

The Auditor-General  
Auditor-General Report No. 18 2024–25  
Performance Audit

# **Procurement and Contract Management by Tourism Australia**

Tourism Australia

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Canberra ACT  
16 December 2024

Dear President  
Dear Mr Speaker

In accordance with the authority contained in the *Auditor-General Act 1997*, I have undertaken an independent performance audit in Tourism Australia. The report is titled *Procurement and Contract Management by Tourism Australia*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website — <http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Caralee'.

Dr Caralee McLiesh PSM  
Auditor-General

The Honourable the President of the Senate  
The Honourable the Speaker of the House of Representatives  
Parliament House  
Canberra ACT

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# Audit snapshot

## Auditor-General Report No.18 2024–25

*Procurement and Contract Management by Tourism Australia*



### Why did we do this audit?

- ▶ Payments to suppliers represented 74 per cent of Tourism Australia's (TA) total expenses in 2023–24, and 73 per cent of its total budgeted expenses for 2024–25.
- ▶ This audit provides assurance to the Parliament over the effectiveness of TA's procurement and contract management activities.



### What did we find?

- ▶ TA's procurement and contract management activities are not effective in complying with the CPRs and demonstrating the achievement of value for money.
- ▶ TA's procurement processes have not demonstrated the achievement of value for money.
- ▶ TA has not effectively managed contracts to achieve the objectives of the procurement.



### Key facts

- ▶ TA is a corporate Commonwealth entity that is subject to the Commonwealth Procurement Rules (CPRs).
- ▶ As at 30 June 2024, TA had reported 55 contracts on AusTender with a start date falling between 2021–22 and 2023–24, valued at \$265.6 million.



### What did we recommend?

- ▶ There were nine recommendations to TA aimed at improving its procurement processes and strengthening its contract management.
- ▶ TA agreed to all nine recommendations.

74%

of expenses in 2023–24 related to payments to suppliers.

70%

of procurements examined by the ANAO did not involve open competition.

Nil

contracts (of the 33 examined) had a contract management plan in place.

# Summary and recommendations

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## Background

1. Tourism Australia (TA) was established in 2004 under the *Tourism Australia Act 2004* (TA Act). Its corporate plan states that its purpose is to 'grow demand to enable a competitive and sustainable Australian tourism industry'.<sup>1</sup> The accountable authority for TA is the Board of Directors. TA reports having around 220 staff.
2. TA is a corporate Commonwealth entity within the Foreign Affairs and Trade portfolio. It is subject to the Commonwealth Procurement Rules (CPRs) issued by the Minister for Finance under section 105B of the *Public Governance, Performance and Accountability Act 2013*.
3. According to its audited financial statements, payments to suppliers represented 74 per cent of TA's total expenses in 2023–24. Of its total budgeted expenses for 2024–25, 73 per cent were attributable to supplier expenses. As at 30 June 2024, TA had reported 55 contracts on AusTender with a start date falling within the last three financial years, valued at \$265.6 million (including contract amendments).

## Rationale for undertaking the audit

4. Noting that nearly three-quarters of organisational expenses relate to contracting suppliers, this audit provides assurance to the Parliament over the effectiveness of TA's procurement and contract management activities.

## Audit objective and criteria

5. The audit objective was to assess whether TA's procurement and contract management activities are complying with the CPRs and demonstrating the achievement of value for money.
6. To form a conclusion against the objective, the following high-level criteria were applied:
  - Do the procurement processes demonstrate the achievement of value for money?
  - Are the contracts being managed appropriately to achieve the objectives of the procurement?

## Conclusion

7. TA's procurement and contract management activities are not effective in complying with the CPRs and demonstrating the achievement of value for money.
8. TA's procurement processes have not demonstrated the achievement of value for money. TA makes insufficient use of open and competitive procurement processes, with 70 per cent of the 33 procurements examined in detail by the ANAO not involving open competition. An appropriate procurement policy framework is not in place and TA's conduct of procurement activities regularly fails to adhere to requirements under the CPRs such as:

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1 TA, *Corporate Plan 2023–2027*, available from <https://previewapi.transparency.gov.au/delivery/assets/80a82ed1-3e33-027b-b7e0-6493f97f18f8/72ea911d-87b9-4fbd-8d6d-8d488972f4cf/2023-24%20Tourism%20Australia%20Corporate%20Plan.pdf> [accessed 7 October 2024].

- including evaluation criteria in request documentation and using those criteria to select the candidate that represents the best value for money;
  - acting ethically including fair treatment of suppliers and through the declaration and management of any conflicts of interest<sup>2</sup>; and
  - maintaining appropriate records commensurate with the scale, scope and risk of the procurement.
9. TA has not effectively managed contracts to achieve the objectives of the procurement. In relation to the 33 contracts examined in detail by the ANAO:
- none had a contract management plan, including some high-risk and high-value arrangements;
  - for more than half (55 per cent), TA had not included clear performance requirements in the contract. There were also shortcomings in TA's monitoring of contractor performance across the sample examined by the ANAO;
  - contract variations are common, with 33 per cent of contracts examined by the ANAO being varied. None of the variations had records created and retained by TA that demonstrated that the variation represented value for money; and
  - invoicing and payments for 64 per cent did not adhere to the contracts and/or requirements under TA's policies.
10. TA has also not been meeting its AusTender reporting requirements.

## Supporting findings

### Procurement processes

11. An appropriate procurement policy framework is not in place. The two versions of the Procurement Policy in place for the period covered by this ANAO performance audit do not fully reflect, or address, the principles, prescriptive requirements and mandatory rules set out in the CPRs. (See paragraphs 2.2 to 2.19)
12. Based on TA's AusTender reporting, the majority (62 per cent) of procurements valued at or above the \$400,000 threshold set by the CPRs did not involve open approaches to the market. (See paragraphs 2.23 to 2.39)
13. A competitive procurement approach was evident in the establishment of 55 per cent of the contracts examined by the ANAO. For 36 per cent of the contracts, a non-competitive approach was taken and in nine per cent there were insufficient records maintained to evidence the procurement approach taken by TA. For 10 of the procurements (30 per cent) examined by the ANAO, it was evident from the evaluation records that TA had favoured existing or previous suppliers when evaluating competing offers through panel procurement or when deciding which potential provider(s) should be invited to participate in a limited tender. Favouring existing or previous suppliers in the conduct of procurement processes is inconsistent with the CPRs. (See paragraphs 2.40 to 2.63)

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<sup>2</sup> See paragraphs 2.40–2.63 for details on TA's treatment of potential suppliers and paragraphs 2.89–2.95 for further details on TA's management of conflicts of interests for the contracts examined in detail by the ANAO.



14. Relevant evaluation criteria were included in request documentation for 52 per cent of the contracts examined in detail by the ANAO. For the remaining 48 per cent, either the request documentation did not include any evaluation criteria (12 per cent) or there were no records of the request documentation on file (36 per cent). This situation is not consistent with the CPRs which require evaluation criteria to be included in the request documentation. (See paragraphs 2.67 to 2.69)

15. Just over half of the contracts examined by the ANAO were awarded to the candidate where records demonstrated that it had been assessed by TA to offer the best value for money. For the remaining 48 per cent of contracts where value for money outcomes had not been demonstrated, this was primarily the result of insufficient analysis being presented commensurate with the scale of the procurement, or insufficient documentation being maintained. (See paragraphs 2.72 to 2.83)

16. TA had not conducted procurements to a consistent ethical standard as required under the CPRs. Of note was that:

- conflict of interest declarations were not completed by all evaluation team members in four per cent of the contracts examined where there was sufficient documentation on file;
- for eight per cent of the contracts where advisers were appointed to assist with the procurement process, TA's records did not include a complete list of the individuals involved; and
- the procurements of external probity advisers were deficient in relation to how those advisers were engaged as well as the limited scope of probity services obtained by TA. (See paragraphs 2.86 to 2.110)

17. TA did not maintain appropriate records commensurate with the scale, scope and risk of the procurement (which is what the CPRs require). Forty-eight per cent of contracts examined by the ANAO were missing one or more important documents. In addition, for those contracts where adequate records were available, more than half of the contracts involved work commencing before a contract was in place. (See paragraphs 2.113 to 2.132)

## **Contract management**

18. TA's reporting of contracts on AusTender was not compliant with the CPRs. TA accurately reported 19 per cent of the relevant contracts examined in detail by the ANAO within the required timeframe. Key information on contract values and contract start and end dates have been reported inaccurately with contract amendments usually not reported at all. (See paragraphs 3.2 to 3.17)

19. An appropriate contract management framework is not in place. None of the 33 contracts examined by the ANAO had a contract management plan and none had a risk management plan. This included a five-year \$311.3 million contract that relates to a key element of TA's marketing efforts. (See paragraphs 3.18 to 3.32)

20. Less than half (45 per cent) of the contracts examined by the ANAO included clear performance requirements. Methods for monitoring performance were included for 79 per cent of contracts examined, including a number of contracts where performance requirements had not been specified (that is the monitoring arrangements, such as reporting and/or progress

meetings, were not against a clear performance requirement). Further, TA has not consistently adhered to the performance framework set out in the contracts and it was common for there to be gaps in the records to evidence the contract management activities undertaken that TA was paying for. (See paragraphs 3.33 to 3.40)

21. For the procurements examined by the ANAO, TA has not consistently managed contracts effectively to deliver against the objectives of the procurements and to achieve value for money.

- Of the 33 contracts examined by the ANAO, 11 (33 per cent) had records of at least one variation being executed. None of the variations had supporting evidence of records to the delegate documenting the decision-making process and demonstrating that the variation represented value for money. Some variations have significantly increased the value of the contract (by up to 105 per cent) and retrospectively added additional services already delivered and/or paid for. There have also been instances of contracts continuing to operate past their stated completion date without being varied.
- Invoicing and payments under 21 of the 33 contracts examined by the ANAO did not adhere to the contracts and/or requirements under TA's policies. This has included instances of full payments being made before final deliverables under the contract are received and payments exceeding the contracted amount. (See paragraphs 3.41 to 3.51)

## Recommendations

**Recommendation no. 1**    Tourism Australia document a comprehensive procurement policy framework that gives full effect to the principles, prescriptive requirements and mandatory rules set out in the Commonwealth Procurement Rules.  
**Paragraph 2.20**

**Tourism Australia response:** *Agreed.*

**Recommendation no. 2**    Tourism Australia increase the extent to which it employs open, fair, non-discriminatory and competitive procurement processes.  
**Paragraph 2.64**

**Tourism Australia response:** *Agreed.*

**Recommendation no. 3**    Tourism Australia strengthen its procurement controls to ensure that procurement request documentation includes:  
**Paragraph 2.70**

- (a) the evaluation criteria that will be applied, together with any weightings; and
- (b) the way that prices will be considered in assessing the value for money offered by each candidate.

**Tourism Australia response:** *Agreed.*

**Recommendation no. 4**    Tourism Australia strengthen its procurement practices so that it can demonstrate that contracts are awarded to the candidate that satisfies the conditions for participation, is fully capable of undertaking the contract and will provide the best value for money as assessed against the essential requirements and evaluation  
**Paragraph 2.84**

criteria specified in the approach to market and request documentation.

**Tourism Australia response:** *Agreed.*

**Recommendation no. 5**  
**Paragraph 2.111**

Tourism Australia engage probity advisers through transparent procurement processes and, where a probity adviser has been appointed, Tourism Australia actively engage and manage the adviser to ensure probity has been maintained during the procurement process.

**Tourism Australia response:** *Agreed.*

**Recommendation no. 6**  
**Paragraph 2.128**

Tourism Australia improve its record keeping processes to ensure that business information and records are accurate, fit for purpose and are appropriately stored within entity systems.

**Tourism Australia response:** *Agreed.*

**Recommendation no. 7**  
**Paragraph 2.133**

Tourism Australia strengthen its procurement controls to better address the risk of work commencing before a contract is in place.

**Tourism Australia response:** *Agreed.*

**Recommendation no. 8**  
**Paragraph 3.14**

Tourism Australia:

- (a) place greater emphasis on timely and accurate reporting of its procurement activities; and
- (b) implement a monitoring and assurance framework over its compliance with the Commonwealth Procurement Rules including for AusTender reporting.

**Tourism Australia response:** *Agreed.*

**Recommendation no. 9**  
**Paragraph 3.52**

Tourism Australia strengthen its contract management including by:

- (a) establishing and maintaining a contract register that contains details of all entity contracts, and implementing a quality assurance process to ensure that the information recorded is complete and accurate, and updated in a timely manner;
- (b) documenting risk management and contract management plans for high-risk, high-value contracts;
- (c) including clear performance requirements in contracts and applying contracted performance monitoring approaches in the management of contracts; and
- (d) introducing effective controls over invoicing and payments under contracts.

**Tourism Australia response:** *Agreed.*

## Summary of entity response

22. The proposed audit report was provided to TA. The letter of response that was received for inclusion in the audit report is at Appendix 1. TA's summary response is provided below.

Tourism Australia acknowledges the ANAO's report and is fully committed to implementing its nine recommendations to improve the agency's procurement and contract management practices.

Tourism Australia had already begun to make improvements to its procurement and contract management systems ahead of the audit, and the agency is in the process of implementing remedial actions relating to the recommendations. This includes enhancing the agency's records management framework and processes, implementing a new procurement and contract management system and adding resources to its corporate services teams. Additional training will also be provided to all staff to improve capability to ensure that decisions are compliant, defensible, and clearly demonstrate value for money.

Some of the report's findings relate to work undertaken during the unprecedented events of the Covid-19 pandemic, when Tourism Australia's primary focus was on the emergency response to support an industry in crisis. Nevertheless, Tourism Australia accepts the recommendations for improvement to ensure that it can better demonstrate that the agency's procurement and contract management activities comply with Commonwealth Procurement Rules and achieve value for money.

## Key messages from this audit for all Australian Government entities

23. Below is a summary of key messages, including instances of good practice, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

### Competitive processes

- Achieving value for money is the core rule of the Commonwealth Procurement Rules. Generally, the more competitive the procurement process, the better placed an entity is to demonstrate that it has achieved value for money. Competition also enables an entity to obtain a better view of the market, can provide the opportunity for candidates to put forward innovative solutions and the competitive tension can encourage respondents to offer better prices, improved terms and/or higher quality proposals.

### Procurement

- Poorly conducted procurement processes by Australian Government entities, including those conducted without open and effective competition, can pose reputational risks to providers as well as the Australian Government.
- When engaging an external probity adviser, it is important that entities conduct the procurement process in an ethical and transparent manner. It is also important that entities do not engage the same probity adviser on an ongoing basis to not threaten the adviser's independence and objectivity.
- Sufficient and appropriate records must be maintained at all stages of a procurement. Not maintaining adequate records impacts the entity's ability to demonstrate that its conduct of a procurement has met the requirements under the Commonwealth Procurement Rules. Record keeping is the responsibility of every public servant and is required by law.

### **Contract management**

- It is important that the most up-to-date version of the contract incorporating any variations and records of relevant decisions, including approvals and authorisations, is formally evidenced in writing and appropriately stored. This provides the basis for making payments and the ongoing management of the contract.



# Audit findings

# 1. Background

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## Introduction

1.1 Tourism Australia (TA) was established in 2004 under the *Tourism Australia Act 2004* (TA Act).<sup>3</sup> Its corporate plan states that its purpose is to ‘grow demand to enable a competitive and sustainable Australian tourism industry’.<sup>4</sup> The accountable authority for TA is the Board of Directors.<sup>5</sup> TA reports having around 220 staff.<sup>6</sup>

1.2 TA is a corporate Commonwealth entity within the Foreign Affairs and Trade portfolio. It is subject to the Commonwealth Procurement Rules issued by the Minister for Finance under section 105B of the *Public Governance, Performance and Accountability Act 2013*.<sup>7</sup>

## Procurement activities

1.3 According to its audited financial statements, payments to suppliers represented 74 per cent of TA’s total expenses in 2023–24. Of its total budgeted expenses for 2024–25, 73 per cent were attributable to supplier expenses.

1.4 As at 30 June 2024, TA had reported 55 contracts on AusTender with a start date falling within the last three financial years, valued at \$265.6 million (including contract amendments). Recently completed procurements have included:

- a seven-year, \$20 million contract to lease office space in Sydney;
- a three-year, \$186.8 million contract for global media services;
- a three-year, \$2.4 million contract for translation and transcreation services; and
- a three-year, \$2.3 million contract for public relations services in North America.

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3 The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) applies to TA. The PGPA Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.

4 The functions of TA are set out in section 7 of the TA Act and are as follows: to increase the awareness of potential international travellers of Australia as a destination; to increase the awareness of potential domestic travellers of Australia as a place to travel; to increase the knowledge of potential travellers, both international and domestic, of Australia; to increase the desire of potential international travellers to travel to Australia; to increase the desire of potential travellers, both international and domestic, to travel throughout Australia; to conduct research into, and analysis of, international and domestic travel; to report on trends in international and domestic travel; to communicate effectively with the Australian tourism industry on issues that may affect it; and to increase awareness throughout Australia of the contribution of tourism to Australia’s economy, society and environment.

5 The board’s functions are to ensure the proper and efficient performance of TA’s functions, and determine TA’s policy in relation to any matter. The board consists of the chair, the deputy chair, the managing director, and six other members. The members (except for the managing director) are appointed by the minister. The managing director is appointed by the board and is responsible for the day-to-day management of TA’s operations. This includes the implementation of strategies and policies, and attaining targets, approved by the board. The managing director is also responsible for measuring performance, maintaining an effective risk management process, and implementing the organisational structure of TA.

6 In November 2023, TA advised the ANAO that it had 186 FTE as at 30 June 2023. TA staff are not engaged under the *Public Service Act 1999*.

7 TA is listed as a prescribed corporate Commonwealth entity under section 30 of the Public Governance, Performance and Accountability Rule 2014.



## Rationale for undertaking the audit

1.5 Noting that nearly three-quarters of organisational expenses relate to contracting suppliers, this audit provides assurance to the Parliament over the effectiveness of TA's procurement and contract management activities.

## Audit approach

### Audit objective, criteria and scope

1.6 The audit objective was to assess whether TA's procurement and contract management activities are complying with the Commonwealth Procurement Rules and demonstrating the achievement of value for money.

1.7 To form a conclusion against the objective, the following high-level criteria were applied:

- Do the procurement processes demonstrate the achievement of value for money?
- Are the contracts being managed appropriately to achieve the objectives of the procurement?

1.8 The audit scope encompassed TA's:

- procurement and contract management framework; and
- procurement and contract management activities for contracts entered into in 2021–22 and 2022–23.

