

SUBMISSION No. 2
Review of Auditor-General's
Report Nos 24 to 32 (2011-12)

Administration of the Australia Network Tender Process

Audit Report No.29 2011-12

Opening Statement by Auditor-General

JCPAA Review 27 June 2012

1. A tender for the provision of the Australia Network broadcasting service was conducted from 4 February 2011 to 7 November 2011, at which time the Government announced that it had terminated the process on public interest grounds due to significant leaks of confidential tender information to the media. Over this period, there was considerable Parliamentary and media interest in the conduct of the tender, particularly following changes to the tender process and several media reports regarding confidential aspects of the tender.
2. The performance audit of the Australia Network tender process was undertaken following requests from the Deputy Leader of the Opposition, a request from the Minister for Broadband, Communications and the Digital Economy, and after taking into consideration the broader Parliamentary and public interest. The Communications Minister indicated in his request that there were aspects of the tender process on which my office could potentially comment in the interests of ensuring future tender processes are as robust as possible. In this light, the objective of the audit was to report on the administration of the Australia Network tender process and to identify lessons learned from the conduct of the process to inform future procurement activities.

3. The report concluded, amongst other things, that the manner and circumstances in which this high profile tender process was conducted brought into question the Government's ability to deliver such a sensitive process fairly and effectively. The report explains the background to the Government agreeing to put the operation of the Australia Network to tender and the key steps in the tender process up until the time the Communications Minister, with the agreement of the Government, announced the termination of the tender and ultimately the policy decision to award the operation of the service to the Australian Broadcasting Corporation (ABC) on a permanent basis.

4. Factors contributing to the audit conclusion included:

- there were differing views within government, including at the ministerial and departmental levels, about the decision-making and approval processes for the tender;
- the issues raised as a result of the Government's changes to the tender process while the tender was in progress, which included changing the nominated approver and the inclusion of an additional evaluation criterion; and
- briefings prepared for Ministers should have had greater regard to the confidentiality and sensitivity of the information being provided for what was still a 'live' tender process. Ultimately, information was not as tightly controlled as it should have been. Compliance by all parties with the probity arrangements put in place for the tender process would have better controlled the flow of confidential information during the course of the tender evaluation process. In addition, tighter control of tender information should have been achieved by not

circulating confidential tender information to any departmental officers, Ministers or their staff, unless they are part of the tender decision-making process or have a demonstrable need for such specific information.

5. At an administrative level, the arrangements put in place by DFAT to manage the approach to market and the evaluation of tenders were, in the main, effective.
6. While the Government was entitled to terminate the tender and make a decision to award the operation of the Australia Network to the ABC, the Australia Network tender process presented the Australian Government in a poor light and cost the two tenderers—the Australian News Channel (ANC) and the ABC—time and money.
7. The audit report did not make any recommendations in light of the termination of the tender process. Rather, the audit identified lessons learned from the conduct of the tender process to inform future procurement activities. There are three main issues to bear in mind:
 - firstly, it is important that, where it is intended that Ministers or Cabinet have a formal role in a tender process, that this be made clear and departments have a role in assisting government to be explicit about this;
 - secondly, information security is critically important to effective tender arrangements and there are accepted ways within government of managing this; and
 - thirdly, all parties involved in the management of a tender process should have regard to the importance of adhering to conventional procurement arrangements

and effectively managing the range of risks involved, given they can change significantly over time.

8. I also indicated that the Government may also wish to reflect on Ministers performing the role of an approver, in situations where the Minister's portfolio bodies may be submitting tenders for services to be determined by government. In such circumstances, any perception of a conflict of interest could be mitigated by the Government agreeing to another Minister, or more than one Minister, approving the tender outcome.
9. To assist the Committee with its inquiry, we have prepared a schedule of key events, which is attached to this statement.
10. I and the audit team will be happy to answer any questions the Committee may have.

