

Managing Conflicts of Interest in Procurement

September 2021

Independent assurance report to Parliament
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VAGO

Victorian Auditor-General's Office

Managing Conflicts of Interest in Procurement

Independent assurance report to Parliament

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Victorian Auditor-General's Office

The Hon Nazih Elasmr MLC
President
Legislative Council
Parliament House
Melbourne

The Hon Colin Brooks MP
Speaker
Legislative Assembly
Parliament House
Melbourne

Dear Presiding Officers

Under the provisions of the *Audit Act 1994*, I transmit my report *Managing Conflicts of Interest in Procurement*.

Yours faithfully



Andrew Greaves
Auditor-General

8 September 2021

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1.

Overview

This report looks at four separate allegations of conflict of interest in procurement and considers whether agencies followed relevant procurement policies and procedures when they engaged services.

This chapter provides context for this limited assurance review, its four case studies and the common themes that emerged from the review. There are lessons from these that can be applied to any procurement process.

This chapter discusses:

- Limited assurance reviews
 - The case studies
 - Conclusion
 - Overall findings
-

1.1 Limited assurance reviews

The Victorian Auditor-General's Office (VAGO) regularly receives topic suggestions for performance audits from members of Parliament, government and non-government agencies and the Victorian public. We assess these topics for inclusion in our work program based on risk, materiality, and public interest. We then consider the level of assurance required that would meet the public's information needs.

A limited assurance review provides a lower level of assurance than a performance audit. We rely primarily on an agency's representations and other evidence generated by that agency to understand matters and develop a meaningful conclusion. We typically express conclusions for a limited assurance review in negative terms. For example, we may say 'nothing has come to our attention to substantiate an allegation'.

We conduct limited assurance reviews under section 20 of the *Audit Act 1994*.

1.2 Case studies

Between July and October 2020, VAGO received four separate referrals alleging conflicts of interest in procurement. In examining these allegations, we considered the referrals as four separate case studies.

The referrals allege that ...	May have ...	Value ...	Over the period ...
the Department of Health and Human Services (now Department of Health)	improperly awarded a contract to a provider delivering medical services, including to the Hotel Quarantine Program, pop-up testing, a call centre, and a hotline for the broader community, based on undisclosed conflicts of interest	\$86.4 million (total cost of contract following Deed of Variation)	from 4 April 2020 ongoing.
the Department of Jobs, Precincts and Regions (DJPR)	breached probity when it awarded a contract for security services at the Hotel Quarantine Program and inappropriately approved contracts on the Secretary's behalf	\$35.2 million (paid to Unified Security Group)	between 20 April and 31 July 2020.
the Department of Health and Human Services (now Department of Families, Fairness and Housing)	not managed a perceived conflict of interest, and appointed providers that did not meet the tender criteria when it procured services for the Victorian Family Preservation and Reunification Response	\$21.3 million (total cost of funding commitment)	from 1 August 2020 to 30 June 2021.
Parks Victoria	not used a competitive tender process and split up contracts to avoid scrutiny when it appointed an archaeological surveyor to assess and record Aboriginal rock art sites	\$199 260 (eight short-term contracts)	between May 2016 and June 2020.

We reviewed the evidence tendered to support these alleged conflicts of interest in procurement and decided to conduct a limited assurance review. In the course of our review, we also considered whether the departments followed relevant procurement policies and procedures.

1.3 What we concluded

Nothing came to our attention to indicate self-interest unduly influenced the procurements we reviewed.

However, none of the agencies fully followed their policies and procedures (including critical incident policies) in procuring those services. This made it difficult for them to demonstrate that their procurement decisions:

- were fair and impartial
- obtained value for money
- were transparent.

Our review highlighted there is a need for improved staff awareness, training and compliance with procurement policies and procedures. Staff need to consistently declare and manage any actual, potential or perceived conflicts of interest that could arise from personal or professional relationships with a supplier. Each department needs to support its staff to do so by providing appropriate guidance.

1.4 What we found overall

The community puts their trust in the public service to effectively and efficiently administer public funds. They expect public servants to follow policies and procedures when they procure goods and services, and they want value for money. Victoria's public servants are also bound by a code of conduct with guiding principles of integrity, impartiality, accountability, and respect.

In investigating the allegations, we found that staff did not fully follow procurement policies and procedures.

We also noticed some challenges and opportunities that are worth considering:

- Staff experienced challenges that hampered their compliance with policies and procedures.
- Staff missed opportunities to monitor and review contracts after the initial procurement.
- Staff showed a lack of regard for how the public might perceive conflict of interest.

Challenges to compliance

When we engaged with the agencies, their staff explained how they interpreted the procurement policies and procedures, or why they did not fully follow them. Staff variously told us they:

- were under pressure to achieve outcomes within short timeframes
- had not undertaken this type or scale of work before
- were not aware of procurement procedures or policies.

Encountering challenges like these may provide context for a procurement decision that does not comply with policies or procedures. It does not, however, justify it.