### Audit methodology

1.9 The audit method involved:

- examination of TA records (including electronic documentation, and procurement and contract management reports) and AusTender reporting;
- targeted testing of a selection of individual procurements to provide coverage across the different procurement approaches employed by TA.<sup>8</sup> In addition to examining records held by TA in the files for each procurement, in response to the preliminary audit findings in a number of instances TA identified and provided to the ANAO relevant procurement records that should have been included in the file for the procurement. This enabled the ANAO to update its analysis before finalising the report of this audit; and
- meetings with relevant staff.

1.10 The audit was conducted in accordance with ANAO Auditing Standards at a cost to the ANAO of approximately \$548,000.

1.11 The team members for this audit were Tiffany Tang, Tomislav Kesina, Sharini Arulkumaran and Brian Boyd.

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8 For the purpose of selecting the sample for detailed examination, the ANAO identified from TA records 131 procurement contracts as having been entered into in 2021–22 and 2022–23 with a reported value of \$100,000 or above. From these 131 contracts, the ANAO selected a sample of 33 with contracts captured across different subject matter categories and contract values.

## 2. Procurement processes

### Areas examined

The ANAO examined whether the procurement processes demonstrated the achievement of value for money.

### Conclusion

Tourism Australia's (TA) procurement processes have not demonstrated the achievement of value for money. TA makes insufficient use of open and competitive procurement processes, with 70 per cent of the 33 procurements examined in detail by the ANAO not involving open competition. An appropriate procurement policy framework is not in place and TA's conduct of procurement activities regularly fails to adhere to requirements under the Commonwealth Procurement Rules (CPRs) such as:

- including evaluation criteria in request documentation and using those criteria to select the candidate that represents the best value for money;
- acting ethically including fair treatment of suppliers and through the declaration and management of any conflicts of interest; and
- maintaining appropriate records commensurate with the scale, scope and risk of the procurement.

### Areas for improvement

The ANAO has made seven recommendations with a particular focus on TA obtaining value for money in its procurement activities, including through greater use of open and effective competition to transparently select suppliers based on a documented assessment against evaluation criteria that are included in an approach to market, more consistent adherence to ethical requirements and improved procurement record keeping.

2.1 To assess whether the procurement processes demonstrated the achievement of value for money, the ANAO examined whether an open and competitive procurement process was conducted in compliance with the CPRs. This reflects that competition is a key element of the Australian Government's procurement framework.

### Is there an appropriate procurement policy framework in place?

An appropriate procurement policy framework is not in place. The two versions of the Procurement Policy in place for the period covered by this ANAO performance audit do not fully reflect, or address, the principles, prescriptive requirements and mandatory rules set out in the CPRs.

2.2 A sound framework helps ensure that: procurements are undertaken in compliance with relevant rules and legislation; entities properly use and manage public resources; and procurements achieve value for money outcomes. The key procurement policy framework document for TA is its 'Procurement Policy'. The Procurement Policy sets out TA's requirements for 'planning, implementing, approving and documenting procurements'.

2.3 For the period examined by the ANAO (contracts entered into in 2021–22 and 2022–23), TA had two versions of this policy in place. The current version, approved in December 2022 (the 10<sup>th</sup> version overall for TA), replaced a June 2021 version.<sup>9</sup>

2.4 Both versions of the Procurement Policy in place for the contracting period examined by the ANAO emphasised the importance of value for money and competition, for example:

Achieving value for money is the core rule of the CPRs and of this policy. Staff responsible for procurements must be satisfied, after reasonable enquiries, that the procurement achieves a value for money outcome for Tourism Australia. Procurements should:

- encourage competition and be non-discriminatory
- use public resources in an efficient, effective, economical and ethical manner that is not inconsistent with the policies of the Commonwealth
- facilitate accountable and transparent decision-making
- encourage appropriate engagement with risk
- be commensurate with the scale and scope of the business requirement.

2.5 Each version of the policy identified monetary thresholds so as to require that higher value procurements would involve greater levels of competition for what TA describes as ‘standard procurements’, which is defined in the policy as ‘where Tourism Australia alone is purchasing goods or services and committing money.’ TA also enters into ‘Partnership Marketing Agreements (PMAs)’, ‘Sponsorship Agreements’ and ‘Cooperative Broadcast Agreements’ which the policy describes as involving ‘a third party, typically in a joint marketing effort with Tourism Australia’. The Procurement Policy requires that:

PMAs must be developed and implemented in line with the *Partnership Strategy and Guidelines*<sup>10</sup>, as updated from time to time. Sponsorship Agreements and Cooperative Broadcast Agreements must be discussed with the Procurement and Legal teams to determine the most appropriate procurement approach.

2.6 In March 2020, TA obtained legal advice from the Australian Government Solicitor that it was reasonable for it to proceed on the basis that entry into a PMA does not involve a procurement for the purposes of the CPRs, on the basis that the agreement is not concerned with the acquisition of goods or services from the partner, provided that:

- the underlying purpose of the arrangement is to engage in joint marketing activities (not to acquire something from the partner); and
- any goods provided by the partner are merely incidental to the arrangement (e.g. the goods provided are not of significant value/the only contribution made by the partner towards the joint marketing activity).

9 The June 2021 version of the policy had replaced a July 2020 version.

10 As of July 2024, there was no ‘Partnership Strategy and Guidelines’ document in the TA Policy Directory. In August 2024, TA advised the ANAO that the ‘Partnership Strategy and Guidelines’ are available in the ‘Partnerships and Distributions Hub which, whilst not incorporating policy documents, does provide guidance to staff’. The Procurement Policy does not include a reference or link to this separate SharePoint site.

2.7 TA's Procurement Policy has not been drafted to reflect that there may be circumstances where a PMA does involve a procurement.<sup>11</sup> For example, in June 2023 TA entered into an agreement with JTB Corp. that required TA to provide Japanese yen (¥) 10,300,000 with JTB Corp. required to use that money as well as its own contribution<sup>12</sup> to purchase specific goods and services in which TA and JTB Corp. would jointly own and control the intellectual property. This agreement was not treated as a procurement even though TA acquired intellectual property.

### Opportunity for improvement

2.8 Tourism Australia could expand the guidance in its Procurement Policy to identify the circumstances in which a Partnership Marketing Agreement involves a procurement.

### Open and effective competition

2.9 The CPRs state that procurements should 'encourage competition and be non-discriminatory'.<sup>13</sup> TA's Procurement Policy provides limited support for the adoption of competitive procurement processes.

2.10 The monetary thresholds identified for 'standard procurements of goods and services' suggest that higher value procurements should have greater competition. There are various caveats and exceptions that undermine the adoption of competition. For example, procurements valued at \$25,000 or more and less than \$400,000 are 'generally' expected to involve 'multiple quotes' with proposed exceptions to be discussed and agreed with TA's procurement team. As part of the audit, the ANAO asked TA to identify to the ANAO any procurements in this value range since 23 December 2022 where the procurement team did not agree to a proposal that multiple quotes not be obtained. No instances were identified to the ANAO by TA.

2.11 As set out in Table 2.2 on page 29, there was no competition for 12 (40 per cent) of the 30 TA procurements examined in detail by the ANAO where records were available.<sup>14</sup> Eight of those 12 procurements involved values in the range of \$103,156 to \$394,680.

2.12 TA's Procurement Policy states that 'Publishing an open tender on AusTender is the default approach' for contracts valued at or above \$400,000. Under the CPRs, open tender is the default method for procurements of non-construction services valued at or above \$400,000 (or \$7.5 million for construction services) for prescribed corporate Commonwealth entities subject to the CPRs, such as TA. When the expected value of a procurement is at or above the relevant procurement threshold, and is not specifically exempt in accordance with Appendix A of the CPRs, then the rules in Division 2 must be followed. Division 2 requires an open tender unless the specified conditions for limited tender apply.

11 Similarly, TA's 'Contract Management Guidance' and 'Partnership Guidelines' (which form part of TA's policy framework) do not clearly state that there may be circumstances where a PMA may involve a procurement for the purposes of the CPRs.

12 Of ¥10,033,400 (which the agreement says equated to \$118,296 calculated at a Budget Parameter Rate of 84.816).

13 Department of Finance (Finance), *Commonwealth Procurement Rules*, 1 July 2024, paragraph 4.4.

14 For the remaining three of the 33 contracts examined, there was insufficient information maintained to evidence the procurement approach used by TA.

2.13 TA's Procurement Policy does not distinguish between procurements of non-construction and construction services.<sup>15</sup>

2.14 There were 10 contracts in the audit sample with a value at the time of signature greater than \$400,000 (59 per cent of the 17 contracts with a value above the \$400,000 threshold when the contract was first signed and where records were available) where the procurement approach was an open tender. On each occasion, the contract was let following an approach to market being published on AusTender.

2.15 The four other non-competitive procurements in the sample examined by the ANAO involved values greater than the relevant threshold set out in TA's Procurement Policy.<sup>16</sup> For two of those four procurements, TA made a record of why it was not conducting an open tender. For the other two of those four procurements, no procurement planning documents were prepared and filed by TA in its record keeping system. There was also no request documentation on file, no evaluation report documenting how the procurement had been assessed to represent value for money, and no approval records for the procurement outcome.

- The first was an August 2021 contract for \$440,000 with Zoe 8 Holdings Pty Ltd as Trustee for ZFB to engage one individual for marketing campaigns.<sup>17</sup>
- The second was a February 2022 contract for \$585,585 (later increased to \$737,555) with LVDI Pty Ltd for tourism operator shoots.<sup>18</sup>

2.16 TA's Procurement Policy is largely silent on key procedural requirements to give effect to the CPRs, either by setting them out in the document or referencing the CPRs.<sup>19</sup> For example, the Procurement Policy does not require that:

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15 In August 2024, TA advised the ANAO that 'TA does not routinely engage in construction services and the policy was designed to complement the requirements specified in the CPRs. Notwithstanding this, TA will incorporate appropriate references to construction contracts within the Policy.'

16 The values of these four procurements ranged from \$440,000 to \$6.2 million.

17 See AusTender contract notice CN3818947, available from <https://www.tenders.gov.au/Cn/Show/7d5ff160-f9a7-4b13-a112-9c9aa7021928> [accessed 9 October 2024]. The contract period was incorrectly reported on AusTender as being 4 August 2021 to 3 August 2022 instead of 6 August 2021 to 5 August 2022.

18 See AusTender contract notice CN3850013 and amendment notice CN3850013-A1, available from <https://www.tenders.gov.au/Cn/Show/a14750fa-dc17-48ee-ac8c-3848e2e1142b> [accessed 9 October 2024]. Note there were errors in the details reported on AusTender including:

- incorrect contract value — the initial contract value as executed on 9 February 2022 was \$585,585. A variation was subsequently executed on 18 February 2022 (nine days later) to increase the contract value to \$737,555. The contract notice published in May 2022 reported the contract value as \$737,555. TA then published an amendment notice in February 2023 which amended the contract value to \$529,191.83. There were no records maintained in TA's systems to evidence that any further variations to amend the contract value had been executed.
- incorrect start date — TA reported the start date on AusTender as 24 May 2021 whereas the date of the contract was 7 February 2022 (difference of nearly nine months).
- incorrect end date — TA originally reported the end date on AusTender as 30 June 2022 which matched the date stated in the contract. However, TA then published an amendment notice in February 2023 which changed the contract end date to 30 June 2024. There were no records maintained in TA's systems to evidence that any variations to amend the contract period had been executed.

19 In August 2024, TA advised the ANAO that 'The policy is principles based. Supplementary procedures documents, training materials etc. are housed outside the Procurement Policy document.' The Procurement Policy does not include references or links to these supplementary procedures. TA further advised the ANAO that 'TA will enhance the Procurement Policy to future proof the procurement requirements of the organisation'.

- evaluation criteria be included in request documentation to enable the proper identification, assessment and comparison of submissions on a fair, common and appropriately transparent basis (CPR 7.12). As set out at paragraphs 2.67 to 2.69, relevant evaluation criteria were demonstrably included in request documentation for just over half (52 per cent) of the contracts examined in detail by the ANAO<sup>20</sup>;
- suppliers be treated equitably, notwithstanding that this is required by the CPRs (CPR 5.4). For 10 of the procurements (30 per cent) examined by the ANAO, it was evident from the evaluation records that TA had favoured existing or previous suppliers when evaluating competing offers through panel procurement or when deciding which potential provider(s) should be invited to participate in a limited tender.

2.17 Procedural requirements for the preparation of procurement plans and evaluation reports for procurements valued at greater than \$100,000 were frequently not complied with (14 of the sampled procurements above this threshold had no procurement plan, and six of these procurements also had no evaluation report).<sup>21</sup> Further, for 12 procurements (36 per cent of those examined by the ANAO) TA did not have a record of what, if any, request documentation was issued to the candidate(s).

2.18 For example, in its procurement of Quiip (Holdings) Pty Limited in 2023 for a \$103,156 contract for community management services TA did not prepare a procurement plan.<sup>22</sup> With respect to procurement planning, TA advised the ANAO in August 2024 that ‘Advice was given from TA’s procurement team on the procurement process to the Business Unit.’ This advice from TA’s procurement team was provided after TA had already approached Quiip, and TA’s procurement team did not raise the lack of a procurement plan with the business unit. Further, there was no probity adviser for the procurement due to its value being below TA’s \$400,000 threshold.<sup>23</sup> TA recorded in the evaluation report for the procurement that it approached Quiip ‘on the basis of its reputation in the market’<sup>24</sup> and also recorded that, while the hourly rate proposed was ‘higher than

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20 In August 2024, TA advised the ANAO that ‘Evaluation criteria is included in the template request forms’ and provided a copy of the template which listed four evaluation criteria (being demonstrated experience, systems & methodologies, skilled resources and value added services). This template is not readily available to TA staff on TA’s ‘Forms, Templates and Guidance Index’ SharePoint site.

21 TA’s Procurement Policy states that ‘A comprehensive suite of templates to support procurements is available on myTA’. As of July 2024, there were no templates for key procurement-related documents such as procurement plans or evaluation reports available on TA’s Forms, Templates and Guidance Index (although there were templates for contracts). During the course of the audit, the ANAO observed instances where TA staff would repurpose past documents or the procurement team would provide business units with examples from previous procurements. In August 2024, TA advised the ANAO that ‘Templates are available directly from the Procurement Team to ensure Procurement is engaged, and can be supplied’.

22 This contract was not reported on AusTender as its value was below the relevant reporting threshold of \$400,000.

23 TA’s evaluation report indicated there was an external probity adviser. When the ANAO raised with TA the absence of a conflict of interest declaration from the individual named as probity adviser, TA advised the ANAO in August 2024 that:

The Probity Advisor’s role was part of the evaluation report template. It was an administrative error to have included *[name]* as part of the evaluation report. Procurements below \$400,000 does not require a review by the probity advisor. As such, *[name]* was not asked to sign the evaluation report.

Further discussion about TA’s use of external probity advisers is at paragraphs 2.96–2.108.

24 TA’s evaluation committee for this procurement decided not to conduct referee checks on the only candidate being considered (who was chosen on the basis of its ‘reputation in the market’).

both the existing agency and the average freelance rate', the 'added value of Quiip's proposal was worth the additional cost.'<sup>25</sup>

2.19 Non-compliance with the requirement for procurement plans to be prepared was also raised in the ANAO's 2008–09 performance audit of TA. Specifically, that audit concluded that, for two of the three major procurements examined, procurement plans were not developed (although they were required by TA's policies).<sup>26</sup> The findings of this current performance audit indicate that TA has taken inadequate steps to address this earlier audit finding.

### Recommendation no. 1

2.20 Tourism Australia document a comprehensive procurement policy framework that gives full effect to the principles, prescriptive requirements and mandatory rules set out in the Commonwealth Procurement Rules.

**Tourism Australia response:** *Agreed.*

2.21 *Tourism Australia has a procurement framework in place, comprising a principles-based Procurement Policy, Delegations Instrument, Code of Conduct, and Contract Management Guidance, supported by supplementary training decks, procedures and processes documents and standard templates. Tourism Australia will enhance this framework to incorporate appropriate best practice guidance.*

### ANAO comment

2.22 The recommendation relates to the audit findings set out at paragraphs 2.2 to 2.19.

## To what extent are open approaches used?

Based on TA's AusTender reporting, the majority (62 per cent) of procurements valued at or above the \$400,000 threshold set by the CPRs did not involve open approaches to the market.

2.23 Openness in procurement involves giving suppliers fair and equitable access to opportunities to compete for work while maintaining transparency and integrity of process. Under the CPRs, procurement is conducted by open tender or by limited tender.

- An open tender involves the entity publishing an open approach to market and inviting submissions.<sup>27</sup> An open approach to market is any notice inviting all potential suppliers to participate in a procurement.<sup>28</sup>

25 See also paragraph 3.49 in relation to TA's management of the contract that resulted from this procurement. In November 2024, TA advised the ANAO that 'there was no incumbent to Quiip'.

26 Auditor-General Report No.2 2008–09, *Tourism Australia*, ANAO, Canberra, 2008, available from <https://www.anao.gov.au/work/performance-audit/tourism-australia>.

27 This includes multi-stage procurements, provided the first stage is an open approach to market. A multi-stage procurement involves an initial approach to market followed by one or more subsequent approaches to market (for example, inviting expressions of interest followed by a request for tender).

28 This may include a request for tender, request for quote, request for expression of interest, request for information and request for proposal.

- A limited tender involves the entity approaching one or more potential suppliers to make submissions, when the process does not meet the rules for open tender.

2.24 Under the CPRs, the expected value of a procurement must be estimated before a decision on the procurement method is made.<sup>29</sup> When the expected value of a procurement is at or above the relevant ‘procurement threshold’, additional rules in the CPRs must also be followed unless an exemption applies.<sup>30</sup> Primarily, those additional rules require that, except under specific circumstances, procurements valued at or above the relevant threshold must be conducted by an open approach to market.<sup>31</sup> For prescribed corporate Commonwealth entities, the threshold is \$400,000 for procurements of non-construction services and \$7.5 million for procurements of construction services.<sup>32</sup>

2.25 Limited tenders, although permitted, may not be appropriate for procurements under the relevant threshold. The CPRs specify that the scope, scale, level of risk and market conditions must be considered to determine an appropriately competitive procurement process that will achieve value for money.

### Proportion of contracts let by open tender

2.26 As at 30 June 2024, TA had reported 45 contracts on AusTender valued at \$260.7 million (excluding contract amendments) with a start date between 1 July 2021 and 30 June 2023.<sup>33</sup> Of those 45 contracts:

- 38 per cent by number or 80 per cent by value were reported as being let through open tender<sup>34</sup>; and
- 62 per cent by number or 20 per cent by value were reported as being let through limited tender.

2.27 The difference between TA’s contract number data and its contract value data is influenced by the largest value contract accounting for 72 per cent of the total value of its procurements.