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Key Events in the Australia Network Tender Process

Date	Event
26 October 2010	The future of the Australia Network was discussed at a Ministers-only meeting on 26 October 2010, as part of Budget processes. In a briefing to the Prime Minister (14 June 2011), the Cabinet Secretary advised that Ministers had agreed the Australia Network decision was to be made by Cabinet.
22 November 2010	Cabinet decided to put the Australia Network contract to tender. The record of the decision was silent on the decision-making process for the tender.
December 2010	<p>In response to a DFAT brief (dated 3 December 2010), the Foreign Minister appointed the Secretary of DFAT as the approver for the tender. (The Foreign Minister's response to the brief was undated.)</p> <p>The Foreign Minister wrote to the Prime Minister, Deputy Prime Minister, Finance Minister, and the Communications Minister seeking nominations from their departments for representation on the Tender Evaluation Board, the letters were undated. The letters referred to the TEB evaluating tenders and making recommendations to Ministers in April 2011.</p>
19 January 2011	<p>The Foreign Minister wrote to the Prime Minister, Treasurer and the Finance Minister, seeking agreement on aspects of the tender (the letter was undated, but other documents indicate that the letters were signed and hand delivered on 19 January 2011.)</p> <p>The letters made no explicit reference to the identity or role of the approver for the tender.</p>
25 January 2011	The Prime Minister's response to the letter from the Foreign Minister noted that the 'outcomes of the successful tender would be subject to Cabinet consideration, with Cabinet to agree the successful tender bid.'
4 February 2011	Request for Tender announced on AusTender (DFAT11-CPD-02). No details regarding the approver were included in RFT documentation.
25 March 2011	Tender closed.
19 April 2011	<p>The Foreign Minister's office provided a statement to the <i>Australian Financial Review</i> that 'the tender evaluation board is currently considering the tender bids. There is no set time-frame for the decision. The recommendation of the TEB will be considered by the approver, who is the secretary of DFAT. Cabinet and caucus are not part of the decision-making process.' This statement was cleared by a senior adviser in the Prime Minister's office, with an email to the Foreign Minister's office indicating that the Prime Minister had 'cleared these lines'.</p> <p>An article quoting the statement was published in the <i>Australian Financial Review</i> on 21 April 2011.</p>
4 May 2011	The Tender Evaluation Board submitted its recommendation, through the Steering Committee, to the Secretary of DFAT as the decision-maker for the tender.
6 June 2011	<p>Cabinet decided that the Foreign Minister would bring forward a submission to Cabinet on 14 June on the tenders, with Cabinet to agree the successful bid. The decision taken was without submission.</p> <p>The Foreign Minister and Communications Minister did not attend this Cabinet meeting.</p>

Date	Event
14 June 2011	<p>The Foreign Minister brought forward a paper on the Australia Network for Cabinet consideration. The paper did not reveal the TEB recommendations or discuss the tenders. The paper canvassed several options for the tender process moving forward, but recommended leaving the approval process as it currently stood.</p> <p>In considering the former Foreign Minister's paper, the Cabinet requested PM&C to coordinate the development of further advice on amending the tender process, including:</p> <ul style="list-style-type: none"> • changing the approver for the tender; and • the addition of a new evaluation criterion.
16 June 2011	<p>Advice was prepared by PM&C in response to Cabinet's request. The key changes proposed for the tender process were:</p> <ul style="list-style-type: none"> • the Communications Minister to be the approver, supported by DFAT; • the inclusion of an additional evaluation criterion relating to the tenderer's ability to meet the national interests of Australia in light of changed international circumstances since the RFT was issued; • clear guidance to be provided to the tenderers as to the information they were required to submit; • existing tenderers to be given the opportunity to amend their tenders in light of the new criterion; • the Communications Minister to bring the revised TEB report to Cabinet and consult Cabinet on the amended tenders; and • the Communications Minister to have discretion to make a decision that did not reflect the recommendations of the TEB report, noting the need for the reasons for any such divergence to be carefully documented and for the decision to be based solely on the evaluation framework and methodology as advised to tenderers.
20 June 2011	The Cabinet amended the tender process largely in line with the approach suggested by PM&C.
24 June 2011	Tenderers were advised of the changes to the tender process.
5 July 2011	An Addendum to the RFT was provided to the tenderers on 5 July 2011.
27 July 2011	Closing date for amended tenders.
30 August 2011	The Supplementary TEB Report was submitted to the approver.
27 October 2011	The Australian Federal Police were requested to investigate the leaking of tender information that had been referenced in articles in <i>The Australian</i> newspaper on 17 October 2011 and <i>The Age</i> newspaper on 24 October 2011 (the investigation was not announced until 7 November 2011).
7 November 2011	The Government announced that the tender process had been terminated and that the Australian Federal Police was conducting an investigation into alleged leaks.
5 December 2011	The Government announced that the ABC would provide the Australia Network service on a permanent basis.

Source: ANAO analysis.