Coronavirus (COVID-19) pandemic and critical incident policy

When the COVID-19 pandemic began, Victoria's public servants were under pressure to initiate and deliver projects quickly.

Two of the case studies occurred when the government asked departments to establish services for the Hotel Quarantine Program.

Departments have critical incident procurement policies for such circumstances. However, in one case, we found staff who made decisions were not familiar with their department's critical incident procurement policy or did not use the mandatory mechanisms that were in place to support them.

Critical incident procurement policies provide a framework that offers staff flexibility in their market approach to expedite delivery. However, staff still need to uphold the basic principles of probity, integrity, impartiality, and transparency in procurement.

Monitoring and review

On the Buying for Victoria website, the Victorian Government Purchasing Board supplies information to support public servants to understand, apply and measure value for money in procurement. The website states the best outcomes are achieved when value for money is a key driver in planning procurement. However, considering value for money at later stages in the procurement process can drive continuous improvement.

The Buying for Victoria website also notes that an organisation can adopt streamlined and flexible procurement processes to facilitate an immediate response to an emergency, crisis or disaster. However, after the immediate response, organisations may have an opportunity to review their decisions.

In two of the case studies, we found staff missed opportunities to review their decisions. We saw evidence of innovation, creativity and effort spent to get the initial job done, despite the challenges. Yet there was less interest in monitoring and reviewing those decisions to make sure they achieved value for money.

Public perception

The Victorian Public Service Commission (VPSC) requires public servants to declare and manage risks associated with conflicts of interest. All conflicts, whether actual, potential or perceived, must be identified and registered.

The VPSC says a conflict of interest is...	If ...
actual	there is a real conflict between an employee or director's public duties and private interests.
potential	an employee or director has private interests that could conflict with their public duties. This refers to circumstances where it is foreseeable that a conflict may arise in future and steps should be taken now to mitigate that future risk.
perceived	the public or a third party could form the view that an employee or director's private interests could improperly influence their decisions or actions, now or in the future.

In two of the case studies, we found staff did not fully consider how the public might view potential or perceived conflicts of interest.

Declaring and managing perceived conflicts of interest is fundamental to ensuring public trust and confidence in the public sector. It is as fundamental as declaring and managing actual conflicts of interest.

2.

DHHS: Procuring medical services for the Hotel Quarantine Program

This chapter looks at how the Department of Health and Human Services (DHHS) managed the procurement of a service provider to deliver medical services to people in the Hotel Quarantine Program, during the COVID-19 emergency response.

This chapter discusses:

- Essential background information
 - Critical incident decision-making
 - Exposure to risk
 - Contractual gaps
 - Transparency and accountability
-

2.1 Chapter snapshot

Did DHHS follow its procurement policies and procedures when it engaged a service provider to deliver medical services to people in the Hotel Quarantine Program?

Background

In March 2020, during the COVID-19 emergency response, the Victorian Government established the Hotel Quarantine Program so that all travellers arriving in Victoria could undertake mandatory 14-day self-isolation.

We received a referral that alleged DHHS improperly awarded a contract to a medical services provider based on undisclosed conflicts of interest:

- The owners of the entity engaged to deliver the services are donors to, and one is an ex-official of, the Victorian Labor Party.
- The daughter of one of the owners of the entity is a ministerial adviser to the Premier of Victoria.

The referral also alleged that the procurement process lacked transparency.

Who and what we examined

We considered whether DHHS followed relevant procurement policies and procedures when it engaged medical services for people in the Hotel Quarantine Program.

We examined the decisions DHHS made while it was under pressure to establish medical services during a State of Emergency.

What we concluded

Nothing came to our attention to show that the contract for medical services was improperly awarded to the medical services provider because of undisclosed conflicts of interest.

However, DHHS did not fully follow its procurement policies and procedures when it engaged a service provider to deliver medical services for people in the Hotel Quarantine Program. It urgently engaged a single entity but did not review its process to ensure value for money, accountability and probity.

DHHS did not manage its legal risk when it did not sign a contract with an entity it engaged. DHHS was also exposed because that entity was not insured for the purpose of recruiting doctors. It then signed a contract, starting on 20 April 2020, with another entity that was not established until 28 April 2020.

Additionally, DHHS's critical incident procedures lacked guidance for staff to ensure the highest standards of transparency and accountability.

Key facts

\$4.2m

Initial estimate of engagement

\$48.7m

Value of the initial contract with Onsite Doctor

\$86.4m

Total cost of contract following Deed of Variation



\$417k

was paid to Medi7 for two weeks' uncontracted work with DHHS



263 days

DHHS had no signed contract with the provider of COVID-19 medical services



144 days

DHHS did not disclose its contract with Onsite Doctor on the Buying for Victoria website after the execution of the contract

Source: VAGO.

2.2 Background

Victorian Government Purchasing Board policy states that during a critical incident, an organisation may adopt streamlined and flexible procurement processes to facilitate an immediate response to an emergency, crisis or disaster.