2.28 As an indicator of whether the proportion of contracts let by open tender was relatively high or low, the ANAO compared TA’s data against that reported by other prescribed corporate Commonwealth entities (given they are also subject to the CPRs and to the same procurement

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29 The expected value is the maximum value (including GST) of the proposed contract, including options, extensions, renewals or other mechanisms that may be executed over the life of the contract. When the maximum value of a procurement over its entire duration cannot be estimated the procurement must be treated as being valued above the relevant procurement threshold.

30 Exemptions are set out in Appendix A of the CPRs. When an Appendix A exemption applies, the additional rules of Division 2 of the CPRs do not apply to the procurement, but the entity must still comply with the rules for all procurements under Division 1.

31 The additional rules are set out in Division 2 of the CPRs.

32 The CPRs define ‘construction services’ as ‘procurements related to the construction of buildings and procurements of works as defined by the *Public Works Committee Act 1969*.’ See section 5 of the *Public Works Committee Act 1969* for the definition of ‘work’.

33 As at 30 June 2024, 13 of these 45 contracts had amendments reported on AusTender. The aggregate value of the 45 contracts (including amendments) was \$258.4 million.

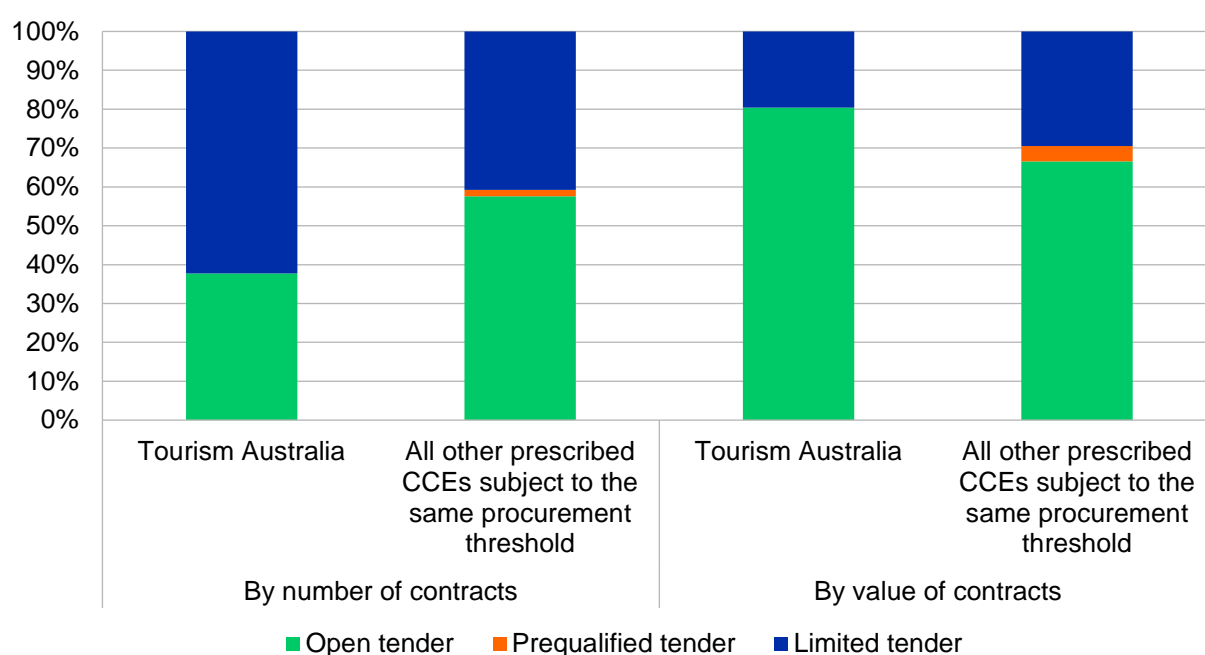
34 Two of these contracts, with a total original contract value of \$1.8 million, were recorded on AusTender as being purchased from a panel established by open tender.



thresholds).<sup>35</sup> To increase the suitability of the comparator, the ANAO used the data reported for contracts valued at \$400,000 or above in its analysis because the CPRs do not mandate (subject to exceptions and exemptions listed in the CPRs) the use of open tenders for procurements below \$400,000.

2.29 As shown in Figure 2.1, the proportion of contracts valued at or above \$400,000 reported by TA on AusTender as being let through open tender (38 per cent) is smaller by number than that reported by all other applicable prescribed corporate Commonwealth entities (58 per cent). Whereas the proportion of open tenders reported by TA is relatively high by value (80 per cent compared to 67 per cent).

**Figure 2.1: Contracts let by procurement method as reported on AusTender with a start date between 1 July 2021 and 30 June 2023 valued at or above the \$400,000 threshold**



Note: The data presented is as reported on AusTender. The ANAO did not examine the accuracy of the information reported except for those procurements examined in detail as part of the audit sample (see further detail on the audit sample at paragraph 1.9).

Source: ANAO analysis of AusTender data.

### *Selecting the procurement method in sampled contracts*

2.30 The CPRs state that a thorough consideration of value for money begins by officials clearly understanding and expressing the goals and purpose of the procurement. For 14 (42 per cent) of the 33 contracts examined in detail by the ANAO, there were no procurement planning documents

35 As at 1 July 2024, there were 25 corporate Commonwealth entities prescribed under section 30 of the Public Governance, Performance and Accountability Rule 2014. For the purpose of this analysis, the following six prescribed corporate Commonwealth entities were not included as they are required to apply a different procurement and reporting threshold as per paragraph 3.9 of the CPRs: Australian Digital Health Agency, Australian Human Rights Commission, High Speed Rail Authority, National Portrait Gallery of Australia, Old Parliament House, and Regional Investment Corporation.

maintained on file to evidence that the expected procurement value was estimated before a decision on the procurement method was made.

2.31 In June and July 2024, TA advised the ANAO that a procurement plan was ‘Not Required’ for six of these contracts. For three of the contracts, no further explanation was provided justifying why a procurement plan was not required in the circumstances. For the remaining three, TA advised that a procurement plan was not required on the basis that two were ‘direct engagements’ and the last was a ‘continuation of existing service’. The value of these six contracts, at contract execution, ranged from \$103,156 to \$1.2 million (with an average value of \$348,720 and aggregate value of \$2.1 million).

2.32 In August 2024, TA further advised the ANAO in relation to two of these six contracts that:  
Talent / broadcasting project is covered by the exemption for government advertising services (Appendix A of the Commonwealth Procurement Rules refers), which allows a limited tender. In practice, TA would rarely approach the market for broadcast projects. Instead, opportunities are often presented by production companies and/or state and territory tourism organisations and subject to a relatively standardised evaluation approach, as detailed in the relevant evaluation report.

2.33 The ANAO’s analysis is that TA’s approach is inconsistent with the CPRs and TA’s internal policy.<sup>36</sup> In particular, Finance guidance states that ‘Exempt procurements remain subject to other requirements of Division 1 of the CPRs, especially the core principle of value for money. Use of an exemption should be clearly documented by the decision maker, including for subsequent audit scrutiny.’ Consistent with this, TA’s Procurement Policy states that ‘The relevance and practical implications of those various exemptions [under the CPRs] should be discussed with the Procurement team and documented in a procurement plan at the start of a procurement process.’

2.34 For the remaining 19 contracts examined in detail by the ANAO where appropriate planning documents were maintained, the expected procurement value was estimated to be:

- above the relevant threshold for 15 contracts; and
- below the relevant threshold for four contracts.

2.35 As shown in Table 2.1, an open approach was taken for the majority of procurements where the estimated value was above the relevant threshold.

**Table 2.1: Extent to which open approaches were used**

	Estimated value below threshold	Estimated value above threshold
Open approach		
Open tender	0	10
Approach to a panel established by open tender	1 <sup>a</sup>	2
Limited approach		
Limited tender	3	3

Note a: TA identified that this was a procurement for construction services and as such, the relevant procurement threshold was \$7.5 million (the estimated value was below this threshold at \$6.2 million). The ‘panel’ accessed was the NSW Government’s ‘Construction Scheme for Works between \$1 million and \$9 million’.

Source: ANAO analysis of TA records.

<sup>36</sup> TA’s approach to procuring ‘talent’ is further discussed at paragraphs 2.53–2.58.

## Panel arrangements

2.36 A panel or standing offer arrangement is a way to procure goods or services regularly acquired by entities. In a panel arrangement, suppliers have been appointed to supply goods or services for a set period of time under agreed terms and conditions, including agreed pricing. Once a panel has been established, entities may then purchase directly from the panel. To maximise competition, entities should, where possible, approach multiple potential suppliers on the panel.<sup>37</sup> Each purchase from a panel represents a separate procurement process, and must demonstrate the achievement of value for money and comply with the rules in Division 1 of the CPRs.

### *Use of procurement arrangements established by other entities*

2.37 As a corporate Commonwealth entity, it is not mandatory for TA to use Whole of Australian Government Arrangements. Rather, it can choose to opt-in to specific arrangements.<sup>38</sup> Joining such arrangements can provide benefits including: increased efficiencies in the procurement process; better prices, services and quality; increased transparency; standard terms and conditions; and improved contract management for entities and suppliers.

2.38 TA's Procurement Policy states:

Tourism Australia can access a range of coordinated procurement arrangements, like panels, administered by other entities that are part of the Australian Government and other jurisdictions. The use of these arrangements is strongly encouraged to reduce direct costs and can streamline procurement processes, as it removes the requirement to publish an open tender. The Procurement team can assist with identifying relevant arrangements.

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37 CPR 9.14, advising officials to approach multiple suppliers from a panel, was added to the CPRs from 1 July 2022 (see Commonwealth Procurement Rules – 1 July 2022 (F2022L00874)).

38 Whole of Australian Government Arrangements are arrangements that are set up for Commonwealth entities to use when procuring certain goods or services. These are either coordinated or cooperative procurements, and generally result in overarching contracts or standing offer (panel) arrangements.

The CPRs define 'Standing Offer' as meaning 'an arrangement setting out the terms and conditions, including a basis for pricing, under which a supplier agrees to supply specified goods and services to a relevant entity for a specified period.'

2.39 For three of the 33 contracts examined by the ANAO, TA used an existing arrangement established by other entities.

- In two instances, the procurement arrangement was established by another Commonwealth entity. Both of these panels were established by open tender with TA approaching:
  - three suppliers on the panel in the first instance<sup>39</sup>; and
  - only one supplier on the panel in the second instance.<sup>40</sup>
- In one instance, TA accessed an existing prequalification scheme administered by the New South Wales Government and approached only one supplier on the scheme.<sup>41</sup>

## To what extent are competitive approaches used?

A competitive procurement approach was evident in the establishment of 55 per cent of the contracts examined by the ANAO. For 36 per cent of the contracts, a non-competitive approach was taken and in nine per cent there were insufficient records maintained to evidence the procurement approach taken by TA. For 10 of the procurements (30 per cent) examined by the ANAO, it was evident from the evaluation records that TA had favoured existing or previous suppliers when evaluating competing offers through panel procurement or when deciding which potential provider(s) should be invited to participate in a limited tender. Favouring existing or previous suppliers in the conduct of procurement processes is inconsistent with the CPRs.

2.40 Competition is a key element of the Australian Government's procurement framework. Effective competition requires non-discrimination and the use of competitive procurement processes. Generally, the more competitive the procurement process, the better placed an entity is to demonstrate that it has achieved value for money. Competition encourages respondents to submit more efficient, effective and economical proposals. It also ensures that the purchasing entity has access to comparative services and rates, placing it in an informed position when evaluating the responses.

39 The contract was accurately reported on AusTender as being let through open tender in accordance with CPR 9.13 which requires officials to 'report the original procurement method used to establish the standing offer when they report procurements from standing offers.'

40 The contract value at execution was below the relevant reporting threshold of \$400,000 and as such, was not required to be reported on AusTender at that time. The contract was subsequently varied twice with the second variation (executed on 6 June 2023) increasing the contract value to above the reporting threshold. The reporting requirements in these circumstances were clarified in the July 2024 version of the CPRs with CPR 7.19 stating that entities 'must report amendments on AusTender within 42 days where a previously unreported contract is amended to be valued at or above, the relevant reporting threshold'. As at 30 September 2024 (more than a year after the variation was executed), TA had not published a contract notice on AusTender for this contract.

41 The procurement was for fitout services for TA's Sydney office. The supplier approached had previously been engaged by TA. The contract value at execution was below the relevant reporting threshold of \$7.5 million for procurements of construction services and as such, was not required to be reported on AusTender.

2.41 As outlined in Table 2.2, TA used a competitive procurement approach to establish 18 (55 per cent) of the 33 contracts, totalling \$359 million at contract execution.<sup>42</sup> Ten were by open tender and the other eight by inviting more than one supplier to tender for the work.

**Table 2.2: Contracts examined by procurement method**

	Number	Value at contract execution (\$ m)	Value as at 30 Dec 2023 (inclusive of variations) (\$ m)
<b>Open approach</b>			
Open tender conducted	10	333.9	334.7
Competitive approach to panel let by open tender	1	0.9	0.9
Non-competitive approach to panel let by open tender	2	6.4	6.7
<b>Limited approach</b>			
Competitive approach	7	24.3	24.3
Non-competitive approach	10	3.6	4.0

Note: For three (nine per cent) of the 33 contracts examined in detail by the ANAO, there was insufficient information maintained to evidence the procurement approach used by TA and so these three are not included in this table.

Source: ANAO analysis of TA records.

### Open tenders conducted

2.42 While open tenders (which at a minimum must be published on AusTender) mean any and all interested suppliers can view the procurement opportunity, ANAO performance audits have identified that a procurement approach that commences with an open approach to the market does not necessarily mean that the procurement process promoted effective competition.<sup>43</sup>

2.43 Relevant entities may specify conditions for participation that potential suppliers must be able to demonstrate compliance with in order to participate in a procurement.<sup>44</sup> Care must be taken when specifying any conditions for participation, as the CPRs require entities to reject any tenders that do not meet those conditions for participation.

42 As at 31 December 2023, the value of these 18 contracts had increased to \$359.9 million (inclusive of variations).

43 For example: Auditor-General Report No.45 2016–17, *Replacement Antarctic Vessel*, ANAO, Canberra, 2017, available from <https://www.anao.gov.au/work/performance-audit/replacement-antarctic-vessel> and Auditor-General Report No.23 2017–18, *Delivery of the Moorebank Intermodal Terminal*, ANAO, Canberra, 2017, available from <https://www.anao.gov.au/work/performance-audit/delivery-the-moorebank-intermodal-terminal>.

44 Conditions for participation must be limited to those that will ensure that a potential supplier has the legal, commercial, technical and financial abilities to fulfil the requirements of the procurement. Any requirements that do not fall under these categories cannot be considered a condition for participation in accordance with the CPRs. Additionally, conditions for participation are not to arbitrarily limit competition by introducing factors that discriminate against a supplier or group of suppliers that would otherwise be competitive and capable in the procurement process.

2.44 All 10 of the contracts examined in detail by the ANAO that were let by open tender listed conditions for participation in the request documentation. Common conditions included:

- being financially solvent;
- compliance with relevant legislation including the *Workplace Gender Equality Act 2012* and *Work Health and Safety Act 2011*;
- agreement to the public disclosure and the right of audit requirements of the Commonwealth; and
- acknowledgement and willingness to cooperate with TA's public accountability requirements under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and adhere to relevant internal TA policies.

### Selecting suppliers invited from panels

2.45 The CPRs state that officials should, where possible, approach multiple potential suppliers on a standing offer to maximise competition.<sup>45</sup> Finance guidance further states that:

Irrespective of the value, an entity must be able to justify the decision to use the panel and demonstrate value for money. This is particularly relevant where only one supplier has been approached. Decisions should be documented and proper records maintained in accordance with the CPRs [7.2–7.5].

2.46 For three of the 33 contracts examined (nine per cent), TA used an existing arrangement by other entities.

- In the one instance where TA employed a competitive approach in accessing a panel established by open tender by another Commonwealth entity, the records indicate that the three suppliers approached were selected 'due to their strong industry reputation for providing end to end services and delivery capability'.
- In the instance where TA approached only one supplier on a panel established by open tender by another Commonwealth entity, the supplier selected had previously provided services to TA. TA's records state that there 'are efficiencies to be gained by using the same supplier to extend the existing methodologies for each of the three projects'.<sup>46</sup> Such an approach of approaching existing or previous suppliers, and no other potential suppliers, is not consistent with the CPRs which, instead, require that entities treat all tenderers, and potential tenderers, in a fair and non-discriminatory manner.
- In the instance where TA accessed an existing prequalification scheme administered by the New South Wales Government, the records indicate that the one supplier approached

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45 Procurements from an existing standing offer are not subject to the additional rules in Division 2 of the CPRs. However, they must comply with the rules in Division 1.

46 This procurement was for the provision of business events research. The contract was originally valued at \$225,555 (that is, below the \$400,000 reporting threshold) and as such was not reported on AusTender. As at 31 December 2023, the contract had been varied twice. The second variation (executed on 6 June 2023) increased the contract value to \$407,660. As at 30 September 2024, TA had not reported this contract on AusTender as required by CPR 7.19.

had previously been engaged by TA and that 'TA has no concerns about its performance'.<sup>47</sup> Again, approaching incumbent or previous providers, and no other potential suppliers, is not consistent with the CPRs.

### Limited tenders conducted

2.47 Seventeen (52 per cent) of the sample of 33 contracts examined by the ANAO, with an aggregate value of \$27.9 million at execution<sup>48</sup>, were let through limited tender.

#### *Justifying the use of limited tenders*

2.48 Under the CPRs, for each contract awarded through limited tender, an official must prepare and appropriately file within the entity's records management system a written report that includes:

- the value and type of goods and services procured;
- a statement indicating the circumstances and conditions that justified the use of limited tender; and
- a record demonstrating how the procurement represented value for money in the circumstances.

2.49 Of the 17 contracts let through limited tender:

- 11 (65 per cent) had written records on file that included a statement indicating the circumstances and conditions justifying the use of limited tender, and a record of how value for money was achieved;
- one (six per cent) had a record documenting a justification for using a limited tender process but no record demonstrating how the procurement represented value for money;
- two (12 per cent) had written records setting out how the procurement represented value for money but no justification for using a limited tender process; and
- three (18 per cent) did not have sufficient documentation maintained on file.

2.50 For the 12 contracts where available documentation included a justification for using limited tender selection processes:

- seven were justified on the basis of being a procurement with a value below the relevant procurement threshold of \$400,000;
- one was justified on the basis of limited tender condition 10.3.d.iii 'when the goods and services can be supplied only by a particular business and there is no reasonable alternative or substitute ... due to an absence of competition for technical reasons'; and
- four were justified on the basis of one of the exemptions listed in Appendix A of the CPRs:
  - one under exemption 1 'procurement (including leasing) of land, existing buildings or other immovable property or any associated rights';

47 This contract was for fitout services of TA's new Sydney office and was valued at \$6.2 million at contract execution. As the procurement had been identified by TA as being for construction services, the contract was not required to be reported on AusTender as it was below the relevant \$7.5 million threshold. As at 31 December 2023, the contract had been varied once which increased the contract value to \$6.3 million.

