, the Board and Audit and Risk Committee.
- **Early engagement**—staff are required to engage with the procurement expert and discuss procurement activities in the planning phase, prior to determining an approach and presenting approvals to the delegate. This is aimed at early intervention but also ensuring that relevant documentation is in place, including a rationale for the procurement approach.
- **Annual Procurement Plan**—a list of proposed open market approaches is regularly updated on AusTender allowing the market to get an indication of (and prepare for) future procurements activities by the NCA.
- **Records Management audit** – the appointment of an external provider to complete an audit of the NCA's record management keeping practices to provide assurance and further improve what has been implemented to date.

Recommendations from the Auditor-General's Report No. 30 (2021-22) Procurement of the National Capital Authority and actions implemented by the NCA.

ANAO Recommendation	NCA Action	Status
The Department of Finance develop and issue guidance on applying the definition of construction services' when relevant entities are considering which procurement threshold to use for the purposes of the Commonwealth Procurement Rules.	Since the Audit, the NCA has updated its internal procurement policies and guidelines and taken a very narrow interpretation of the definition of construction services to exclude any related activities including planning and design services – for example architectural services.	Continuous
The National Capital Authority: (a) increase the extent to which it employs open competitive procurement processes; and (b) improve the accuracy of its AusTender reporting on the manner in which contracts have been let.	(a) The NCA has increased the use of open tenders (partly driven by the action above). From 1 July 2023 to 31 December 2023, 15 procurement activities over \$80,000 were completed, worth approximately \$23 million. Of these procurement activities, 14 (93%) were via an open tender process. In the 2022-23 financial year, the NCA has undertaken 61 procurement activities over \$80,000, worth approximately \$41 million. Over 75% (\$31M) by value (70%, 43 by count) have been via open market approach. (b) The NCA has also put measures in place to ensure timely AusTender reporting. Results are reported to the NCA Board at each meeting.	Continuous
The National Capital Authority improve its controls over the making of appropriate records of the justification for using limited tender procurement approaches and outlining how value for money was achieved.	The NCA has updated internal procurement policies and guidelines that require accurate record keeping when staff undertake procurements. This includes a procurement plan that sets out the reasons for the procurement, how it will be conducted, and how responses will be evaluated and by whom. Every procurement plan activity is vetted by NCA's newly established procurement adviser. Every procurement plan greater than \$80,000 is reviewed and signed off by the COO.	Continuous
The National Capital Authority's Audit Committee monitor and provide assurance that the National Capital Authority employs open, fair and non-discriminatory approaches when undertaking procurements.	The NCA has updated internal procurement policies and guidelines to require accurate record keeping when staff undertake procurements. It has also implemented an ongoing review of procurement activities to ensure recommendations of the ANAO are adhered to, including accuracy of reporting of procurement as well as to monitor trends such as the number of engagements via limited or open tender. A report is provided to the NCA Executive, Board and Audit and Risk Committee setting out the results.	Continuous
The National Capital Authority strengthen its procurement controls to ensure that procurement request documentation includes a complete description of the evaluation criteria that will be applied.	The NCA has updated its internal procurement policies and guidelines to require accurate record keeping when staff undertake procurements. This includes a procurement plan that sets out the reasons for the procurement, how it will be conducted and how responses will be evaluated, and by whom. Every procurement plan activity is vetted by the NCA's newly established procurement adviser. Every procurement plan greater than \$80,000 is reviewed and signed off by the COO.	Continuous
Where a probity adviser has been appointed, the National Capital Authority actively engage and manage the adviser to ensure services are delivered as agreed and that probity has been maintained during the procurement process.	For high-value or high-risk procurement activities, the NCA also engages the services of external legal and probity advisers and updated the engagement protocols that requires them to provide a sign-off confirming the procurement process is compliant with the CPRs.	Continuous
The National Capital Authority implement a monitoring and assurance framework over its compliance with the Commonwealth Procurement Rules, including AusTender reporting.	Every procurement plan activity is vetted by the NCA's newly established procurement adviser. Every procurement plan greater than \$80,000 is reviewed and signed off by the COO. For high-value or high-risk procurement activities, the NCA also engages the services of external legal and probity advisers and requires them to provide a sign off confirming the procurement process is compliant with the CPRs. The NCA has also implemented a rolling external audit program of high value and/or risk procurements throughout the life of these projects. Two of these reviews have been undertaken so far and concluded that the "NCA took a considered and controlled approach to the procurement and its obligations under the CPRs".	Continuous
The National Capital Authority place greater emphasis on timely and accurate reporting of its procurement activities, and making and retaining appropriate records of those activities.	The NCA has updated its internal procurement policies and guidelines that require accurate record keeping when staff undertake procurements. The records are spot-audited to ensure they are complete and accurate.	Continuous