COVID-19 Hotel Quarantine Program

On 16 March 2020, in response to the serious public health risk posed by COVID-19, the Victorian Minister for Health declared a State of Emergency under the *Public Health and Wellbeing Act 2008*. At the time of writing, the declaration is in force until 26 August 2021.

On 27 March 2020, the National Cabinet agreed that, from 11:59 pm on 28 March 2020, all travellers arriving in Australia would undertake mandatory 14-day self-isolation at designated facilities.

On the same day, the Victorian Premier announced Victoria would accommodate its returned travellers in 5 000 hotel rooms. The Victorian Government expected the Hotel Quarantine Program to run 24 hours per day, seven days per week, for an indeterminate length of time and for an indeterminate number of people.

The then DHHS made arrangements for the health and wellbeing of the people in the Hotel Quarantine Program. It decided to procure an Accredited Medical Deputising Service (AMD Service) to deliver out-of-home general practitioner services for returned travellers.

DHHS's procurement policy

DHHS had procedures for routine procurement and a separate critical incident procurement policy that guided procurement in the event of an emergency within the meaning of the *Emergency Management Act 2013*. We present its definition of 'critical incident' and the procedures relevant to this procurement in Appendix D.

2.3 What we found

Timeline

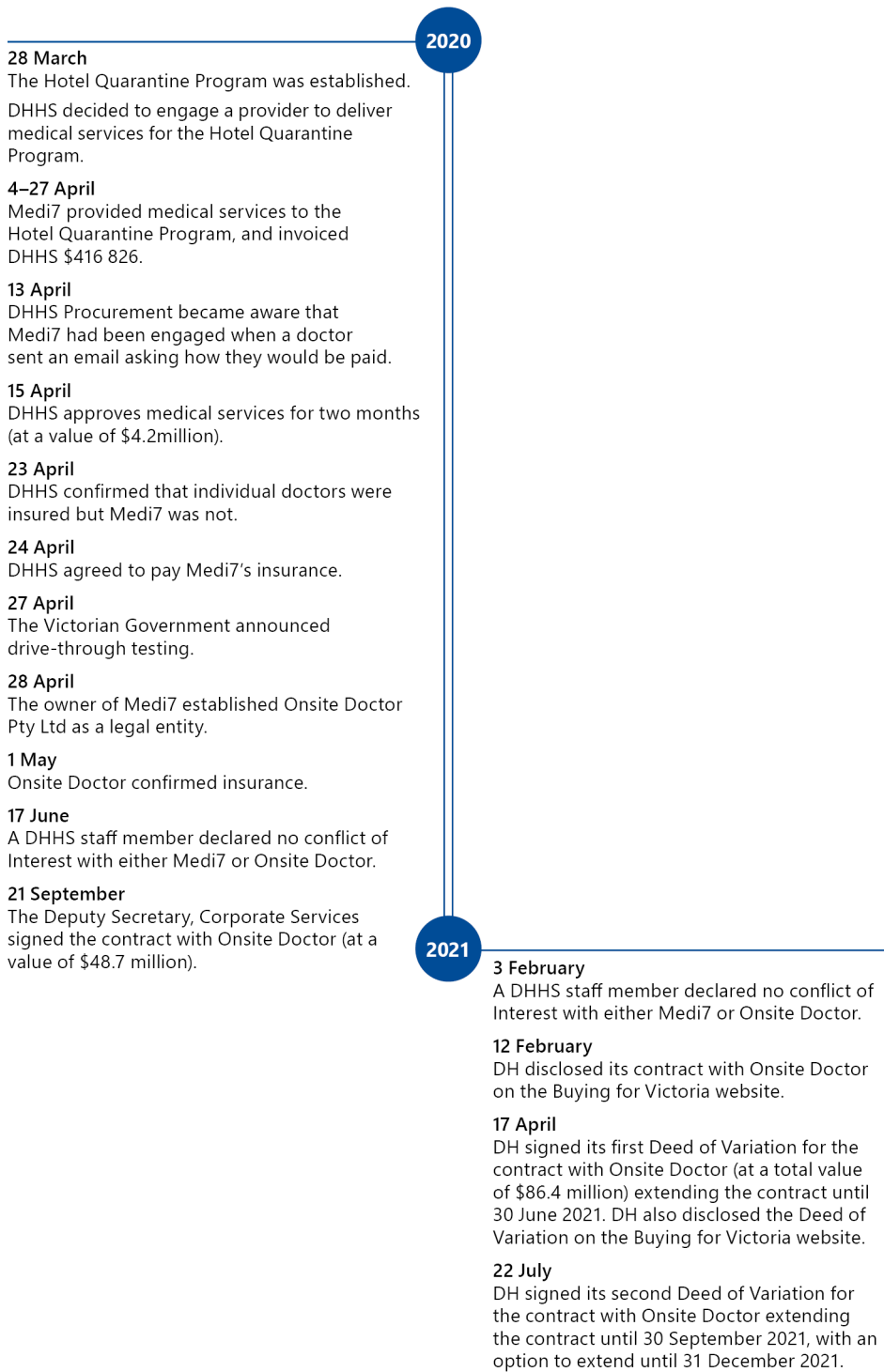
The timeline of the decision to establish the Hotel Quarantine Program and engage medical services for people in quarantine was short. The time from when National Cabinet agreed to establish the Hotel Quarantine Program to the time the entity (Medi7) started to provide medical services was eight days.