48 As at 31 December 2023, the total value of these 17 contracts had increased to \$28.3 million.

- two under exemption 8 ‘procurement of goods and services (including construction) outside Australian territory, for consumption outside Australian territory’; and
- one under exemption 12 ‘procurement of government advertising services’.

### *Selecting suppliers invited in limited tenders*

2.51 Of the 17 contracts examined, the records for four were insufficient to identify the basis on which TA selected the suppliers to participate. For three of these four procurements, other available TA records indicated that the supplier invited to tender had been previously engaged by TA. From the procurement records and other TA records it was evident that current or previous experience as a supplier to TA was favoured by TA in eight of the 17 limited tender procurements examined by the ANAO.

2.52 For example, Sayers Advisory Pty Ltd was procured in 2022 to support the development and implementation of an upcoming procurement by TA of creative agency services.<sup>49</sup> TA’s evaluation report identified that the basis for approaching a sole supplier related to past work with TA (TA described this past work as placing the supplier in a ‘unique position’<sup>50</sup>) such that no other potential providers were afforded the opportunity to compete for this work. TA’s evaluation report for this procurement states that ‘Sayers was approached by Marketing in March 2022 for an initial proposal’ and that ‘TA met with Sayers on 22 April 2022 to clarify its expectations, including in relation to the variables that informed the proposed costs. Sayers was given a more comprehensive brief discussions led to refined costs within the indicative range that Sayers had originally proposed but no substantive variance.’ There were no records evidencing why Sayers was approached nor what was discussed in meetings with Sayers.

#### Procurement of talent

2.53 For three of the 10 procurements conducted by TA through non-competitive limited tender, totalling \$657,299 at contract execution, TA advised the ANAO in August 2024 that:

Procuring talent for Tourism Australia is always done as a “Direct Source Exemption” and is not a service we can tender to market. This is for a variety of reasons:

- Our talent requirements are highly bespoke and specific to the type of project, brief or campaign;

49 The contract was originally valued at \$241,450 (that is, below the \$400,000 reporting threshold) and as such was not reported on AusTender. As at 31 December 2023, the contract had been varied three times. The third variation (signed by TA on 6 June 2023 and countersigned by the supplier on 16 June 2023) increased the contract value to \$495,550. A contract notice was published on AusTender on 28 July 2023, 42 days after the supplier’s countersigning. See AusTender contract notice CN3975310, available from <https://www.tenders.gov.au/Cn/Show/369a31ec-f7f6-43e2-bc31-725b893bc285> [accessed 9 October 2024]. Note the start date was incorrectly reported as being 2 June 2022 (which was the date of contract execution) rather than 1 June 2022 (which was the commencement date stated in the contract).

50 Specifically, TA recorded in its evaluation report that:

In a former role leading the PricewaterhouseCoopers (PwC) CMO Advisory, its principals and their team provided strategic guidance and support with the implementation of:

- TA’s last creative pitch in 2018 when M&C Saatchi was appointed, which has allowed an in-depth understanding of its requirements, operating environment and stakeholders; and
- the Australian Government’s establishment of the Government Campaign Communications Panel (GCCP), led by the Department of Finance, including the appointment of five creative agencies within a flexible operational model.



- Creative ideas are often written for specific talent, so we cannot swap out between vendors;
- We often try to work with talent because of their unique intellectual property, their unique network or other benefits that they can bring to TA that other vendors can't;
- We have a very rigorous Advocacy Selection Criteria that has been endorsed by the Board<sup>51</sup>, and we use this to vet talent in the initial stage to ensure TA is getting value for money, before we progress with the official procurement process of the Evaluation Report and delegation approvals.

2.54 TA advice to the ANAO in August 2024 was that the 'official procurement process' begins after it had identified the talent that would be engaged. At odds with TA's approach, the CPRs state that the procurement process 'begins when a need has been identified and a decision has been made on the procurement requirement'. For a limited tender procurement, decisions about which candidate(s) will be afforded the procurement opportunity is a key part of the procurement process and appropriate records (documenting the requirement for the procurement and the process that was followed) must be maintained.

2.55 None of the three 'talent' procurements included in the ANAO's sample had a procurement plan or request documentation maintained on file. TA advised the ANAO in June and July 2024 that such documents were 'Not Required'.

2.56 In addition, although TA advised the ANAO that the Advocacy Selection Criteria is used to 'vet' talent to ensure value for money is obtained, TA was unable to provide the ANAO with a completed Advocacy Selection Criteria for two of the three 'talent' provider procurements. The one completed Advocacy Selection Criteria document that TA was able to provide to the ANAO had been completed for an earlier procurement, and was not updated for the later procurement examined by the ANAO (the Advocacy Selection Criteria include considerations, such as social media reach and risk considerations such as whether there has been any evidence of inappropriate behaviour, that require update to remain relevant).

2.57 Furthermore, none of the three procurements had procurement records referencing the 'Advocacy Selection Criteria'<sup>52</sup> or demonstrating how the suppliers were assessed as meeting these criteria as part of the procurement process. In addition, there were no other possible candidates considered. Advice provided by TA in October 2017 to its board was that the Advocacy program was launched in 2010 and at that time there were more than 150 'Friends of Australia' under this program, in addition to 'influencers'.

2.58 Overall, TA's approach to procuring talent is inconsistent with the CPRs.

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51 In October 2017, TA provided an update to the board on its Advocacy program following a review of the program, including six 'refined advocate selection criteria [to] ensure that selected advocates are aligned with TA's brand and definition of advocacy' (being reach, relevance, resonance, rise (increase in profile), risk and relationship). The board noted this update. As such, the criteria were not 'endorsed' by the board as stated by TA in its advice to the ANAO.

52 There were limited records maintained on file for these three procurements with none having a procurement plan or request documentation. Two of the three procurements had an evaluation report. Those evaluation reports did not refer to the 'Advocacy Selection Criteria'. The third procurement did not have an evaluation report on file.

### *Use of TA's own panel arrangement*

2.59 In 2021, TA established by open tender the National Experience Content Initiative (NECI) panel comprising 32 suppliers to provide photographic and videographic services.<sup>53</sup> TA entered into a Deed of Standing Offer with all but one of the suppliers on the panel for an initial term of two years from the date of execution.<sup>54</sup> Under clause 2.2, TA had the discretion to 'extend the term of the agreement for two 12-months ... by giving written notice to the Contractor at least 30 days before the end of the Initial Term.'

2.60 In August 2024, the ANAO asked TA to advise whether any of the extension options were exercised and provide supporting evidence. No advice or evidence was provided by TA.

2.61 For two of the 33 contracts examined by the ANAO, TA purported to use the NECI panel arrangement. The ANAO's analysis of TA records was that separate procurement processes were not undertaken by TA when purchasing from the panel. Rather TA directly entered into work orders with the two suppliers, totalling \$980,265 at execution. No records were maintained demonstrating how these engagements represented value for money.

2.62 TA referred the ANAO to the procurement plan and evaluation report relating to the procurement process to establish the NECI panel. In August 2024, TA advised the ANAO that 'The total approved funds did not change. However, TA was required to amend the allocation of funds to suppliers mentioned in the Evaluation Report in situations such as the inability of the supplier to travel to the specified regions or their inability to meet TA's requirements'. For each of these two procurements, TA did not develop a procurement plan to subsequently engage the supplier in 2022, only one firm was invited to quote<sup>55</sup> and there was no evaluation report prepared.<sup>56</sup>

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53 This open procurement process (Stage 2) followed a 'pilot' limited tender process (Stage 1).

For Stage 2, a single open tender approach to market was conducted in March 2021 with potential tenderers able to nominate the region(s) they wished to tender for from a list of 55 regions across Australia. In total, 163 responses were received. TA then undertook a staged evaluation process between May and December 2021.

The Standing Offer Period, as reported by TA on AusTender, is 24 May 2021 to 30 June 2024. This is inconsistent with the records maintained in TA's systems.

54 The Deeds of Standing Offer with 31 of the 32 suppliers were executed over a period of over eight months, between 25 May 2021 and 2 February 2022. This reflects the staged evaluation approach undertaken by TA.

For the remaining supplier, Hotel Miami Pty Ltd, no record of a signed Deed of Standing Offer was maintained in TA's systems as at 17 July 2024. This supplier was originally engaged by TA as part of the Stage 1 'pilot' limited tender process (conducted in December 2020 to January 2021) to deliver services on the Gold Coast with a contract being executed on 2 March 2021. A second contract was subsequently executed with this same supplier in April 2021 for similar services to be delivered in Brisbane. A new/separate procurement process was not conducted prior to procuring these services in the Brisbane region. This supplier had submitted a tender for Stage 2 but was not recommended to be on the panel.

55 The CPR principles concerning open and effective competition apply to each instance when a procurement is undertaken via a panel, including when the panel was established through a competitive process.

56 This is notwithstanding that value for money must still be demonstrated when conducting a procurement from a panel, even though value for money has been considered when forming the panel.

2.63 TA's approach to using its NECI panel is not consistent with the CPRs. It is also reflective of practices criticised by the Joint Committee of Public Accounts and Audit<sup>57</sup>, and is at odds with guidance from the Department of Finance that<sup>58</sup>:

Once a panel has been established, an entity may then purchase directly from the panel by approaching one or more suppliers.

Each purchase from a panel represents a separate procurement process. When accessing a panel, you must be able to demonstrate value for money has been achieved for each engagement.

Procurements from existing panels are not subject to the rules in Division 2 of the CPRs. However, these procurements must still comply with the rules in Division 1 ...

As advised at paragraph 9.14 of the CPRs, wherever possible, you should approach more than one supplier on a Panel for a quote. Even though value for money has been demonstrated for the supplier to be on a panel, you will still need to demonstrate value for money when engaging from a Panel, and competition is one of the easier ways to demonstrate this. Where you only approach one supplier, you should provide your delegate with reasons on how value for money will be achieved in the procurement ...

Irrespective of the value, an entity must be able to justify the decision to use the panel and demonstrate value for money. This is particularly relevant where only one supplier has been approached. Decisions should be documented and proper records maintained in accordance with the CPRs (refer paragraphs 7.2 – 7.5).

## Recommendation no. 2

2.64 Tourism Australia increase the extent to which it employs open, fair, non-discriminatory and competitive procurement processes.

**Tourism Australia response:** *Agreed.*

2.65 *Whilst Tourism Australia notes that many limited tenders may have been justifiably conducted in line with CPR's, Tourism Australia will increase the extent to which it employs open procurements.*

### ANAO comment

2.66 The recommendation relates to the audit findings set out at paragraphs 2.23 to 2.63, including identifying how Tourism Australia's approach to limited tenders has not been consistent with the CPRs.

57 Joint Committee of Public Accounts and Audit, Parliament of Australia, *Report 498: 'Commitment issues' - An inquiry into Commonwealth procurement* (2023), pp. vii–viii, available from [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Public\\_Accounts\\_and\\_Audit/~/\\_link.aspx?id=8D910891B0724A72BD2621E9AFB70D9D&z=z](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Public_Accounts_and_Audit/~/_link.aspx?id=8D910891B0724A72BD2621E9AFB70D9D&z=z) [accessed 6 September 2024].

58 Department of Finance, *Procuring from a Panel – Panels 101*, Finance, paragraphs 2–4, 9 and 11, available from <https://www.finance.gov.au/government/procurement/buying-australian-government/procuring-panel-panels-101> [accessed 25 September 2024].

## Are evaluation criteria included in request documentation and used to assess submissions?

Relevant evaluation criteria were included in request documentation for 52 per cent of the contracts examined in detail by the ANAO. For the remaining 48 per cent, either the request documentation did not include any evaluation criteria (12 per cent) or there were no records of the request documentation on file (36 per cent). This situation is not consistent with the CPRs which require evaluation criteria to be included in the request documentation.

2.67 The CPRs require relevant evaluation criteria to be included in request documentation to enable the proper identification, assessment and comparison of submissions on a fair, common and appropriately transparent basis.<sup>59</sup> Request documentation must include a complete description of evaluation criteria to be considered in assessing submissions and, if applicable to the evaluation, the relative importance of those criteria. Additionally, if the entity modifies the evaluation criteria during the course of a procurement, it must transmit all modifications to all the potential suppliers, and allow adequate time for potential suppliers to modify and re-lodge their submissions if required.

2.68 For 12 (36 per cent) of the 33 contracts examined by the ANAO, TA records did not include the relevant request documentation.<sup>60</sup> Of the remaining 21 contracts where request documentation was maintained on file:

- 17 included evaluation criteria. Common evaluation criteria included the tenderer's capability and experience, the proposed approach or methodology, resources including key personnel, and value add. Price/costs were included as a criterion for three (18 per cent) of these procurements. For 15 of these procurements the criteria were weighted (88 per cent) and for two they were not.
- four did not include any evaluation criteria in the request documentation:
  - for one of these four procurements, the procurement plan had identified the evaluation criteria. This related to TA's procurement of Running PR (Xiamen) Co. Ltd to provide event management services for the Business Events Australia Asia Showcase 2022 – China event held in March 2022.<sup>61</sup> A limited tender request for quotation was issued in November 2021 to three candidates identified in the procurement plan with Running PR later added as a fourth candidate (the subsequent evaluation report stated that the fourth candidate was added because

59 The CPRs define 'evaluation criteria' as 'the criteria that are used to evaluate the compliance and/or relative ranking of submissions. Evaluation criteria **must** be clearly stated in the request documentation'.

60 In June and July 2024, TA advised the ANAO that request documentation was 'Not Required' for five of these contracts. For three of the contracts, no further explanation was provided explaining why request documentation was not required in the circumstances. For the remaining two, TA advised the ANAO that request documentation was not required on the basis that one was a 'direct engagement' and the other was a 'continuation of existing service'. The value of these five contracts, at contract execution, ranged from \$107,299 to \$1.2 million (with an average value of \$397,833 and aggregate value of \$2 million). In August 2024, TA further advised the ANAO in relation to three of these five contracts that 'Procuring talent for Tourism Australia is always done as a "Direct Source Exemption" and is not a service we can tender to market.' TA's approach to procuring talent is further discussed at paragraphs 2.53–2.58.

61 This contract was not reported on AusTender as its value was below the relevant reporting threshold of \$400,000.

it 'had capacity'). The request documentation identified conditions for participation but did not identify any evaluation criteria.<sup>62</sup> The evaluation report identified that five weighted criteria were applied to the two responses received to select Running PR at a fee of RMB500,000 with a cap of RMB1 million for fees plus expenses.

- for the remaining three procurements, TA had approached the market without a procurement plan having been prepared or approved.<sup>63</sup>

2.69 ANAO analysis on the application of the evaluation criteria during the evaluation process is discussed in paragraph 2.79.

### Recommendation no. 3

2.70 Tourism Australia strengthen its procurement controls to ensure that procurement request documentation includes:

- (a) the evaluation criteria that will be applied, together with any weightings; and
- (b) the way that prices will be considered in assessing the value for money offered by each candidate.

**Tourism Australia response:** *Agreed.*

2.71 *Although Tourism Australia notes that evaluation criteria are included in its standard templates and in the majority of the sample, Tourism Australia will ensure evaluation criteria and price considerations are more consistently applied.*

## Are contracts awarded to the candidates assessed as providing the best value for money?

Just over half of the contracts examined by the ANAO were awarded to the candidate where records demonstrated that it had been assessed by TA to offer the best value for money. For the remaining 48 per cent of contracts where value for money outcomes had not been demonstrated, this was primarily the result of insufficient analysis being presented commensurate with the scale of the procurement, or insufficient documentation being maintained.

2.72 Achieving value for money is the core rule of the CPRs. Officials responsible for a procurement must be satisfied, after reasonable enquiries, that the procurement achieves a value for money outcome.

62 The request for quotation for this procurement was filed within TA's procurement directory on 13 June 2024, two years and four months after the procurement had been completed and the contract executed. Attachment 1 – Response Schedule, which formed part of the request documentation and included the applicable conditions for participation, was not filed.

63 Records of the request documentation for these three procurements were not filed within TA's procurement directory. In August 2024 (between 1.5 and two years after the relevant procurements had been completed and contracts executed), TA provided the ANAO with additional information on the request documentation for these three contracts.

2.73 Under the CPRs, unless the entity has determined that it is not in the public interest to award a contract, a contract must be awarded to the tenderer that the entity has determined:

- satisfies the conditions for participation;
- is fully capable of undertaking the contract; and
- will provide the best value for money, in accordance with the essential requirements and evaluation criteria specified in the approach to market and request documentation.<sup>64</sup>

2.74 The ANAO examined TA's procurements in terms of whether the records demonstrated that successful tenderers were assessed as providing the best value for money. The ANAO factored the scale, scope and risk of the procurements into its examination.

### Late submissions

2.75 The CPRs state that late submissions must not be accepted unless the submission is late as a consequence of mishandling by the entity. In two instances where there was sufficient documentation maintained, the records indicated that tenders submitted after the closing date were accepted and progressed to evaluation notwithstanding that the circumstances were not consistent with those the CPRs says enable a late tender to be accepted.

- In the first instance, one tenderer submitted late but was nonetheless included for evaluation as it 'presented a good option for TA'.<sup>65</sup>
- In the second instance, a tender was received late and by an alternative communication channel. The reason recorded for progressing this tender to evaluation was that the TA procurement team 'understands that there can often be significant delays with emails in to and out of mainland China' (notwithstanding that the other four tenderers were able to submit a response by the closing date) and that 'Procurement is comfortable there was no significant advantage or disadvantage with the short delay.'

2.76 In neither instance was the late tender successful.

### Screening of tenders

2.77 Further consideration must be given only to submissions that meet minimum content and format requirements.<sup>66</sup> In all contracts examined where sufficient documentation was maintained by TA, tenderers assessed as meeting the requirements were appropriately progressed to evaluation.

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64 When assessing value for money, officials must consider the relevant financial and non-financial costs and benefits of each submission. These include, but are not limited to the: quality of the goods and services; fitness for purpose of the proposal; potential supplier's relevant experience and performance history; flexibility of the proposal (including innovation and adaptability over the lifecycle of the procurement); environmental sustainability of the proposed goods and services (such as energy efficiency, climate change impact, environmental impact, circularity of the goods and services and use of recycled materials); and whole-of-life costs.

65 Note that an external adviser was engaged by TA to conduct the procurement on its behalf. The evaluation report stated that by the time TA became aware of this late submission 'no further action was required.'

66 When an entity provides tenderers with opportunities to correct unintentional errors of form between the opening of submissions and any decision, the relevant entity must provide the opportunity equitably to all tenderers.

