

**SUBMISSION No. 5**  
**Review of Auditor-General's**  
**Report Nos 24 to 31 (2011-12)**

**Administration of the Australia Network tender process**

**ANAO Audit Report No. 29 2011–12**

**References in the audit report to decision-making arrangements for the tender process**

Date	Events	Report Reference
26 Oct 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.	Para 3.37, p.77; and 3.55, p.82.
22 Nov 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.	Para 1.28, p.41, 3.28, p.74 and 2.41, p.65.
3 Dec 2010	In response to a DFAT brief (dated 3 December 2010), the then Foreign Minister appointed the Secretary of DFAT as the approver for the tender. (The Foreign Minister's response to the brief was undated.) 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.	Para 2.5 and 2.7, p.51.
19 Jan 2011	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.) The letters made no explicit reference to the identity or role of the approver for the tender.	Para 2.8, p.52.
25 Jan 2011	The Prime Minister's response to the letter from the Foreign Minister noted that the 'outcomes of the tender would be subject to Cabinet consideration, with Cabinet to agree the successful tender bid.'	Para 2.8, p.52 and 3.28, p.74.
March 2011 onwards	As the tender process progressed, ongoing discussion occurred between DFAT, PM&C, the offices of the Prime Minister and the former Foreign Minister in relation to the Government's role in determining the tender outcome. From March 2011, discussions occurred between DFAT, PM&C, the Prime Minister's office and the former Foreign Minister's office, regarding how the position outlined in the Prime Minister's letter to the Foreign Minister could be implemented given the Minister's earlier decision that the Secretary of DFAT should be the decision-maker for the tender. These discussions did not, however, settle the differing views on the arrangements to be adopted to approve the tender outcome.	Para 2.9, p.52 and 3.29, p.75.
18 Apr 2011	The Prime Minister requested advice from PM&C on options available for the Government to consider the tender process. On 21 April 2011, PM&C provided the Prime Minister with a brief advising that the Secretary of DFAT had sole responsibility for deciding the preferred tenderer and that, under the current process, there was no scope for the Government to approve the preferred tenderer. This brief was returned to the department unsigned.	Para 3.30, p.75.

Date	Events	Report Reference
19 Apr 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>	Para 3.32, p.75 and 3.36, pp.76–77.
4 May 2011	TEB Report finalised and submitted to the Approver (Secretary of DFAT), through the Steering Committee.	Para 3.18, p.72.
Around 6 May 2011	The Secretary of DFAT informed the ANAO that, prior to taking a decision on the preferred tenderer, he was contacted by the then Secretary of PM&C (around 6 May 2011) and subsequently by other senior PM&C officials. During the course of those discussions it became evident that there was some unhappiness within government with the decision to put the Australia Network service to tender, and there was an expectation that the tender outcome would be brought back to government for further consideration or endorsement.	Para 3.25, p.74.
17 May 2011	<p>From 17 May 2011, the Government, through PM&amp;C, requested legal advice on three key issues to inform its deliberations:</p> <ul style="list-style-type: none"> <li>• whether the Secretary of DFAT could take into account the expressed vies of government in making a decision on the preferred tenderer;</li> <li>• whether the former Foreign Minister could be substituted for the Secretary of DFAT as the approver; and</li> <li>• a number of possible scenarios under which a decision that differed from any recommendations of the TEB might be reached.</li> </ul> <p>The AGS advice was provided to PM&amp;C, and subsequently the Cabinet Secretary and the Prime Minister's Office, on 17, 20 and 27 May.</p>	Para 3.34, p.76 and Footnote 84, p.76.
25 May 2011	The Prime Minister and Foreign Minister met to discuss aspects of the Australia Network tender process.	Para 3.36, p.76.
26 May 2011	<p>DFAT began drafting a submission to government on the Australia Network tender process.</p> <p>DFAT informed the ANAO that, at that time, officials in the department were of the view that Cabinet was to assume the role of approver and would select the preferred tenderer.</p>	Para 3.38 and 3.39, p.77.
5 June 2011	The Foreign Minister wrote to the Prime Minister on 5 June 2011. The Minister's letter indicated that, in the earlier meeting, the Prime Minister had requested that the tender be considered by Cabinet, and asked the Minister to review the legal advice on the matter and advise her further. The letter noted the apparent inconsistency between the Government's decision on 22 November 2010, the Prime Minister's letter of 25 January 2011, which stated that the matter was to be referred back to government, and his decision that the Secretary of DFAT be the nominated approver. The Minister outlined the reasons for his decision and also stated that discussions had occurred between DFAT and PM&C and agreement had been reached between departmental officials and the two ministerial offices. This understanding was reflected in the statement provided to the <i>Australian Financial Review</i> on 19 April 2011.	Para 3.36, pp. 76–77.

Date	Events	Report Reference
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>	Para 3.46, p.79.
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&amp;C to coordinate the development of further advice on amending the tender process, including:</p> <ul style="list-style-type: none"> <li>• changing the approver for the tender; and</li> <li>• the addition of a new evaluation criterion.</li> </ul>	Para 3.46, p.79 and 3.59, p.83.
14 June 2011	<p>In a brief provided to the Prime Minister on 14 June 2011, PM&amp;C advised that it had a differing view to that stated in the former Foreign Minister's paper, on whether the decision-making process had been agreed. PM&amp;C's briefing stated that officials had not reached an understanding about the decision-making arrangements, and further, the Secretary of PM&amp;C had not been involved in the 'officials-level discussions'. The briefing added that PM&amp;C had sought over the last month to bring the 'issue' to Cabinet for a decision.</p> <p>In a separate briefing (dated 14 June 2011) to the Prime Minister, the Cabinet Secretary (the Hon. Mark Dreyfus QC MP) also disagreed with some of the points raised in the former Foreign Minister's paper, namely, that the Prime Minister's and Foreign Minister's offices had agreed the approval process for the tender. The briefing also noted that the paper omitted reference to a Ministers' agreement in October 2010 that the decision was to be made by Cabinet, and that at the 22 November 2010 meeting the former Foreign Minister had agreed to bring a further submission on the Australia Network contract to Cabinet.</p>	Para 3.54 and 3.55, p.82.
16 June 2011	<p>Advice was prepared by PM&amp;C in response to Cabinet's request. The key changes proposed for the tender process were:</p> <ul style="list-style-type: none"> <li>• the Communications Minister to be the approver, supported by DFAT;</li> <li>• 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;</li> <li>• clear guidance to be provided to the tenderers as to the information they were required to submit;</li> <li>• existing tenderers to be given the opportunity to amend their tenders in light of the new criterion;</li> <li>• the Communications Minister to bring the revised TEB report to Cabinet and consult Cabinet on the amended tenders; and</li> <li>• 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.</li> </ul>	Para 3.61, p.97.
20 June 2011	<p>The Cabinet amended the tender process largely in line with the approach suggested by PM&amp;C.</p>	Para 3.68, p.87.

Source: ANAO analysis.