Figure 2A illustrates the timeline of providing medical services for people in the Hotel Quarantine Program.

In February 2021, DHHS became two new departments—the Department of Health (DH) and the Department of Families, Fairness and Housing. We use DHHS in this report, other than in the recommendations and DH's response to the recommendations.

A **Medical Deputising Service** supports a general practice by caring for patients outside of normal opening hours. A fully accredited Medical Deputising Service that has been operating for more than 12 months can apply to join the AMD Service Program.

FIGURE 2A: Timeline of the procurement of medical services for the Hotel Quarantine Program



Source: VAGO.

Critical incident decision-making

At the outset of the COVID-19 emergency, when the government established the Hotel Quarantine Program, DHHS staff operated in a high-pressured and uncertain environment. They had not previously arranged medical services for a Hotel Quarantine Program.

On 28 March 2020, DHHS decided to procure a single entity under the critical incident policy. DHHS asserted that this decision was based on advice from the Australian Government Department of Health and to accommodate travellers who were due to arrive within two days.

To expedite the choice of a medical services provider, it asked the Australian Government Department of Health and the North West Primary Health Network (NWPHN) to suggest potential AMD Service providers. The NWPHN advised DHHS that two AMD service providers operated in Victoria (Doctor Doctor and National Home Doctor Service). DHHS told us it understood only Doctor Doctor had the capability to deliver the services, and it did not contact National Home Doctor Service.

DHHS told us it could not recall whether it was the NWPHN or the Australian Government that provided contact details for an employee of Doctor Doctor. However, DHHS did not become aware until early April 2020 that the Doctor Doctor employee was engaging with DHHS on behalf of their own company, Medi7.

DHHS initially estimated the engagement of medical services for the Hotel Quarantine Program would last two months and cost \$4.2 million.

Ultimately, Medi7 provided medical services to people in the Hotel Quarantine Program between 4 and 27 April 2020. Medi7 invoiced DHHS a total of \$416 826 (for services between 4 and 19 April 2020).

After the Victorian Premier announced a testing blitz on 27 April 2020, the required services expanded, beyond the Hotel Quarantine Program, to include COVID-19 pop-up testing, a call centre, and a hotline for the broader community. The cost of medical services for the Hotel Quarantine Program plus these additional medical services, between 27 April and 31 December 2020, was \$48.7 million.

The owner of Medi7 established Onsite Doctor on 28 April 2020. At the time we tabled this report, over a year later, Onsite Doctor was still providing medical services, including for the Hotel Quarantine Program. The value of the extended contract was \$86.4 million.

DHHS originally intended to engage an AMD Service. Onsite Doctor was established because Medi7 was not adequately insured. However, Onsite Doctor is not an AMD Service.

At any point after DHHS's initial engagement of Medi7, it could have:

- reviewed the process it had undertaken to ensure it was in line with DHHS's critical incident procurement policy
- invited tenders for ongoing services.

DHHS could have sought quotes from the two AMD Services that the NWPHN recommended. Or, concurrent with the initial engagement, DHHS could have run a tender process to identify whether the current entity, or another, would deliver the best value for money.

Primary Health Networks are independent organisations with regions closely aligned with state and territory Local Hospital Networks or their equivalent. Australia has 31 Primary Health Networks. The NWPHN encompasses the Melbourne central business district.

DHHS's **critical incident procurement policy** requires that, once a critical incident procurement is in effect, the department is required to take into account value for money, accountability and probity to the extent that these factors can be applied given the severity and urgency of the incident.

Rather than going to tender or seeking other quotes, DHHS continued to use Onsite Doctor.

Specifically, DHHS had the opportunity to test the market for an alternate provider on three occasions:

On ...	When DHHS ...	At a contract value of ...
or after 28 April 2020	engaged Onsite Doctor	\$48.7 million.
or before 31 December 2020	reached the end of its initial contract with Onsite Doctor	
or after 1 January 2021	needed to extend the contract with Onsite Doctor	\$86.4 million.

DHHS told us it will review its critical incident procurement policy and consider including a review stage after the initial engagement. The review is intended to confirm that single entity engagements align with principles of value for money, accountability, and probity.

DHHS's exposure to risk

According to the Victorian Managed Insurance Authority, risk management must be an integral part of an agency's culture. It needs to be reflected in policies, systems, and processes. Agencies are responsible for identifying, assessing and managing all risks to which they are exposed.

Medical indemnity insurance

On 23 April 2020, DHHS confirmed that its medical indemnity policy could be extended to indemnify the doctors it engaged to provide medical services, but it did not cover Medi7's role in recruiting doctors. DHHS agreed to pay Medi7's insurance.