2.78 In two instances, the records indicated that tenderers who had been assessed as failing the minimum requirements were progressed and assessed, an approach that is inconsistent with the CPRs.

- In one instance, five of the seven tenderers invited did not complete the conditions of participation as required but were progressed to evaluation (one of these suppliers was awarded the contract). The evaluation report stated that the ‘Committee understands that such conditions are not common practice in the property sector and [the external adviser engaged by TA to conduct the procurement on its behalf] did not emphasise their importance to prospective respondents’.
- In the second instance, one supplier was assessed as failing the minimum requirements with the tender presenting ‘some significant omissions and non-compliance’ but was nevertheless progressed to evaluation ‘due to the existing relationship with Tourism Australia, and the risk of souring that relationship if their response was not given due consideration.’ This supplier was not awarded the contract.

### Evaluation of tenders

2.79 For 16 of the 33 contracts examined (48 per cent), the criteria and weightings (where applicable) applied by TA in the evaluation process were consistent with those advised to potential suppliers in the request documentation. Of the other 17 contracts:

- five (15 per cent) had some inconsistency evident:
  - in four instances, evaluation criteria were applied notwithstanding that the request documentation did not include any evaluation criteria<sup>67</sup>; and
  - in the last instance, the evaluation criteria applied were the same however TA assessed the tenderer as ‘acceptable’ rather than giving a weighted score as had been advised would occur in the request documentation.
- 12 (36 per cent) had insufficient documentation on file to demonstrate consistency.

2.80 While there were inconsistencies in the application of the minimum requirements and evaluation criteria, the records adequately demonstrated that contracts were awarded to candidates assessed as providing the best value for money in 17 (52 per cent) of the 33 contracts examined in detail. For 10 contracts (30 per cent), while the contracts were awarded to the highest ranked or sole tenderer, value for money outcomes had not been demonstrated with insufficient analysis being presented by the evaluation committee commensurate with the scale of the procurement. For instance, evaluation reports did not adequately explain the basis on which tenders had been assessed or why the proposed costs represented value for money in the circumstances. For the other six contracts (18 per cent), insufficient documentation was on file.

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<sup>67</sup> For one of these four procurements, the five evaluation criteria applied were weighted with the potential tenderers given an overall effectiveness score. In the other three instances, the evaluation criteria applied were not weighted with the potential tenderers assessed as ‘acceptable’ against the criteria.

2.81 For competitive procurements, a value for money outcome was generally supported by the successful tenderer being the highest ranked against the evaluation criteria.<sup>68</sup> For non-competitive procurements, the contract was awarded to the single supplier approached.

2.82 Benchmarking is valuable in non-competitive procurements, as it is more challenging to establish that a single bid is a reasonable market price and represents value for money. Benchmarking by TA was primarily undertaken by comparative analysis of the proposed prices against competing tenders, past contracts and TA's internal project budget. Occasionally, TA also used other benchmarks including industry or market rates.

2.83 The ANAO identified the following shortcomings in its examination.

- Where select tenderers were invited to bid, it was common for evaluations to be less robust with tenderers' capacity and capability largely assumed to be sufficient. For example, The Buzz Group was procured in 2022 to provide talent management and broadcast public relations support services.<sup>69</sup> The evaluation report did not include any analysis of the proposal to support rating the supplier as 'acceptable' against the three unweighted evaluation criteria. Rather the supplier was identified as being 'value for money based on successful previous cooperation on the projects' and was awarded a contract valued at \$110,000.
- It was common for records to provide limited or inadequate analysis when assessing price against benchmarks, particularly where there was only one tenderer being considered. For example, Infinity Squared Pty Ltd was procured in 2021 via a non-competitive limited tender to develop and deliver a video content series to support the Always On Creative Initiatives.<sup>70</sup> Identifying directly comparable benchmarks can be challenging. In this instance, TA's evaluation report advised that the proposal 'compared favourably against recent benchmarks for work commissioned by TA' (notwithstanding that the proposed cost was around six to eight times more expensive than the two examples referenced) and did not present further analysis explaining how this meant the proposal 'compared favourably'. The contract was valued at \$1.2 million.

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68 In three of the 18 competitive procurements, the suppliers were not ranked. In the first instance, only the successful tenderer was assessed against the evaluation criteria. In the second instance, the tenderers were not exhaustively assessed against the technical criteria and instead were considered against a number of factors on a binary basis. In the third instance, the one tender received was assessed as 'acceptable' rather than scored against the weighted evaluation criteria.

69 This contract was not reported on AusTender as its value was below the relevant reporting threshold of \$400,000.

70 See AusTender contract notice CN3819258, available from <https://www.tenders.gov.au/Cn/Show/1d129783-f60c-48f9-9bf4-35c14ae3bd22> [accessed 9 October 2024].



## Recommendation no. 4

2.84 Tourism Australia strengthen its procurement practices so that it can demonstrate that contracts are awarded to the candidate that satisfies the conditions for participation, is fully capable of undertaking the contract and will provide the best value for money as assessed against the essential requirements and evaluation criteria specified in the approach to market and request documentation.

**Tourism Australia response:** *Agreed.*

2.85 *Tourism Australia will strengthen its procurement practices to better demonstrate value for money and ensure evaluation criteria are appropriately documented.*

## Are procurement activities conducted ethically?

TA had not conducted procurements to a consistent ethical standard as required under the CPRs. Of note was that:

- conflict of interest declarations were not completed by all evaluation team members in four per cent of the contracts examined where there was sufficient documentation on file;
- for eight per cent of the contracts where advisers were appointed to assist with the procurement process, TA's records did not include a complete list of the individuals involved; and
- the procurements of external probity advisers were deficient in relation to how those advisers were engaged as well as the limited scope of probity services obtained by TA.

2.86 Under the CPRs, officials undertaking procurement must act ethically throughout the procurement. Ethical behaviour includes:

- dealing with potential suppliers, tenderers and suppliers equitably<sup>71</sup>;
- carefully considering the use of public resources; and
- complying with all directions, including relevant entity requirements, in relation to gifts or hospitality, the Australian Privacy Principles of the *Privacy Act 1988* and the security provisions of the *Crimes Act 1914*.

2.87 The CPRs also state that officials undertaking procurement must seek to prevent corrupt practices by recognising and dealing with actual, potential and perceived conflicts of interest and not accepting inappropriate gifts or hospitality.

2.88 Section 15 of the PGPA Act requires the accountable authority to govern the entity in a way that promotes the proper use and management of public resources. The PGPA Act defines 'proper' as efficient, effective, economical and ethical.

71 As discussed in the section at paragraphs 2.40–2.63, for 10 of the procurements (30 per cent) examined by the ANAO it was evident that TA had favoured existing or previous suppliers when evaluating competing offers through panel procurement or when deciding which potential provider(s) should be invited to participate in a limited tender.

## Conflict of interest

2.89 Effective management of conflicts of interest should be a central component of an entity's integrity framework. Poor practice, or the perception of poor practice, in the management of conflicts of interest will undermine trust and confidence in an entity's activities. Where conflicts cannot be avoided, the relevant provisions of the PGPA Act and the Public Governance, Performance and Accountability Rule 2014 require that persons must disclose details of any material personal interest.<sup>72</sup>

2.90 Entity accountable authorities must promote the ethical management of public resources and establish and maintain appropriate systems relating to risk management and oversight and internal controls. This includes policies and procedures regarding the management of conflicts of interest.

### *TA internal policy*

2.91 TA's Code of Conduct requires staff to: disclose and take reasonable steps to avoid any conflict of interest (real or apparent) in connection with their employment; and act objectively, impartially and free of conflicts of interest in the conduct of their duties.

2.92 TA's Procurement Policy states that:

Any potential or actual conflict of interest, involving either a staff member or their immediate family member, must be disclosed promptly in writing to your manager. As part of procurements valued at \$100,000 or more, staff members are required to complete a conflict of interest declaration.

### *Evaluation members*

2.93 Of the 33 contracts examined by the ANAO, in:

- 26 instances (79 per cent) records of completed conflict of interest declarations were maintained for all listed evaluation team members<sup>73</sup>;
- one instance (three per cent) declarations were not completed by all listed evaluation members; and
- six instances (18 per cent) there were insufficient information to enable reliable examination.

2.94 It was common for no management actions to be put in place to avoid or mitigate identified conflicts of interest, and no records documenting how conflicts had been managed.<sup>74</sup> In August 2024, TA advised the ANAO that:

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72 Additionally, where the accountable authority is a board, board members must generally exclude themselves from any discussion or decision regarding the matter on which they have a conflict. TA's board charter sets out the relevant disclosure requirements applicable to board members.

73 For four of these 26 contracts, complete records of the signed conflict of interest declarations were located by TA in June and August 2024 (between 1.5 and 2.5 years after the relevant procurements had been completed and contracts executed).

74 Declared conflicts of interests largely related to prior and/or ongoing engagement with TA suppliers or past employment with potential tenderers.

TA takes conflicts of interest seriously and believes that the management of conflicts of interest is an active process. In the sample tested, there were no material conflicts of interests recorded<sup>75</sup>, which is why management did not take any actions. In any instances where a material conflict of interest is recorded, management take appropriate action, for example excluding the individual from the scoring process.

### Advisers

2.95 Of the sample of 33 procurements examined by the ANAO:

- 26 had advisers appointed during the procurement process:
  - 24 had completed conflict of interest declarations for all listed adviser personnel maintained on file<sup>76</sup>; and
  - two stated that advisers had been appointed but did not include a complete list of all relevant individuals involved in the procurement;
- one did not have any advisers appointed; and
- six had insufficient information to enable reliable examination.

### External probity advisers

2.96 External probity advisers may be appointed where justified by the nature of the procurement. Finance guidance states that ‘The decision on whether to engage an external probity specialist should weigh the benefits of receiving advice independent of the process against the additional cost involved and include consideration of whether or not skills exist within the entity to fulfil the role.’

2.97 TA’s Procurement Policy requires an external probity adviser to be engaged for procurements valued at or above \$400,000.

2.98 For at least<sup>77</sup> 17 (52 per cent) of the 33 contracts examined by the ANAO, an external probity adviser was appointed during the relevant procurement process. Of these 17 contracts, NTT Australia Digital Pty Ltd (NTT) was appointed as the probity adviser in 15 and Grosvenor Performance Group Pty Ltd (Grosvenor) for the remaining two.<sup>78</sup>

75 TA policies do not define ‘material conflicts of interests’ and do not set out the processes of how declared conflicts should be managed.

76 For four of these 24 contracts, complete records of the signed conflict of interest declarations were located by TA in June and August 2024 (between 1.5 and two years after the relevant procurements had been completed and contracts executed). For one of these 24 contracts, an external probity adviser was listed in the signed evaluation report as having been appointed during the procurement process yet there was no signed declaration maintained on file which was inconsistent with the advice to the delegate that ‘All Evaluation Committee members with declared evaluation, decision-making or support roles completed a conflict of interest and confidentiality declaration’. In August 2024, TA advised the ANAO that:

The Probity Advisor's role was part of the evaluation report template. It was an administrative error to have included *[name]* as part of the evaluation report. Procurements below \$400,000 does not require a review by the probity advisor. As such, *[name]* was not asked to sign the evaluation report.

77 Of the remaining 16 contracts, nine (27 per cent) did not have a probity adviser appointed, six (18 per cent) had insufficient records on file to enable reliable examination and for one (three per cent) TA advised the ANAO in August 2024 that it was ‘an administrative error’ to have listed an external probity adviser in the evaluation report (see also footnote 76 and paragraph 2.18).

78 These two contracts were established under the same approach to market for global media services and a single probity adviser was appointed for the procurement process.

## *Engagement of NTT*

2.99 In March 2019, TA contracted NTT to provide probity services on an as needs basis at a cost of \$30,000.<sup>79</sup> As at 30 June 2024, there were no records maintained in TA's systems demonstrating how NTT's services had been procured. In July 2024, TA advised the ANAO that 'The total value was below \$100k so formal tendering documentation was not required.' This approach was inconsistent with TA's Procurement Policy which requires multiple quotes to be sourced.

2.100 The initial contract term was one year (from 20 February 2019 to 19 February 2020) with two extension options of one year each.

2.101 Section 2.13 of the Department of Finance's *Contract Management Guide* states that contracts can only be extended if three conditions are met: the contract contains an (unused) option to extend; it is value for money to extend the contract; and the contract has not yet expired. The contract between TA and NTT contained two extension options. TA did not exercise the first extension option until a week after the contract had already expired.<sup>80</sup> TA then:

- exercised the second (and last) extension option in February 2021;
- varied the contract in February 2022 to extend the contract by a further 10 months until 31 December 2022 (despite the contract not containing an unused option to extend); and
- continued to engage NTT's services in 2023 without a contract being in place.

2.102 Engaging the same probity adviser on an ongoing or serial basis over several related or unrelated issues increases self-interest and familiarity risks that may threaten the actual or perceived independence of the practitioner.<sup>81</sup>

### Scope of services

2.103 Under the contract, the services that may be provided by NTT included (without limitation): review of pre-tender and tender documents and related material before release to market; advice on compliance and probity issues as required, throughout the tender process; ensuring all key evaluation and probity decisions throughout the tender process are documented, defensible and auditable; provision of a probity report to TA's board at the conclusion of the tender process; and any other probity related services that may be determined by TA, from time to time.

2.104 Where sufficient documentation was available, the role of NTT was set out in the relevant procurement plans and included:

- providing probity advice as required;
- being available for tenderers to raise concerns throughout the procurement process; and
- completing the probity report.

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79 The contract was executed 15 days after the commencement date. This contract was not reported on AusTender as its value was below the relevant reporting threshold of \$400,000.

80 Finance's *Contract Management Guide* includes a warning that entities cannot legally extend an expired contract. This means that once the end date of the contract has passed, entities cannot exercise an extension option, even if one exists, or extend through a contract variation.

81 Auditor-General Report No.42 2021–22, *Procurement of Delivery Partners for the Entrepreneurs' Programme*, ANAO, Canberra, 2022, p. 40, available from <https://www.anao.gov.au/work/performance-audit/procurement-delivery-partners-the-entrepreneurs-programme>.

2.105 For each of the 15 contracts examined by the ANAO where NTT was appointed as the probity adviser, the relevant evaluation report:

- included a ‘Probity Advisor Report’ which indicated that the probity services were limited in scope and largely related to reviewing the procurement plans and evaluation reports<sup>82</sup>; and
- was signed off by the probity adviser.

### *Engagement of Grosvenor*

2.106 In August 2020, TA appointed Grosvenor as the probity adviser for the global media services procurement<sup>83</sup> at a cost of \$30,000.<sup>84</sup> TA sourced the probity services through the Australian Federal Police’s Capability Support Services Panel. While records indicate that two quotations were received from different suppliers on the panel, the engagement of Grosvenor did not transparently demonstrate value for money due to insufficient records being maintained on file by TA. Specifically, there were no records of: an approved procurement plan; approval to approach the market; an approved evaluation report or similar advice to the decision-maker.

#### Scope of services

2.107 Under the contract, the scope of the services to be provided by Grosvenor included: providing probity briefings; providing probity advice as required; reviewing and approving procurement documents<sup>85</sup>; providing advice on contract management planning; and/or any ad hoc related services. Additionally, the approved procurement plan for the global media services procurement stated that the probity adviser would ‘maintain a record of conflict of interest declarations and any courses of action undertaken in regards to managing actual or potential conflicts.’ There were no records in TA’s systems evidencing that a register was maintained.

2.108 The evaluation report for the global media services procurement (which related to two of the 33 contracts examined in detail by the ANAO as part of this audit<sup>86</sup>) contained a summary of the probity assistance provided by Grosvenor which included: providing probity briefs and probity protocols to TA staff; reviewing the procurement plan, request documentation and evaluation report; observing the industry briefing session; and providing advice on specific probity issues.<sup>87</sup>

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82 The ‘Probity Advisor Report’ was a table with three columns titled ‘Stage’, ‘Actions’ and ‘Comments and Dates’. The reports indicate that probity advice was only sought in one instance.

83 Auditor-General Report No.2 2008–09, *Tourism Australia* concluded that earlier tenders for creative development and media placement lacked transparency and that tenders were re-evaluated following concerns raised by the minister. These findings supported the need to engage an external probity adviser for the subsequent procurement process examined in this current ANAO performance audit.

84 This contract was not reported on AusTender as its value was below the relevant reporting threshold of \$400,000.

85 This included TA’s procurement plan, request for tender package, clarifications for tenderers, shortlist, evaluation report, presentations, negotiation strategy or any associated documentation, as required.

86 These two contracts relate to Mediabrands Australia Pty Ltd (t/a UM) and Beijing Gridsum Technology Co., Ltd. Both suppliers were engaged by TA following a single procurement process for global media services. See also paragraphs 3.9–3.11, 3.27 and 3.46 in relation to the contract with Mediabrands.

87 This included advice on: the conditions of participation and minimum content and format requirements; TA’s participation in industry events during the tender period; protocols for embedded personnel from Digitas at TA; forward advice of the approach to market; extensions of tender closing date; acceptance of gifts and hospitality in relation to business-as-usual work with incumbent agencies; management of minor errata in tenders received; additional expert advisers; and business-as-usual activities.

Complete records evidencing the engagement between TA and Grosvenor were not maintained within TA's systems. The evaluation report was signed off by Grosvenor.

## Gifts and benefits

2.109 TA policy states that 'employees involved in an active procurement process must not accept gifts or benefits of any kind from companies associated with the procurement'. The policy also sets out a requirement for staff to complete monthly declarations of reportable gifts and benefits received, and for a gifts and benefits register to be maintained.<sup>88</sup>

### *Internal audit findings*

2.110 As part of the 2022–23 internal audit plan for TA, Deloitte conducted an internal audit of TA's gifts and benefits register. The objective of the audit was to assess compliance with TA's Gifts and Benefits Policy and covered the period from 1 July 2022 to 31 December 2022. The report was completed in April 2023 and presented the following results:

We selected 15 Gifts and Benefits declared during the audit period. Our procedures and testing of all declared Gifts and Benefits found that 13 of the 15 declarations did not obtain timely appropriate approvals as stipulated in the 'Gifts and Benefits Policy'.<sup>89</sup> Our procedures and testing found three of the 15 declared gifts and benefits did not obtain required pre-approvals as sponsored travel submitted through the travel requisition system.

### Recommendation no. 5

2.111 Tourism Australia engage probity advisers through transparent procurement processes and, where a probity adviser has been appointed, Tourism Australia actively engage and manage the adviser to ensure probity has been maintained during the procurement process.