Appendix B

Procurements over \$80,000 from panel arrangements published between 1 July 2023 to 31 December 2023.

Panel ID	Panel Title	Supplier Engaged	Value (AUD)
SON1183832	Secure Internet Gateway Services	Macquarie Technology Operations Pty Ltd.	354,276.25
SON3529652	International Freight Forwarding Panel	JR Global Logistics P/L	215,265.36
SON3538332	Capability Support Services Panel	Hays Specialist Recruitment (Australia) Pty Ltd	233,490.21
SON3557594	Recruitment Services Panel	Randstad Pty Ltd	89,299.71
SON3557594	Recruitment Services Panel	Randstad Pty Ltd	260,000.00
SON3622041	Legal Services Panel - Whole of Australian Government	Minter Ellison	209,000.00
SON3622041	Legal Services Panel - Whole of Australian Government	Maddocks	499,800.00
SON3729785	Building Design Services	Northrop Consultants	159,786.00
SON3751667	Management Advisory Services (MAS Panel)	Customer Driven Solutions Pty Ltd	192,555.00

Procurements over \$80,000 from panel arrangements published between 1 July 2022 to 30 June 2023.

Panel ID	Panel Title	Supplier Engaged	Value (AUD)
SON3413842	Digital Marketplace Panel 1.0	Xaana Pty Ltd	119,196.00
SON3413842	Digital Marketplace Panel 1.0	Yellow Hat Consulting	109,316.68
SON3413842	Digital Marketplace Panel 1.0	Datacom Systems (AU) Pty Ltd	97,020.00
SON3413842	Digital Marketplace Panel 1.0	Datacom Systems (AU) Pty Ltd	559,864.69
SON3460637	Construction Related Services Panel	AECOM Australia Pty Ltd	218,637.10
SON3541738	Hardware Marketplace Panel	Dell Computer Pty Ltd	354,086.70
SON3557594	Recruitment Services Panel	Randstad Pty Ltd	181,020.84
SON3557594	Recruitment Services Panel	Randstad Pty Ltd	264,000.00
SON3640577	Building Mapping and Projections	The Electric Canvas	170,500.00
SON3668352	Cloud Marketplace	iCognition Pty Ltd	574,302.03
SON3683997	Defence Infrastructure Panel - Environment, Heritage & Engineering 2020-25	Umwelt (Australia) Pty Limited	136,240.50
SON3696828	Video Surveillance Equipment and Services Panel	Sapio Pty Ltd	81,527.35
SON3713272	Telecommunications Marketplace Panel	Macquarie Telecom Pty Limited	299,931.65
SON3729785	Building Design Services	Northrop Consultants	82,637.50
SON3751667	Management Advisory Services (MAS Panel)	Grosvenor Public Sector Advisory	91,300.00
SON3751667	Management Advisory Services (MAS Panel)	JLL Public Sector Valuations Pty Ltd	255,255.00
SON3751667	Management Advisory Services (MAS Panel)	SMEC Australia Pty Ltd	110,000.00
SON3848791	Standing Offer for Capital Works Consultants	ACOR Rudds Consultants Pty Ltd	185,350.00
SON3922691	Trade Services Panel	Ecwise Services (Australia) Pty Ltd	480,623.19
SON3922691	Trade Services Panel	Ecwise Services (Australia) Pty Ltd	670,206.65