At the same time, to address the insurance gap, Medi7's insurer suggested it establish a new entity. DHHS understood the reason the owner of Medi7 established a new entity was because Medi7 was not insured for the activity of recruiting and providing credentialed doctors to DHHS for the Hotel Quarantine Program. On 28 April 2020, the person who had previously represented Medi7 established Onsite Doctor.

On 1 May 2020, Onsite Doctor secured medical indemnity insurance backdated to 4 April 2020. On 2 May 2020, DHHS asked Onsite Doctor to submit an invoice for the total cost of the insurance policy for seven years.

DHHS and Medi7 (and potentially Onsite Doctor) are exposed to risk from potential liabilities arising between 4 and 27 April 2020 because Onsite Doctor did not exist until 28 April 2020. They may not be protected from the financial consequences of those liabilities.

Medical indemnity insurance covers Victorian public health service providers if there are claims for compensation for personal injuries.

Contractual gaps

There are periods of time when DHHS, Medi7 and Onsite Doctor may not have been protected against legal liability because they did not have a signed contract.

DHHS never entered a contract with Medi7, yet Medi7 invoiced it for services.

DHHS took time to approve the initial contract with Onsite Doctor, and then the extension of that contract through a Deed of Variation. DHHS told us this was due to contract negotiations in a changing environment.

As a result, DHHS did not have a signed contract with a service provider, for a total of 263 days, between:

- 4 April and 20 September 2020
- 1 January and 16 March 2021
- 1 July and 21 July 2021.

In the absence of a signed contract, the legal liability of DHHS and Medi7 and Onsite Doctor is not clear.

Figure 2B shows the dates and periods of the contractual gaps when DHHS was, and remains, exposed to increased risk.

FIGURE 2B: **DHHS's exposure to risk from contractual gaps**

From	Until	Days	Contractual gap
4 April 2020	27 April 2020	23	DHHS did not enter into a contract with Medi7—an entity that was not insured for this work.
20 April 2020	27 April 2020	7	Onsite Doctor was not yet legally established.
20 April 2020	20 Sept 2020	153	DHHS had not yet signed a contract with Onsite Doctor.
1 Jan 2021	16 April 2021	105	DHHS had not yet signed a Deed of Variation to extend the contract with Onsite Doctor.
1 July 2021	21 July 2021	20	DHHS had not yet signed a Deed of Variation to extend the contract with Onsite Doctor.

Source: VAGO analysis of DHHS data.

A lack of transparency and accountability in procurement

When DHHS engaged Medi7 and Onsite Doctor for the delivery of COVID-19 medical services, it did not:

- adopt a format for minimum records
- liaise with procurement from the outset
- ensure probity when approving expenditure
- adhere to contract disclosure requirements
- declare conflicts of interest in a timely manner.

Maintaining records

Under the critical incident procurement policy, DHHS was required to adopt a format to record the minimum information, which includes:

- the service being procured and its purpose
- the value of the procurement
- the contact details of the supplier
- a summary of the procurement process
- the details of the contact managing the procurement.

DHHS recorded some of this information in emails. In October 2020, six months after the initial procurement, DHHS recorded reference numbers for the procurement, a title of the procurement, the nature of the critical incident (COVID-19), the process undertaken (purchase), the value of the engagement, and the name of the supplier in its critical incident procurement register. However, this format does not include the purpose of the service, the contact details of the supplier, a summary of the procurement process, or the details of the contact managing the procurement.

Maintaining records is important for transparency and accountability. The referral for this review alleges that DHHS improperly awarded a contract to a medical services provider based on undisclosed conflicts of interest. DHHS did not record its conversation with the NWRPHN and the Australian Government Department of Health and told us it cannot confirm who provided the contact details of the supplier it spoke to. This information was not required under the critical incident policy at the time but maintaining records of key information ensures staff have a view to being accountable for their decisions.

Engagement with DHHS Procurement

DHHS Health and Wellbeing did not initially inform DHHS Procurement of the engagement. DHHS Procurement first became aware of the engagement on 13 April 2020 (nine days after it began) when one of the doctors emailed DHHS asking how they would be paid.

DHHS Health and Wellbeing should have sought advice from the Chief Procurement Officer when it decided to engage a sole supplier under the critical incident procurement policy.

Probity in expenditure approval

The briefing note to the Minister for Health seeking approval of the contract did not mention the name of the service provider. This meant the minister could not conduct their own due diligence in approving the contract.

The Minister for Health also asked the Deputy Secretary in Corporate Services to sign the \$48.7 million contract for hotel quarantine medical services, on their behalf. However, DHHS told us that, between March and September 2020, the upper limit of financial delegation for a deputy secretary was \$5 million.

Contract disclosure requirements

DHHS's procurement policy had a mandatory requirement that contracts exceeding \$10 million be fully disclosed on the Contracts Publishing System, within 60 days of the contract being awarded.

DHHS did not fully disclose its contract with Onsite Doctor on the Buying for Victoria website until 144 days after it awarded the contract.