**Tourism Australia response:** *Agreed.*

2.112 *Tourism Australia will continue to increase the rigour it applies to the appointment and management of probity advisors.*

## Are appropriate procurement records maintained?

TA did not maintain appropriate records commensurate with the scale, scope and risk of the procurement (which is what the CPRs require). Forty-eight per cent of contracts examined by the ANAO were missing one or more important documents. In addition, for those contracts

88 Under the policy, gifts or benefits valued at or greater than \$300 must be declared.

89 In relation to these 13 declarations, the internal audit stated that:

line manager approval had not been completed within 30 days as required, due to an error with the Lighthouse system which resulted in required approval tasks not being work-flowed to the appropriate delegate ... Torque Software identified that the error had affected 27 declarations in the system as at 9 March 2023, and re-issued approvals to the appropriate delegates for all affected declarations retrospectively ... Approvals were obtained retrospectively from the appropriate delegate in March 2023 for 12 out of 13 gifts and benefits declared from September 2022 to January 2023. As of 20 April 2023, one line manager had not yet completed the retrospective approval, despite multiple follow ups ... It is recommended that TA management considers further following-up with the relevant line manager to approve the one outstanding gift and benefit declaration.

where adequate records were available, more than half of the contracts involved work commencing before a contract was in place.

2.113 The CPRs state that officials must maintain, and retain in accordance with the *Archives Act 1983*, for each procurement a level of documentation commensurate with the scale, scope and risk of the procurement. Documentation should provide accurate and concise information on:

- the requirement for the procurement;
- the process that was followed;
- how value for money was considered and achieved;
- relevant approvals; and
- relevant decisions and the basis of those decisions.

2.114 Additionally, entities must have access to evidence of agreements with suppliers, in the form of one or a combination of the following documents: a written contract, a purchase order, an invoice or a receipt.

2.115 The ANAO's 2008–09 performance audit of TA concluded that, for two of the three major procurements examined, procurement plans were not developed (although they were required by TA's policies) and the supporting documentation was not comprehensive and, as a consequence, the selection of the service providers lacked transparency.<sup>90</sup>

### **TA's record keeping policy**

2.116 TA's Records Management and Archiving Policy is a two-page document that outlines how records are 'created, maintained, archived and disposed of over time'. The policy applies to all TA records, both physical and electronic, as well as to all records of work done by or on behalf of TA in any of its global offices. All TA staff (including permanent, temporary and casual staff), contractors and consultants engaged by TA globally must comply with this policy.

2.117 The policy requires all staff to 'use the TA recordkeeping system to create, capture and manage their records in the course of work (SharePoint)'. It further states:

SharePoint is TA's official repository for all corporate records. SharePoint may be used to electronically review and approve corporate documents. Electronic records captured and maintained in SharePoint remain accessible for as long as required to meet legislative, accountability and business obligations. Employees must transfer hardcopy records into electronic format by scanning into SharePoint or other relevant system used by that team (such as Finance invoicing systems, trade events systems etc., as relevant).

Electronic records must be appropriately stored in SharePoint or any other system designated for capturing TA information (as relevant to that team).

Some individual teams may also use additional systems for specific purposes, such as an invoicing system, or events booking system.

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90 Auditor-General Report No.2 2008–09, *Tourism Australia*.

## *Internal audit findings*

2.118 As part of the 2022–23 internal audit plan for TA, Deloitte conducted an internal audit of TA's records management processes.<sup>91</sup> The objective of the audit was to 'examine the adequacy and effectiveness of records management processes to ensure that they are in line with legislation and are consistently followed by all TA staff for the business areas in scope.' The report was completed in May 2023 and concluded that:

The overall rating for this internal audit is Needs Improvement, with three medium-rated issues and two low-rated issues. The rationale for this rating is that various risks in relation to the four objectives [being robust governance; records are trusted and authenticated; records are managed effectively and efficiently; and records are effectively retained and disposed] were not met and sufficiently mitigated.

2.119 The report noted that:

The functions across TA uses various business systems to store information which primarily includes SharePoint, Outlook, Shared OneDrive, and DocuSign. Given the various systems in use with each function operating independently, it is imperative to establish a clear hierarchy of roles to ensure that TA complies with the requirements of Acts and Regulations.

2.120 One of the three medium-rated issues was that TA had no procedural guidance for records management with the report finding:

TA has a Records Management & Archiving Policy and a Data Classification, handling & Disposal Policy that set out high level governance principles. However, TA has no internal technical procedural documentation or detailed guidance materials in place to govern records management practices across TA including defining roles and responsibilities for the business units. There is also no formal training on these IT policies.

As a result, there is insufficient awareness of the records management practices for storing, managing, and retaining records. In addition, there were no local business rules to guide records management practices within their business units.

2.121 Three related internal audit recommendations were that TA:

R3. Develop internal records management procedures and guidelines aligned with relevant legislations, to complement the formal policies in place.

R4. Provide formal records management training for all relevant staff across TA to ensure that their roles and responsibilities are well understood, as well as relevant legislative and organisation requirements.

R5. Evaluate the potential of assigning a temporary contracted resource to manage the process of evaluating current records management practices, develop and roll out record management procedures and guidelines and implement transformation process required for best practice (or consider whether existing resources can undertake this).

2.122 In June 2023, TA advised the Audit and Risk Committee:

Whilst Management concurs with the findings many of the recommendations are time consuming and arduous to complete with limited practical benefit to TA. As such, Management will consider

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91 In May 2020, TA engaged Deloitte to provide internal audit services. The original contract value was \$750,000 for a period of three years. In February 2023, the contract was extended for a further year until 30 June 2024 with an amended contract value of \$1 million.



the recommendations from a risk/reward perspective and revert with a fit for purpose plan to address the relevant areas.

2.123 Table 2.3 sets out the management agreed actions against each of the three related recommendations and the status of those actions as at May 2024.

**Table 2.3: Status of actions taken in response to recommendations**

Rec #	Management agreed action	Target date	Status as at May 2024
R3	As per R1 Management will develop a process to categorise documents requiring retention.	April 2024	In progress <sup>a</sup>
R4	As per R1 — Staff will be trained on this process and each department will have a SME to ensure compliance.	April 2024	In progress
R5	Management held discussions with the Executive General Manager of corporate services, and it was determined that there is insufficient funding to support hiring additional staff. Management's assessment is that the associated cost outweighs the perceived risk. The Action will be presented to the audit committee.	April 2024	Completed <sup>b</sup>

Note a: In the Audit Findings Register — May 2024, the action taken against this recommendation was changed to 'These processes are covered in two places the Records Management Policy (in final draft) and the NAP policy currently in draft'.

Note b: This action was recorded as being 'Complete' in the Audit Findings Register — August 2023 and then subsequently removed from the register.

Source: ANAO analysis of TA records.

## Reliability of records

2.124 The maintenance of appropriate documentation is a fundamental element of accountability and transparency in procurement. It ensures that officials are responsible for the actions and decisions they have taken, and for the resulting outcomes. It also facilitates scrutiny of government activity, including by the Parliament.

2.125 Risks associated with an absence of appropriate records management procedures and guidance include that: legislative obligations are not met; complete records are not readily accessible<sup>92</sup>; value for money is not demonstrably achieved; and procurements do not deliver the desired outcomes at the expected costs. Each of these risks was realised.

2.126 The ANAO experienced challenges in locating relevant records given inconsistencies in record keeping practices across TA and the use of various business systems to create and store information.<sup>93</sup> The ANAO examined 33 contracts in detail, which ranged in value from \$102,980 to

92 TA took more than two months, from the time of the ANAO's original information request, to locate the relevant procurement and contract management files for the 33 contracts sampled.

93 The different systems used by TA to store business information and Commonwealth records included: SharePoint; Microsoft Dynamics 365 Finance and Operations; Monday.com; Outlook; Shared OneDrive; DocuSign; and the Parliamentary Document Management System (PDMS). Note that different teams within TA may have their own SharePoint sites/folders, Monday.com dashboards and DocuSign accounts with differing documents stored across them. Additionally, TA does not have access to PDMS, rather any official correspondence such as briefings and submissions to and from the minister (including approvals relating to procurement contracts) goes through Austrade's PDMS account. The ANAO observed instances where complete records of these official correspondence were not then transferred and stored in TA's systems.

\$311.3 million at execution. Of the 33 contracts, 16 (48 per cent) had one or more of the following documents missing:

- procurement planning document;
- request documentation;
- evaluation report (or similar document);
- conflict of interest and confidentiality declarations;
- relevant approvals; and/or
- a formal contract.

2.127 Commensurate with their size and scale, higher value procurements tended to have a greater volume of documents on file and record keeping practices were more robust although some gaps were identified. To illustrate the extent to which documents were missing and to provide a sense of scale, Figure 2.2 shows the number of documents missing per contract examined. For the purposes of this analysis, the types of documents considered were limited to four key documents being: planning documents, evaluation documents, approval records and contracts. These key documents collectively address the requirements under the CPRs as set out in paragraphs 2.113 to 2.114.

**Figure 2.2: Number of documents missing per contract examined**



Note: For contract 31, the signed contract did not specify the contract value. For contracts 32 and 33, there were insufficient records for the ANAO to determine what the contract value was at execution.

Source: ANAO analysis of TA records.

## Recommendation no. 6

2.128 Tourism Australia improve its record keeping processes to ensure that business information and records are accurate, fit for purpose and are appropriately stored within entity systems.

**Tourism Australia response:** *Agreed.*

2.129 *Tourism Australia is currently in process of implementing a new procurement and contract management system and is also enhancing its record managements framework.*

## Approvals

2.130 Under section 8 of the *Tourism Australia Act 2004*, TA's powers include the power to 'enter into contracts, agreements or arrangements'. These powers have been delegated to TA employees as per TA's Delegations Instrument and Instructions which set out the 'approvals to be obtained prior to spending funds or committing Tourism Australia to any course of action'. The relevant financial limits vary depending on the individual's position. Employees can only exercise the powers if it is within their delegation threshold.<sup>94</sup>

2.131 Of the 33 contracts examined:

- 21 had records of the relevant approvals being obtained from an appropriate delegate prior to the contracts being executed;
- four had records of the relevant approvals being obtained prior to the evaluation reports being finalised and signed off;
- two had records of the relevant approvals being obtained after the contracts had been executed; and
- six did not have records of the relevant approvals maintained on file.

### *Works commencing prior to contracts being signed*

2.132 An entity takes on increased risk where it permits a contract to commence before its execution. Problems can arise when suppliers are instructed to commence services or works prior to a contract being signed such as if there is a dispute about what was agreed. Of the 33 contracts examined by the ANAO:

- 16 (48 per cent) were scheduled to commence before the date of contract execution<sup>95</sup>;
- 15 (45 per cent) were scheduled to commence on or after contract execution; and
- two (six per cent) did not have contracts maintained on file.

94 TA's Delegations Instrument and Instructions further states that 'When determining an appropriate delegate based on financial threshold, the whole-of-life value of the commitment including taxes (e.g. VAT, GST), options to extend, charges and contingencies must be factored into the total sum.'

95 The average time between the commencement date and execution date was 23 days (ranging from one day to 83 days).

## Recommendation no. 7

2.133 Tourism Australia strengthen its procurement controls to better address the risk of work commencing before a contract is in place.

**Tourism Australia response:** *Agreed.*

## 3. Contract management

### Areas examined

The ANAO examined whether contracts had been managed appropriately to achieve the objectives of the procurement.

### Conclusion

Tourism Australia (TA) has not effectively managed contracts to achieve the objectives of the procurement. In relation to the 33 contracts examined in detail by the ANAO:

- none had a contract management plan, including some high-risk and high-value arrangements;
- for more than half (55 per cent), TA had not included clear performance requirements in the contract. There were also shortcomings in TA's monitoring of contractor performance across the sample examined by the ANAO;
- contract variations are common, with 33 per cent of contracts examined by the ANAO being varied. None of the variations had records created and retained by TA that demonstrated that the variation represented value for money; and
- invoicing and payments for 64 per cent did not adhere to the contracts and/or requirements under TA's policies.

TA has also not been meeting its AusTender reporting requirements.

### Areas for improvement

The ANAO has made two recommendations to improve AusTender reporting, and to strengthen contract management within TA.

3.1 Following the awarding of a contract, the delivery of and payment for the goods and services and, where relevant, the ongoing management of the contract, are important elements in achieving the objectives of the procurement. The Department of Finance's (Finance) *Contract Management Guide* states that it is 'important that contracts are managed consistently and actively throughout their life in accordance with their terms [as this] will ensure that supplier performance is satisfactory, stakeholders are well informed, and all contract requirements are met thereby ensuring that the contract delivers the anticipated value for money.'

### Are AusTender reporting requirements being met?

TA's reporting of contracts on AusTender was not compliant with the CPRs. TA accurately reported 19 per cent of the relevant contracts examined in detail by the ANAO within the required timeframe. Key information on contract values and contract start and end dates have been reported inaccurately with contract amendments usually not reported at all.

3.2 Under the Commonwealth Procurement Rules (CPRs), prescribed corporate Commonwealth entities must report contracts on AusTender within 42 days of entering into a contract when it is valued at or above the following reporting thresholds:

- \$400,000 for procurements of non-construction services; and

- \$7.5 million for procurements of construction services.<sup>96</sup>

3.3 Amendments must be reported on AusTender within 42 days where:

- a previously unreported contract is amended to be valued at or above, the relevant reporting threshold;
- an amendment increases or decreases the reported contract value by \$10,000 or more; or
- accumulated unreported amendments will vary the reported contract value by \$10,000 or more.<sup>97</sup>

3.4 Reporting entities are responsible for the quality and content of the data that they publish and report on AusTender. In order to effectively meet their publishing and reporting obligations, entities should implement appropriate measures to quality assure any data published on AusTender for completeness and accuracy. Accurate AusTender reporting achieves two important objectives: transparency to suppliers that the awarded contract is consistent with the representations that were made to the market in the approach to market; and meeting Australia's reporting obligations under various free trade agreements.

3.5 In December 2023, TA advised the ANAO that, in the absence of having a contract management system in place, there is a 'heavy reliance on the Procurement team (responsible for publishing contract notices) being notified [by business units] of the execution of contracts'. The risks associated with the lack of a contract management system or contract register are discussed in paragraph 3.23.

## Contract reporting

3.6 During 2021–22 and 2022–23, TA had published 80 contract notices on AusTender comprising 48 contracts totalling \$256.8 million and 32 amendments totalling \$15.4 million. Of those 80 contract notices:

- 48 (60 per cent) were published within 42 days of the reported start date; and
- 32 (40 per cent) were published more than 42 days after the reported start date (the average time taken was seven months, with the maximum time taken being just over three years).

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96 Key details that must be included in a contract notice are entity details, supplier details and contract details (such as the total value of the initial term of the contract (including GST where applicable), start and end dates, description and procurement method).

Standing offers, regardless of value, must be reported on AusTender within 42 days of the relevant entity entering into or amending such arrangements. Relevant details in the standing offer notice, such as supplier details and the names of other relevant entities participating in the arrangement, must be reported and kept current.

97 Amendments may include options that have been exercised, contract extensions or renewals. Entities are not required to report amendments to the contract term, although they may choose to. This includes instances where the term of a contract is amended with no impact to contract value.

The CPRs were amended from 1 July 2024 to clarify the reporting threshold at which amendments to contracts must be reported on AusTender. This was in response to recommendation 6 of Auditor-General Report No.21 2023–24, *Management of the Australian War Memorial's Development Project*. Previous iterations of the CPRs stated 'Relevant entities must report contracts and amendments on AusTender within 42 days of entering into (or amending) a contract if they are valued at or above the reporting threshold.'

3.7 Sixteen of the 33 contracts examined by the ANAO were required to be reported on AusTender as they were valued at or above the relevant reporting threshold at contract execution.<sup>98</sup> Of these 16 contracts:

- 11 (69 per cent) were reported within 42 days of the contract being entered into (three of which had details accurately reported); and
- five (31 per cent) were reported outside the required reporting period (all had errors in the details reported), with the average time taken being two months and maximum time being three months.

3.8 The accuracy of contract data published on AusTender is largely dependent on an entity correctly entering contract particulars. Accuracy of contract reporting was not to an appropriate standard with 13 (81 per cent) of these 16 contracts reported on AusTender having one or more of the following errors, being incorrect:

- contract start date, with the largest error being nearly nine months difference between the reported start date and the actual commencement date of the contract;
- contract end date, with the largest error being two years difference between the reported end date and the actual contract expiry date; and
- contract value, with eight instances where the contract value was under-reported (ranging from \$24,196 to \$124.5 million) and three where the reported contract value was overstated (ranging from \$140,509 to \$1.7 million).

3.9 The largest under-reporting (of \$124.5 million) related to TA's contract with Mediabrands Australia Pty Ltd (t/a UM).<sup>99</sup> The contract, as executed in December 2021, did not specify the total contract value or maximum budgeted value. The contract was for an initial three-year term with two one-year extension options (making a maximum term of five years).

3.10 TA's advice to the minister in July and August 2021 was that the 'estimated value of the UM contract is \$311.25 million over the five-year period', which was the same figure referenced in the evaluation report for the procurement.<sup>100</sup> The evaluation report had included a recommendation that TA negotiate a five-year contract and did not evaluate the cost of the competing tenders over a three-year period (although the procurement plan and request for tender had each outlined that the term was to be for three years with two one-year extension options).

3.11 In September 2024, TA advised the ANAO that, as AusTender reporting guidance is that the contract value should represent the amount committed for the life of the contract not including options or extensions, it reported a value that was three-fifths of the estimated value for five years.

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98 Of the remaining 17 contracts:

- 14 were valued below the relevant reporting threshold at contract execution (two of these contracts were subsequently amended to be valued above the reporting threshold — see further detail in paragraphs 3.16–3.17); and
- three had insufficient information to enable reliable examination.

99 See AusTender contract notice CN3818949, available from <https://www.tenders.gov.au/Cn/Show/1295c84e-bb0d-46b3-9366-8b410e72e8df> [accessed 9 October 2024]. The contract period was also incorrectly reported on AusTender as 1 September 2021 to 31 August 2024 rather than 22 December 2021 to 21 December 2024 as per the signed contract.

100 Under section 59 of the *Tourism Australia Act 2004*, the board must not, except with the written approval of the minister, enter into a contract under which TA is to pay or receive an amount exceeding \$3 million, or enter into a lease of land for a period of 10 years or more.

TA's advice to the ANAO outlined that this approach had also been taken when reporting the values for two other contracts where the ANAO's analysis was that the value had been under-reported.

3.12 A different contracting approach by TA was evident in another of the procurements examined by the ANAO, being the engagement of H Plus for in-market trade representation in South Korea.<sup>101</sup> This contract also had an initial term of three years with two extension options of one year each. The evaluation report identified the estimated whole-of-life cost of competing tenders over the full five years and did not quantify an estimated cost for the initial three years. The contract specified the maximum value for the initial three years, as well as the maximum value if the two extension options were exercised (both values were expressed in foreign currency). The value reported by TA on AusTender was \$2.05 million, which was \$24,196 lower than TA's Australian dollar estimate of the maximum value of the initial three-year term.<sup>102</sup>

3.13 Overall, TA does not have adequate controls to promote compliance with the AusTender reporting requirements under the CPRs. A key causal factor was poor record keeping by TA.

## Recommendation no. 8

3.14 Tourism Australia:

- (a) place greater emphasis on timely and accurate reporting of its procurement activities; and
- (b) implement a monitoring and assurance framework over its compliance with the Commonwealth Procurement Rules including for AusTender reporting.

**Tourism Australia response:** *Agreed.*

3.15 *Tourism Australia's new procurement and contract management system will help ensure accurate recording and reporting of contracts.*

## Contract amendments

3.16 As at 31 December 2023, 11 (33 per cent) of the 33 contracts examined by the ANAO had records evidencing that the contracts had been varied at least once. One of these 11 contracts had insufficient information maintained on file in relation to the variations to enable reliable examination as to whether the associated amendments had been reported in accordance with the CPRs. For the remaining 10 contracts, the individual variations totalled 22 in number and \$1.6 million in value. TA was obligated to report five of those 22 variations on AusTender as:

- two had amended the previously unreported contract to be valued above the relevant reporting threshold; and

101 See AusTender contract notice CN3954054, available from <https://www.tenders.gov.au/Cn/Show/61eb7781-cff2-4770-b398-98c41f7eaa2e> [accessed 9 October 2024].

102 The ANAO identified issues with invoicing and payments under this and a number of other TA contracts examined in detail (see further at paragraphs 3.47–3.51). For this contract, a monthly retainer service fee was specified and ANAO analysis was that invoicing and payments were in line with the contractually specified retainer from January 2023 to March 2024. Payments attributed to the retainer fee then increased by 16 per cent in April 2024, and then increased by a further 14 per cent in May 2024 (meaning the monthly retainer fee was now 32 per cent higher than specified in the contract). There were no TA records explaining the increase in retainer fee or evidencing TA's decision-making process as to how this represented value for money in the context of the competitive procurement process that had resulted in the award of the contract.



- three had increased the contract value by more than \$10,000.

3.17 None of these five amendments were reported on AusTender in accordance with the requirements under the CPRs.

### Is there an appropriate contract management framework in place?

An appropriate contract management framework is not in place. None of the 33 contracts examined by the ANAO had a contract management plan and none had a risk management plan. This included a five-year \$311.3 million contract that relates to a key element of TA's marketing efforts.

3.18 The delivery of and payment for the goods and services, and the ongoing management of the contract are important elements in achieving the objectives of the procurement. An appropriate contract management framework supports the effective management of procurement risks, and the achievement of procurement objectives and value for money outcomes. Its purpose is to provide a clear and consistent approach to managing and administering contracts.

#### Contracting policy and procedures

3.19 A key means to address contract management risk is through the development and implementation of policy and procedures. Well-designed policies are sources of information and guidance for staff in the performance of their roles and responsibilities.

3.20 The key policy document for TA is its 'Contract Management Guidance' which 'supplements the Procurement Policy to clarify the roles and responsibilities for managing contracts with vendors'.<sup>103</sup> The guidance applies to all TA staff globally and provides 'practical guidance on several of the more common contract management issues within Tourism Australia at four key stages (i.e. planning, commencement, performance and closure)'. The coverage of TA's guidance document is largely consistent with the Department of Finance's *Contract Management Guide*, except that it does not provide information about ethical behaviour and contract administration.<sup>104</sup> The guidance document refers staff to Finance's Guide for 'more detailed guidance on contract management' and directs staff to contact the procurement and legal teams for 'specific guidance on contracts administered' by TA.

#### Contract administration

3.21 Finance's *Contract Management Guide* states that 'Proper systems for identifying, gathering and recording relevant information will help you to manage your contract effectively and provide a clear audit and accountability trail.'

103 For the period examined by the ANAO, TA had two versions of this guidance in place. A February 2022 version (the second version overall for TA) replaced a May 2021 version.

104 Effective contract administration provides accurate recording of contract information and progress and can help when making decisions around contract performance.

3.22 As at 31 August 2024, TA did not have a contract management system or contract register in place.<sup>105</sup>

3.23 Under the *Public Governance, Performance and Accountability Act 2013*, accountable authorities (the board in relation to TA) have various responsibilities including a duty to establish and maintain systems relating to risk and control. In addition, the *Tourism Australia Act 2004* specifies that one function of the board is to ensure the proper and efficient performance of TA's functions. As procurement is core business for TA given some three-quarters of its expenses involve payments to suppliers, the establishment and maintenance of a contract register that contains details of all the entity contracts is necessary from an accountability perspective and also for financial and risk management purposes.<sup>106</sup> Risks associated with the absence of a centralised system to track and monitor contracts include: a lack of visibility over existing contracts; expenditure not being accurately tracked against contracts; reporting obligations not being met<sup>107</sup>; and contract variations and extensions not being appropriately managed. Each of these risks has been realised.

3.24 The ANAO observed shortcomings in how contract information was being recorded and maintained including inconsistent record keeping practices being employed across TA with multiple systems and databases containing incomplete and/or conflicting contract data.

### **Contract management plans**

3.25 Effective planning impacts how a contract is managed and whether there is a successful outcome. A contract management plan is a useful tool to support the management of risks to the success of a contract and to ensure value for money is achieved. The plan should reflect the level of complexity and risk associated with the contract, and include key information about how the contract will be managed over its life.<sup>108</sup>

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105 In November 2023 (and again in December), TA advised the ANAO that it did not have a contract management system or contract register in place. In December 2023, TA advised the ANAO that Monday.com was used as an interim measure for contract management with a 'Project Overview' dashboard used for 'Tracking current projects solely within the Procurement team'. This dashboard is not accessible to TA staff more broadly and does not include details of all TA's procurement contracts and variations.

106 Advantages of using an electronic contract management system include consistency, efficiency and timeliness. It can be particularly useful in managing the administrative aspects of contracting in organisations that are geographically disparate such as TA.

107 The ANAO observed inconsistencies in the contract information reported across different mediums (including Senate Order Reports, reports to TA's Audit and Finance Committee and AusTender reporting). For example, TA's Delegations Instrument and Instructions require contracts valued at or above \$400,000 to be reported to its Audit and Finance Committee. During 2021–22 and 2022–23, TA had reported 40 contracts, valued at \$389.9 million to the Committee. Of these 40 contracts, two had not been reported on AusTender despite being valued above the relevant reporting threshold.

108 Information may include key activities, roles and responsibilities, risk management, contract governance, supplier reporting, meetings, performance management, delivery and acceptance, payments arrangements, specified personnel, supplier access and security, insurance and guarantees, contract variations, and extension options or contract renewal.

3.26 Finance's *Contract Management Guide* requires contract management plans for complex and strategic contracts. TA's guidance similarly states that 'more complex or higher risk contracts would usually require a detailed contract management plan'.<sup>109</sup>

3.27 None of the 33 contracts examined by the ANAO had a contract management plan. The value of these contracts (where sufficient evidence was available) ranged from \$102,980 to \$311.3 million at contract execution (the latter being a five-year \$311.3 million contract with Mediabrands Australia Pty Ltd (t/a UM)<sup>110</sup> with the minister advised in July and August 2021 that the majority of the value — \$280 million — related to media buys, which 'represent a key element of TA's marketing efforts'). Two of the 33 procurements examined by the ANAO did not have a signed contract in place.

### *Risk management*

3.28 Managing risk is an essential part of procurement and contract management. TA's guidance states that:

In consultation with stakeholders, technical staff or other users, contract managers should identify the risks associated with delivering the contract and analyse the seriousness of those risks and likelihood of them occurring ...

Once risks have been identified, the next step is to consider existing controls that are already in place and evaluate whether they are sufficient to manage the risk without taking additional measures. If not, then risk controls need to be applied. For complex or higher-risk contracts, this can be documented in the contract management plan or as a standalone plan, which is the responsibility of the relevant business unit.

3.29 A risk management plan provides a systematic approach to identifying, assessing, evaluating and treating risks that are associated with the contract.

3.30 None of the 33 contracts examined had a risk management plan.

3.31 One of the contracts had a 'Risk Register' on file that identified eight project risks and included information on the associated causes, consequences, existing controls, future treatment action and target dates for each risk.

### **Contract management training**

3.32 In December 2023, TA advised the ANAO that responsibility for the management of contracts primarily sits with the relevant business unit with the procurement and legal teams providing support. In relation to training provided to TA staff on managing contracts, TA advised the

109 TA's Contract Management Guidance states that 'the overall risk profile associated with a procurement and subsequent contract generally scale in line with the value.' It then identified the overall risk profile for contracts by value as follows:

- ≥ \$25,000 to < \$400,000 = Low to high.
- ≥ \$400,000 = Medium to high.

110 See AusTender contract notice CN3818949, available from <https://www.tenders.gov.au/Cn/Show/1295c84e-bb0d-46b3-9366-8b410e72e8df> [accessed 9 October 2024]. There were errors in the contract particulars reported on AusTender with the contract dates as reported differing by almost four months to the actual contract dates and the contract value being under-reported by \$124.5 million (see further discussion on the under-reporting of the contract value at paragraphs 3.9–3.11).

ANAO in September 2024 that ‘The contract management guide is shared after the procurement induction training’.

## Do contracts include clear performance requirements, and a means to effectively measure performance against the requirements?

Less than half (45 per cent) of the contracts examined by the ANAO included clear performance requirements. Methods for monitoring performance were included for 79 per cent of contracts examined, including a number of contracts where performance requirements had not been specified (that is the monitoring arrangements, such as reporting and/or progress meetings, were not against a clear performance requirement). Further, TA has not consistently adhered to the performance framework set out in the contracts and it was common for there to be gaps in the records to evidence the contract management activities undertaken that TA was paying for.

3.33 Good performance management is key to delivering value for money and involves ensuring that goods or services are delivered as required under the contract. Performance management should take place throughout the life of the contract and be based on the performance framework included in the contract.

### Performance requirements

3.34 Finance’s *Contract Management Guide* states that performance standards should be specified in the contract. This requirement is also reflected in TA’s internal policy.

3.35 Of the 33 procurements examined by the ANAO:

- 15 (45 per cent) included performance requirements (such as key performance indicators, performance standards and/or service levels that the supplier must achieve);
- 16 (48 per cent) did not include clear performance requirements.<sup>111</sup> For five of these contracts the request documentation had set out minimum performance requirements yet TA did not then sign a contract that incorporated those performance requirements<sup>112</sup>; and
- two procurements (six per cent) did not have a contract in place.<sup>113</sup>

111 In September 2024, TA advised the ANAO that:

TA agrees that there were deficiencies in the performance requirements ... In some cases performance requirements were limited either by the nature of the service or specific Covid-19 related clauses built into the contracts.

112 For example, in February 2023 TA approached the market via a competitive limited tender for the supply of ‘comprehensive international forward flight bookings data’. The request documentation set out four key performance indicators (being adherence to agreed timelines, sample quality, quality of deliverables and consistency of project team) and associated measures. It also set out three methods to monitor contract performance including account management, quarterly reviews and meetings. In May 2023, TA entered into a three-year contract with the International Air Transport Association at a cost of USD150,000. The signed contract (which was not based on the draft contract template attached as part of the request documentation) did not include any key performance indicators, performance measures or methods to monitor contract performance. This contract was not reported on AusTender as its value was below the relevant reporting threshold of \$400,000.

113 For one of these procurements, TA entered into a memorandum of understanding with the supplier in August 2023 which included service levels.

## Performance monitoring

3.36 For 26 of the 33 contracts examined (79 per cent), methods for monitoring performance were set out in the contract (including through reporting, progress meetings, reviews and/or milestones). Of the remaining seven procurements, two did not have a contract in place and five did not include a means to effectively monitor performance against the requirements.<sup>114</sup>

3.37 TA's performance management and monitoring activities for the 33 contracts examined by the ANAO have not consistently implemented the performance framework set out in the relevant contracts. It was also common for there to be gaps in the records maintained to evidence that all deliverables and performance requirements as set out in the contract were delivered and/or met.

3.38 The ANAO observed the following deficiencies in TA's performance management activities.

- Monitoring activities not being undertaken in accordance with the contract. For example, TA engaged H Plus in 2023 under a three-year KRW1.8 billion contract to provide trade representation services for South Korea.<sup>115</sup> The contract provided a means to monitor performance through regular reports.<sup>116</sup> TA did not obtain the reports specified in the contract. In July 2024, TA provided the ANAO with three screenshots of Outlook meeting invites and a copy of the monthly work-in-progress insights spreadsheet as evidence of its contract management activities, and advised:

We have a regular discipline of communication and review.

In addition to the core requirements in the contract TA holds with H+, we conduct the following performance and management activities.

- As-required calls
- Full participation by Korea in the AOP process, and half yearly business reviews
- Weekly management call (RGM Japan and Korea, with H+ account director)
- Weekly Asian regional management call (TA's EGM Asia and Aviation, RGM, country managers including H+ account director)
- Monthly regional distribution review
- Monthly Korea call (RGM, H+, TA Regional Marketing Director Asia)
- Approx quarterly visit by RGM to Korea market to meet with H+ and key Korea stakeholders

114 For one of the five contracts where a contract was in place but did not include details on performance monitoring, the request documentation had listed three methods of monitoring contract performance comprising account management, quarterly reviews and meetings. In September 2024, TA advised the ANAO that two of these five contracts 'would likely also fall under 'Transactional' in the Dept of Finance Contract Management Guide and therefore not require reports or meetings.'

115 See AusTender contract notice CN3954054, available from <https://www.tenders.gov.au/Cn/Show/61eb7781-cff2-4770-b398-98c41f7eaa2e> [accessed 9 October 2024]. The contract value was under-reported on AusTender by \$24,196 (see further details at paragraph 3.12).

116 The reporting requirements included annual operating plans; highlights and insights to TA's Quarterly Business Updates; comprehensive progress and performance/return of investment reports for each campaign; budget reconciliations; 'Spotlight in South Korea' reports; market intelligence and competitor reports; Aussie Specialist Program reports; and all agents' contact information.

- Monthly meetings attended by H+ and RGM with TA head office teams, including distribution and marketing
- Monitoring activities not being adequately documented and maintained on file. For example, Fifty-Five Five Pty Ltd was procured in 2023 to provide market research services at a cost of \$2.1 million.<sup>117</sup> The contract provided a means to monitor performance through regular work-in-progress meetings and reports.<sup>118</sup> The reports were not obtained by TA. In June 2024, TA advised the ANAO that:  
We have weekly WIPs with supplier, actions are documented in emails.  
We also do quarterly reviews after each presentation to discuss what went well and even better ifs. We will also be doing an annual review to discuss the account and personnel.  
We track some of it on Monday.com but nothing is saved down in folders.
- Key records being maintained outside of TA’s official record keeping system. For 16 of the 33 contracts examined, TA advice to the ANAO included that records relating to the management of the contracts were maintained and/or stored in emails or other systems.<sup>119</sup>
- Loss of key records due to poor record keeping practices and staff turnover. For example, The Buzz Group was procured in 2022 to provide talent management and broadcast public relations support services for \$110,000.<sup>120</sup> In June 2024, TA advised the ANAO that ‘Documentation unable to be retrieved as was stored in emails and managed by an employee who is no longer with Tourism Australia’.

## Performance adjustments

3.39 There are benefits to linking contract payments to the achievement of milestones or key performance indicators. For seven of the 33 contracts examined by the ANAO, payments were linked to the achievement of milestones or key performance indicators.

3.40 Entities can also limit financial risks by structuring payments so that they become due after the completion of services, delivery of goods or completion of activities. By contrast, advance payments are amounts paid before a good or service is provided or delivered. Advance payment increases financial risk and creates a risk of weaker leverage to enforce performance requirements. For nine of the 33 contracts examined, the payment schedule set out in the contract included an upfront payment on or shortly after contract execution (ranging from 50 to 80 per cent of the total fees). In September 2024, TA advised the ANAO that ‘upfront payments are standard industry practice’ for the services that were procured under those contracts.

117 See AusTender contract notice CN3969156, available from <https://www.tenders.gov.au/Cn/Show/55faf144-5948-4dec-b4a1-b3f8f2b32bfc> [accessed 9 October 2024].

118 The reporting requirements included monthly pulse reports; quarterly analysis reports; annual reports customised for each state and territory tourism organisation; six issue-led reports; and data provision on a monthly basis for PowerBI dashboard.

The contract had also set out milestones however these were not meaningful as they were not aligned to service deliverables and did not contain sufficient detail. The milestone listed for each month for the financial year was simply ‘Completion of fieldwork’.

119 This included Monday.com, Confluence, Google Drive, WhatsApp and the supplier’s portal.

120 This contract was not reported on AusTender as its value was below the relevant reporting threshold of \$400,000.

## Is the delivery of contracted goods and/or services effectively managed?

For the procurements examined by the ANAO, TA has not consistently managed contracts effectively to deliver against the objectives of the procurements and to achieve value for money.

- Of the 33 contracts examined by the ANAO, 11 (33 per cent) had records of at least one variation being executed. None of the variations had supporting evidence of records to the delegate documenting the decision-making process and demonstrating that the variation represented value for money. Some variations have significantly increased the value of the contract (by up to 105 per cent) and retrospectively added additional services already delivered and/or paid for. There have also been instances of contracts continuing to operate past their stated completion date without being varied.
- Invoicing and payments under 21 of the 33 contracts examined by the ANAO did not adhere to the contracts and/or requirements under TA's policies. This has included instances of full payments being made before final deliverables under the contract are received and payments exceeding the contracted amount.

3.41 Part of achieving value for money is ensuring that the objectives of the procurement are met without a substantial increase in cost.

### Contract variations

3.42 Finance guidance states that 'an entity should not seek or allow a contract variation where it would amount to a significant change'.<sup>121</sup> The same principle applies when varying a contract to extend its initial term. The decision-making process for a contract variation must also be documented to ensure that the contract still presents value for money.

3.43 TA's internal policies require approval to be sought from its legal team for all contract variations and extensions prior to entering into binding legal relations. While the legal team is responsible for reviewing the content and substance of contracts, the contract manager is responsible for obtaining all necessary approvals.

3.44 Of the 33 contracts examined by the ANAO, 11 (33 per cent) had records of at least one variation being executed.<sup>122</sup> Of these 11 contracts, six were varied to increase the value of the contract<sup>123</sup>, as summarised in Table 3.1.

121 Substantial changes include those that affect the length, price or deliverables under the contract. Minor changes may be allowed where they do not negatively affect the achievement of value for money.

122 For four of the other 22 contracts where there were no records of any variations being executed on file, other available evidence indicates that in practice aspects of the contract had been varied (including changes to the scope of services, fees payable and reporting requirements).