Additionally, DHHS did not disclose the value of the contract for medical services purchased under the critical incident procurement policy in its 2019–20 annual report.

Conflict of interest

Two DHHS staff members did not initially declare any conflicts of interest when they coordinated the process of procurement. They signed conflict of interest forms in relation to the services provided by Medi7 and Onsite Doctor 74 and 305 days, respectively, after the engagement commenced.

Both staff members declared they had no conflicts of interest.

2.4 What we recommend

We recommend that:	Response
<p>Department of Health</p> <ol style="list-style-type: none"> revises its critical incident procurement policy so that it takes into account value for money, accountability and probity, to the extent possible under the circumstances, and includes: <ul style="list-style-type: none"> accessible information and guidance for staff procurement’s role in ensuring procurement decisions and record keeping comply with policies and procedures. 	Accepted
<ol style="list-style-type: none"> provides training and communications for staff so that they follow procurement policies and procedures and: <ul style="list-style-type: none"> take into account value for money, accountability, and probity in procurement consistently adopt mandatory and minimum recordkeeping maintain transparency and accountability in procurement adhere to contract disclosure requirements declare any potential, perceived or actual conflicts of interest when participating in a procurement. 	Accepted

3.

DJPR: Procuring security services for the Hotel Quarantine Program

This chapter looks at how DJPR managed the procurement of security guards for the Hotel Quarantine Program, during the COVID-19 emergency response.

This chapter discusses:

- Essential background information
 - State Purchase Contract policy
 - Exemptions from procurement procedures
 - Probity breach
 - Transparency and accountability
-

3.1 Chapter snapshot

Did DJPR follow its procurement policy and procedures when it engaged a service provider to deliver security services for the Hotel Quarantine Program?

Background

In March 2020, during the COVID-19 emergency response, the Victorian Government established the Hotel Quarantine Program so that all travellers arriving in Victoria could undertake mandatory 14-day self-isolation.

We received a referral that alleged DJPR breached probity when it awarded a contract for security services at the Hotel Quarantine Program. Specifically, that the contract was awarded based on approval from Victorian Trades Hall Council (Trades Hall). A second referral alleged that DJPR staff inappropriately approved contracts on the Secretary's behalf.

Who and what we examined

We considered whether DJPR followed relevant procurement policies and procedures when it

engaged security services for the Hotel Quarantine Program.

We examined the decisions DJPR made while it was under pressure to establish the Hotel Quarantine Program during a State of Emergency.

What we concluded

Nothing came to our attention that contradicts DJPR's assertion that it did not seek Trades Hall's approval for the preferred firm to deliver security services for the Hotel Quarantine Program. Nor that DJPR staff inappropriately approved contracts on the Secretary's behalf.

However, DJPR did not fully follow its procurement policies and procedures when it engaged a service provider to deliver security services for the Hotel Quarantine Program. DJPR breached market confidentiality when it contacted Trades Hall to discuss security

services for the Hotel Quarantine Program.

Despite the critical incident environment, DJPR had options. DJPR procurement and central agencies provided advice, based on the April 2019 policy, that DJPR should use entities on the State Purchase Contract (SPC) panel or apply for an exemption from the SPC, with the former being their preferred option. Rather than accept their advice, DJPR formed a view that it did not require an exemption from using the SPC. It continued an engagement with a security company that was not on the SPC panel.

DJPR's critical incident procedures lack guidance for staff to ensure the best value for money and the highest standards of transparency and accountability. Also, its sign-off procedures are not designed for staff working remotely.

Key facts



\$35.2m

DJPR paid to Unified Security Group between 20 April and 31 July 2020



94 days

length of Unified Security Group's contract with DJPR



exemptions from using State Purchase Contract suppliers



exemption from the prescribed tender process under critical incident policy

Source: VAGO.

3.2 Background

Victorian Government Purchasing Board policy states that during a critical incident, an organisation may adopt streamlined and flexible procurement processes to facilitate an immediate response to an emergency, crisis, or disaster.

COVID-19 Hotel Quarantine Program

On 16 March 2020, in response to the serious public health risk posed by COVID-19, the Victorian Minister for Health declared a State of Emergency under the *Public Health and Wellbeing Act 2008*. At the time of writing, the declaration is in force until 26 August 2021.

On 27 March 2020, the National Cabinet agreed that, from 11:59 pm on 28 March 2020, all travellers arriving in Australia would undertake mandatory 14-day self-isolation at designated facilities.

On the same day, the Victorian Premier announced Victoria would accommodate its returned travellers in 5 000 hotel rooms. The Victorian Government expected the Hotel Quarantine Program to run 24 hours per day, seven days per week, for an indeterminate length of time, and for an indeterminate number of people.

DJPR handled the logistics of the Hotel Quarantine Program. In less than 36 hours, it identified hotels, arranged transport for travellers, and security to staff the Program.

DJPR's procurement policy

DJPR's procurement policy includes provision for management of procurement in the event of an emergency within the meaning of the *Emergency Management Act 2013*. We present these in Appendix E.

Under section 3.5.2 of DJPR's procurement policy (April 2019), a critical incident is automatic grounds for an exemption from the prescribed tender process. However, minimum record keeping and fundamental requirements in relation to probity remain in place.

State Purchase Contracts

State Purchasing Contracts (SPCs) are centralised contracts the Victorian Government uses to buy common goods and services. An SPC is designed to provide supplier choice and competition through a panel arrangement.

Section 5.1 of DJPR's procurement policy includes information about SPCs and states 'where the scope of a mandatory SPC ... satisfactorily meets the procurement needs, these must be used unless an exemption from using the SPC is sought and approved.'

Section 3.5.3 of DJPR's procurement policy explains that an SPC exemption must be 'approved by the Executive Director of Finance and Procurement and the relevant SPC category manager'. The SPC exemption process requires the Project Manager to put

An **exemption** from a Mandatory SPC (s 3.5.3) and an exemption from the prescribed market approach because of a critical incident (s 3.5.2) are two different exemption processes.

forward their rationale for the exemption to a member of the Strategic Procurement Unit, by email. If supported by the Executive Director of Finance and Procurement, the Strategic Procurement Unit will then submit the exemption request to the SPC lead department and advise the Project Manager of the outcome.

DJPR's procurement policy (April 2019) did not provide guidance on using an SPC during a critical incident.

In October 2020, DJPR updated their procurement policy. It now states that 'During a critical incident the department will continue to use State Purchase Contracts (SPCs) and State Purchase Registers (SPRs) where relevant.'

Security Services SPC

The security services SPC (1 February 2018 to 31 January 2022) offers security services for static guarding, patrolling, mail scanning and alarm response, and includes a no less favourable mechanism to protect the pay and condition of security workers. The conditions of its use are mandatory, and it offers five suppliers:

- G4S Custodial Services
- MSS Security (MSS)
- National Protective Services
- SECUREcorp (Victoria)
- Wilson Security (Wilson).

DJPR signed a contract, for the delivery of security services to the Hotel Quarantine Program, with MSS, Wilson, and Unified Security Group (Unified). Unified is not on the security services SPC panel.

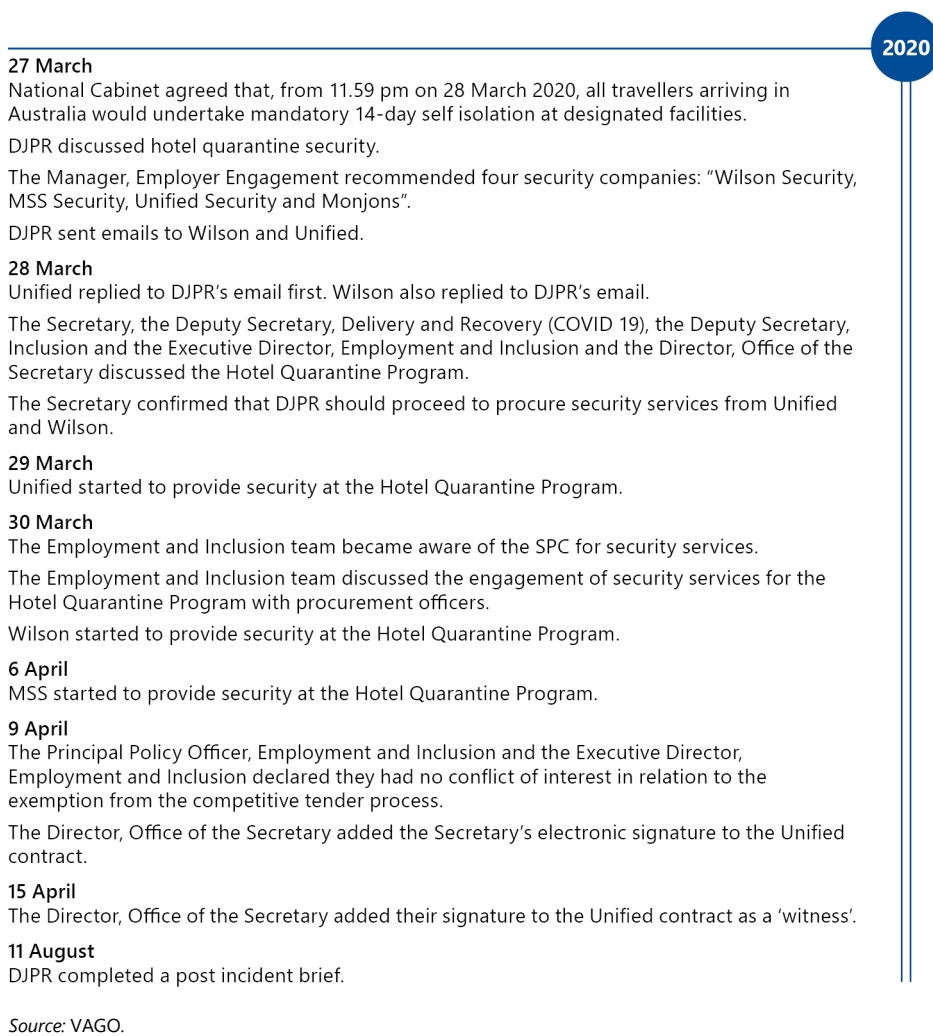
3.3 What we found

Timeline

The timeline of events in the decision to establish the Hotel Quarantine Program, engage security services and establish contracts was short. The time from when National Cabinet agreed to establish the Hotel Quarantine Program to the time Unified signed a contract was 13 days.