123 Of the other five contracts, one had insufficient evidence maintained on file to confirm the total number of variations approved. For the remaining four contracts, the variations executed did not have a financial implication (i.e. did not vary the overall contract value).



**Table 3.1: Contracts varied to increase contract value, by largest increase**

Supplier	No. of variations	Initial contract value (\$)	Amended contract value (\$)	Contract value increase (%)
Sayers Advisory Pty Ltd <sup>a</sup>	3	241,450	495,550	105
Snapcracker Research & Strategy Pty Ltd <sup>b</sup>	2	225,555	407,660	81
Turner Public Relations, Inc. <sup>c</sup>	1	2,977,861	3,798,585	28
LVDI Pty Ltd <sup>d</sup>	1	585,585	737,555	26
VMLY&R Pty Ltd <sup>e</sup>	1	859,957	910,258	6
Renascent Australia Pty Ltd <sup>f</sup>	1	6,157,250	6,276,521	2

Note: The number of variations and the amended contract values are as at 31 December 2023.

Note a: See AusTender contract notice CN3975310, available from <https://www.tenders.gov.au/Cn/Show/369a31ec-f7f6-43e2-bc31-725b893bc285> [accessed 9 October 2024]. The start date was incorrectly reported as being 2 June 2022 (which was the date of contract execution) rather than 1 June 2022 (which was the commencement date stated in the contract).

Note b: The contract value at execution was below the relevant reporting threshold of \$400,000 and as such, was not required to be reported on AusTender at that time. The contract was subsequently varied twice with the second variation (executed on 6 June 2023) increasing the contract value to above the reporting threshold. As at 30 September 2024 (more than a year after the variation was executed), TA had not published a contract notice on AusTender for this contract.

Note c: See AusTender contract notice CN3890968 and amendment notice CN3890968-A1, available from <https://www.tenders.gov.au/Cn/Show/a01dcdbf-1496-4689-a9fc-7131847dcde6> [accessed 9 October 2024]. The contract value was incorrectly reported on AusTender with the first contract notice under-reporting the initial contract value by \$1.2 million and the subsequent amendment notice under-reporting the contract value (as varied in December 2023) by \$1.5 million.

Note d: See AusTender contract notice CN3850013 and amendment notice CN3850013-A1, available from <https://www.tenders.gov.au/Cn/Show/a14750fa-dc17-48ee-ac8c-3848e2e1142b> [accessed 9 October 2024]. Note there were errors in the details reported on AusTender as set out in footnote 18.

Note e: See AusTender contract notice CN3869814 and amendment notice CN3869814-A1, available from <https://www.tenders.gov.au/Cn/Show/350d770d-040d-413a-8398-04381df9395f> [accessed 9 October 2024].

Note f: This contract, which was for fitout services of TA's Sydney office, was not reported on AusTender as its value was below the relevant reporting threshold of \$7.5 million for procurements of construction services.

Source: ANAO analysis of TA records.

3.45 None of the variations had supporting evidence of records to the delegate documenting the decision-making process and demonstrating that the variation represented value for money.

3.46 The ANAO identified the following further shortcomings in TA's management of contract variations.

- Formal variations being executed to retrospectively cover additional services already delivered and/or paid. For example, Renascent Australia Pty Ltd was procured in 2022 to provide design and construct services in relation to TA's Sydney office fitout for a fixed



- lump sum cost of \$6.2 million. On 4 May 2023, a variation was executed to retrospectively 'account for agreed variations' totalling \$119,271.<sup>124</sup>
- Variations being signed by officials without the appropriate delegation.<sup>125</sup> For example, TA engaged Mediabrands Australia Pty Ltd (t/a UM) in December 2021 to provide global media services for a total maximum value of \$311.3 million.<sup>126</sup> As at 31 December 2023, seven variations had been executed including to vary the annual retainer fees and scope of services to incorporate search engine management and search engine optimisation services in China (following the termination of the contract with the supplier who was originally contracted to provide those services). None of the variations amended the maximum contract value. Given the value of the contract was over \$3 million, approval was required from the minister. There were no records evidencing that TA had sought approval from the minister, nor was the minister advised of these variations (he had been advised at the time of the original procurement decision).<sup>127</sup>
  - Changes being made to contracts without a formal variation being executed. For example, INFOX Inc. was contracted by TA in 2022 to provide distribution and fulfilment services in North America at a total cost of USD220,000.<sup>128</sup> The contract set out reporting

124 Internal records indicate that this formal variation comprised 28 agreed variations which totalled \$119,271 as at 18 April 2023. Records of these 28 variations were not consistently filed within TA's systems. Other available evidence indicates that further variations were subsequently agreed between the parties without a formal variation document being executed. Based on D365 records, a total of \$6.4 million had been paid by TA under this contract which exceeds the 'final contract value' of \$6.3 million (as per the variation executed in May 2023).

Note that given the value of the contract (being greater than \$3 million), approval was required by the minister. There were no records evidencing that TA had sought approval from the minister, nor was the minister advised of these variations. In September 2024, TA advised the ANAO that:

Minister approval for variations has not historically been required unless dollar value increases ... Dollar value did not increase beyond the approved funding envelope ... TA has clarified this in the latest Delegations Instrument for the avoidance of doubt.

125 During the period examined by the ANAO, there were three versions of the Delegations Instrument and Instructions in force. Each version set out the relevant financial limits that apply to delegates in relation to contracts (employees can only exercise the powers if it is within their delegation threshold). The Instructions further state that in determining the appropriate delegate based on the financial threshold, the whole-of-life value of the commitment should be used.

The current version of the Instructions (approved by the board on 6 June 2024) includes a new statement in relation to contract variations that do not have a financial impact stating:

Any non-financial variations to agreements valued over \$1 million, for example changes to operational terms and/or extensions to contract end dates, may be signed by a Band 7 or above. For other non-financial variations to agreements valued at \$1 million or below, the normal delegations apply.

Previous versions of the Instructions did not include this statement.

126 See AusTender contract notice CN3818949, available from <https://www.tenders.gov.au/Cn/Show/1295c84e-bb0d-46b3-9366-8b410e72e8df> [accessed 9 October 2024]. The contract period and contract value were incorrectly reported on AusTender with the dates as reported differing by almost four months to the actual contract dates and the value being under-reported by \$124.5 million (see further discussion on the under-reporting of the contract value at paragraphs 3.9–3.11).

127 In September 2024, TA advised the ANAO that:

Minister approval for variations has not historically been required unless dollar value increases ... Dollar value did not increase beyond the approved funding envelope ... TA has clarified this in the latest Delegations Instrument for the avoidance of doubt.

128 This contract was not reported on AusTender as its value was below the relevant reporting threshold of \$400,000.

requirements including monthly inventory reports and annual stocktakes. In June 2024, TA advised the ANAO that the monthly reports were ‘replaced by agreement to an ad-hoc request system of reporting’ and the ‘annual stocktake was found to be no longer needed’. There were no records of a variation being executed to reflect these changes.

- Contracts continuing to operate past their stated completion date despite no variations or extensions being exercised. Six (18 per cent) of the 33 contracts examined by the ANAO had records evidencing that services were being delivered, and payments being made, after the contracts had expired.
- The variation process undertaken not being consistent with the procedures set out in the contract. For example, TA engaged Snapcracker Research & Strategy Pty Ltd in 2022 by accessing the then Department of Education, Skills and Employment’s Research Evaluation Services Panel.<sup>129</sup> Under the work order, ‘Minor changes to the Work Order may be made if agreed in writing between the Panel Member and the Agency. Major changes to the scope or methodology, payments or end date must be made through an agreed Work Order Variation’. Two variations were subsequently executed to add an additional ‘Project 2: International Consumer Demand Project (wave three)’ with an aggregate value of \$182,105. Both variations were made through a signed letter, rather than a Work Order Variation.

## Payments

3.47 Verification of invoices is important to ensure the proper use of Commonwealth resources. Finance’s *Contract Management Guide* states that entities should only make a payment when the goods or services have been received and meet the required standards; the supplier is compliant with the contract; the invoice is accurate and correct according to the contract; and when all necessary authorisations and approvals have been obtained.

3.48 TA’s policies require purchase orders to be approved prior to suppliers invoicing for relevant goods or services.<sup>130</sup> Supplier invoices must include the approved purchase order number, a brief description of the items sold, the price and, if applicable, the relevant tax amount payable. Invoices with missing information are to be rejected. Additionally, when verifying an invoice, contract managers should check that: the description of the goods or services on the invoice matches the description in the contract and does not exceed the contracted amount; the invoice date is after the goods or services were received (unless in exceptional cases where payment in advance has been agreed); and there are no other obvious errors.

3.49 Invoicing and payments under 21 of the 33 contracts examined by the ANAO (64 per cent) did not adhere to the contracts and/or requirements under TA’s policies. The ANAO observed the following deficiencies.

- Invoicing and payments not being made in line with the contract terms. For example, Quiip (Holdings) Pty Limited was procured in April 2023 for the provision of community

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129 As at 30 September 2024, this contract had not been reported on AusTender despite being varied in June 2023 to increase the contract value above the relevant reporting threshold of \$400,000.

130 Suppliers are required to include the approved purchase order number on the invoice. TA’s Contract Management Guidance states that ‘Exceptions are possible only in limited circumstances and are subject to the prior approval in writing by the Chief Financial Officer.’

management services.<sup>131</sup> The contract set out a payment schedule which included a monthly payment for ‘Tier 2 – Social Media Community Management’. Contrary to the payment schedule, a lump sum of \$103,156 (which covered the fees for the entire initial contract term) was invoiced and paid by TA in May 2023.<sup>132</sup>

- Full payments being made before final deliverables under the contract are delivered. For example, Grainger Films Pty Ltd was engaged in April 2023 to deliver production services and photography assets.<sup>133</sup> The contract provided that the second (and final) payment, equating to approximately 50 per cent of the total fees, was payable after delivery of the assets. Records show that TA had requested that the supplier provide the final invoice before 31 May 2023 despite not having received the deliverables. The final payment of \$146,710 was made in June 2023 and the final deliverables received four months later in October 2023.
- Total payments exceeding the contracted amount. For example, TA contracted the Trustee for J&M Calabro Family Trust in 2022 to provide photographic and videographic services at a maximum fee of \$394,680.<sup>134</sup> As at 30 June 2024, a total of \$450,459 had been paid to the supplier. There were no records of any variations having been executed to increase the original contract value.
- Invoices not being correctly calculated. For example, TA engaged INFOX Inc. in 2022 to provide distribution and fulfilment services in North America.<sup>135</sup> The contract set out the fixed and variable costs (including USD11 per pallet per month for warehousing charges). Records show the actual cost invoiced, and paid by TA, was incorrectly calculated at a rate of USD12 per pallet in 71 invoices and USD25 per pallet in one invoice (none of the invoices which included pallet handling fees had used the correct rate charge). This resulted in TA paying an excess of USD1011 as at 30 June 2024.<sup>136</sup>
- Purchase orders being approved after suppliers invoiced TA for goods and services.

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131 This contract was not reported on AusTender as its value was below the relevant reporting threshold of \$400,000.

132 See also paragraph 2.18 in relation to this procurement.

133 This contract was not reported on AusTender as its value was below the relevant reporting threshold of \$400,000.

134 See AusTender contract notice CN3841113, and amendment notices CN3841113-A1 and CN3841113-A2, available from <https://www.tenders.gov.au/Cn/Show/5504a9f3-1a0f-4a73-985f-2971d4e29616> [accessed 9 October 2024]. Note there were errors in the details reported on AusTender including:

- incorrect contract value — TA originally reported the contract value on AusTender as \$426,450 in January 2022 before amending the value to \$467,929 in May 2022 and then to \$448,336.53 in February 2023. The contract value as per the signed contract was \$394,680 and there were no records maintained in TA’s systems to evidence that any variations to amend the contract value had been executed.
- incorrect start date — TA reported the start date on AusTender as 24 May 2021 whereas the date of the contract was 18 February 2022 (difference of nearly nine months).
- incorrect end date — TA originally reported the end date on AusTender as 30 June 2022 which matched the date stated in the contract. However, TA then published an amendment notice in February 2023 which changed the contract end date to 30 June 2024. There were no records maintained in TA’s systems to evidence that any variations to amend the contract period had been executed.

135 This contract was not reported on AusTender as its value was below the relevant reporting threshold of \$400,000. See also paragraph 3.46 in relation to this procurement.

136 In November 2024, TA advised the ANAO that it ‘has commenced the process of recovering the overpayment from INFOX Inc.’.

3.50 ANAO analysis of TA records indicates that the total cumulative expenditure for the 33 contracts between 14 July 2020 and 30 June 2024 was approximately \$58.8 million.<sup>137</sup> In November 2023, TA advised the ANAO that 14 July 2020 is the date TA transitioned to using Microsoft Dynamics 365 Finance and Operations (D365) as its enterprise resource planning system. Some purchase orders were migrated from the previous system however the details recorded differed. Three of the procurements examined by the ANAO were entered into prior to this transition date and as such it is not possible to determine the total expenditure from the time of contract execution for those contracts.<sup>138</sup>

3.51 The ANAO also identified the following shortcomings in the use of TA's financial management system.

- Inconsistencies in how purchase orders are raised against contracts. For example, Article Onze Tourisme was procured in December 2022 to provide market representation services in France.<sup>139</sup> As of August 2024, there were 14 separate purchase orders raised in D365 under this contract for different fee components and/or different time periods. By contrast, H Plus was engaged by TA in February 2023 to provide trade representation services in South Korea<sup>140</sup> and as of August 2024 there was only one purchase order raised under this contract to capture the total contract value for the initial contract term.
- Lack of a unique identifier or other robust method to identify to which contract a particular purchase order relates. This presents challenges where there are multiple contracts with a supplier and is exacerbated by inconsistencies in the level of detail recorded and documentation filed within D365.

### Recommendation no. 9

3.52 Tourism Australia strengthen its contract management including by:

- (a) establishing and maintaining a contract register that contains details of all entity contracts, and implementing a quality assurance process to ensure that the information recorded is complete and accurate, and updated in a timely manner;
- (b) documenting risk management and contract management plans for high-risk, high-value contracts;
- (c) including clear performance requirements in contracts and applying contracted performance monitoring approaches in the management of contracts; and
- (d) introducing effective controls over invoicing and payments under contracts.

**Tourism Australia response:** *Agreed.*

3.53 *Tourism Australia's new procurement and contract management system will maintain a detailed contract register. Tourism Australia will also prepare risk management and contract*

137 This is an approximate figure as 13 of the 33 contracts were invoiced and paid in foreign currencies.

138 For two of these three procurements, there was no signed contract in place. Both of these procurements were for the provision of travel management services by Australian OpCo Pty Ltd. Between 14 July 2020 and 30 June 2024, a total of \$7.5 million had been paid under these two procurements.

139 See AusTender contract notice CN3937370, available from <https://www.tenders.gov.au/Cn/Show/01ab2012-c494-420a-a0f2-13c2a89def79> [accessed 10 October 2024]. The contract value was under-reported on AusTender by \$1.3 million.

140 See also paragraphs 3.12 and 3.38 in relation to this procurement and the resulting contract.

*management plans for high-risk, high-value contracts, will include clear performance requirements in relevant contracts as per best practice guidance, and will enhance controls around invoicing and payments.*

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Dr Caralee McLiesh PSM  
Auditor-General

Canberra ACT  
22 November 2024



# Appendices

## Appendix 1 Entity response



8 November 2024

Dr Caralee McLiesh PSM  
Auditor-General  
Australian National Audit Office  
FOREST, ACT 2600

Dear Dr McLiesh,

Thank you for the email of 11 October providing the Australian National Audit Office's (ANAO) proposed audit report on *Procurement and Contract Management by Tourism Australia*. I appreciate the opportunity to respond on behalf of the Board of Directors of Tourism Australia.

Tourism Australia acknowledges the ANAO's report and is fully committed to implementing its nine recommendations to improve the agency's procurement and contract management practices.

Tourism Australia had already begun to make improvements to its procurement and contract management systems ahead of the audit, and the agency is in the process of implementing remedial actions relating to the recommendations. This includes enhancing the agency's records management framework and processes, implementing a new procurement and contract management system and adding resources to its corporate services teams. Additional training will also be provided to all staff to improve capability to ensure that decisions are compliant, defensible, and clearly demonstrate value for money.

Some of the report's findings relate to work undertaken during the unprecedented events of the Covid 19 pandemic, when Tourism Australia's primary focus was on the emergency response to support an industry in crisis. Nevertheless, Tourism Australia accepts the recommendations for improvement to ensure that it can better demonstrate that the agency's procurement and contract management activities comply with Commonwealth Procurement Rules and achieve value for money.

I assure you that Tourism Australia will act to ensure it maintains the trust of the tourism industry and Australian taxpayers. Tourism Australia is committed to implementing improvements to its procurement and contracting processes. As noted above, all the ANAO's recommendations will be accepted, and progress updates on their implementation will be regularly presented to the Board's Audit Committee.

Should you require further information on our response, please contact Tourism Australia's Executive General Manager Corporate Services, Mr Mark Craig on (02) 9361 1242 or [mcraig@tourism.australia.com](mailto:mcraig@tourism.australia.com).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Michael Issenberg'.

Michael Issenberg  
**CHAIRMAN**

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## Appendix 2 Improvements observed by the ANAO

1. The existence of independent external audit, and the accompanying potential for scrutiny improves performance. Improvements in administrative and management practices usually occur: in anticipation of ANAO audit activity; during an audit engagement; as interim findings are made; and/or after the audit has been completed and formal findings are communicated.

2. The Joint Committee of Public Accounts and Audit (JCPAA) has encouraged the ANAO to consider ways in which the ANAO could capture and describe some of these impacts. The ANAO's Corporate Plan states that the ANAO's annual performance statements will provide a narrative that will consider, amongst other matters, analysis of key improvements made by entities during a performance audit process based on information included in tabled performance audit reports.

3. Performance audits involve close engagement between the ANAO and the audited entity as well as other stakeholders involved in the program or activity being audited. Throughout the audit engagement, the ANAO outlines to the entity the preliminary audit findings, conclusions and potential audit recommendations. This ensures that final recommendations are appropriately targeted and encourages entities to take early remedial action on any identified matters during the course of an audit. Remedial actions entities may take during the audit include:

- strengthening governance arrangements;
- introducing or revising policies, strategies, guidelines or administrative processes; and
- initiating reviews or investigations.

4. In this context, the below actions were observed by the ANAO during the course of the audit. It is not clear whether these actions and/or the timing of these actions were planned in response to proposed or actual audit activity. The ANAO has not sought to obtain assurance over the source of these actions or whether they have been appropriately implemented.

- TA is in the process of procuring a contract management system.
- TA is in the process of updating its records management process.