Figure 3A illustrates the timeline of providing security services for the Hotel Quarantine Program.

FIGURE 3A: Timeline of security services for the Hotel Quarantine Program



DJPR engaged a supplier who was not on the SPC panel for security services

On Friday 27 March 2020, the Deputy Secretary, Delivery and Recovery (COVID-19) asked the Executive Director, Employment and Inclusion, to source security services for the Hotel Quarantine Program.

On the evening of 27 March 2020, DJPR staff considered which security companies they would engage for the Hotel Quarantine Program. In broad terms, they were seeking a company that:

- was a good employer
- had access to enough personal protective equipment
- had the capability and capacity to scale up quickly.

They sought advice from the Employer Engagement Team, who provided the names of four security companies who were 'good employers', in the following order: Wilson, MSS, Unified and Monjons.

DJPR contacted Wilson and Unified. On the morning of Saturday 28 March 2020, Unified was the first to respond.

At a meeting on the morning of 28 March 2020, the Secretary confirmed that DJPR should proceed to engage Unified and Wilson. Unified was engaged to start work on Sunday 29 March 2020.

However, Unified was not on the Victorian Government's SPC panel for security services.

The DJPR staff who identified and engaged Unified told us they became aware of the SPC for security services three days later, on Monday 30 March 2020.

They also told us they had no training in procurement and no previous experience in procuring security services.

On 30 March 2020, DJPR also engaged Wilson and MSS, which are on the SPC panel for security services.

DJPR did not have an exemption from mandatory use of the SPC

On 30 March 2020, DJPR staff considered costings of security companies. They recorded that Unified was more expensive than Wilson and, separately, that SECUREcorp had the lowest rates, and Wilson had the second lowest.

On the same day, the DJPR staff who engaged Unified discussed the engagement with DJPR's procurement staff.

In line with procedure, a Strategic Procurement Specialist, Corporate Services, asked the Employment and Inclusion team to justify why Unified was engaged outside of the SPC, and to explain the rationale for continuing with them.

The Executive Director, Employment and Inclusion explained, in emails, that DJPR would continue the engagement with Unified because:

- of the immediate need, and Unified's responsiveness
- they were already in place
- they are an Aboriginal-owned and controlled business.

DJPR amended its procurement policy in October 2020, which now requires the department to 'continue to use SPCs during a critical incident, and to complete a post incident brief within 30 days of the engagement.'

DJPR procurement staff raised concerns that ...	Which had the impact of ...	So DJPR procurement staff advised that ...
DJPR staff had engaged an entity that was not an SPC panel member	a significant risk to individuals and the department/government that is not easily mitigated	it is mandatory (and much simpler) to use the Victorian Government's standing Security Services Contract for the procurement of the required security services.
Unified had not undergone a due diligence process and had not agreed to the service standards as set out in the Security Services Contract		While an exemption from using the Security Services Contract would allow Unified to be contracted, neither DJPR nor Department of Treasury and Finance (DTF) procurement recommended this option.
security companies on the SPC panel for security services provided the cheapest options	DJPR not seeking quotes from the supplier who provided the best value for money	

DJPR and DTF procurement provided advice that DJPR should use entities on the SPC or apply for an exemption from the SPC, with the former being their preferred option.

DJPR staff continued their engagement with Unified to provide security services to the Hotel Quarantine Program.

DJPR asserted their view that an automatic exemption from a prescribed market approach under the critical incident policy meant that clause 3.5.3 did not apply. That is, it was automatically exempt from the mandatory requirements of using the SPC.

DJPR had an exemption from going to market

DJPR did have automatic grounds for an exemption from going to market because a State of Emergency had been declared in Victoria. On 11 August 2020, DJPR prepared a post incident brief noting an exemption from the prescribed competitive procurement process had been approved.

DJPR breached probity when its employee contacted Victorian Trades Hall Council

On 28 March 2020, notes from a meeting that included the Secretary and the Deputy Secretary, Delivery and Recovery (COVID-19), record that the Deputy Secretary, Delivery and Recovery (COVID-19) would 'call trades hall re 2 companies'.

The Executive Director, Employment and Inclusion asserted that in the week of 30 March 2020, they spent time 'ensuring that Trades Hall was comfortable with Unified continuing to be engaged on an ongoing basis'. On the same day, in an email,

the Deputy Secretary, Delivery and Recovery (COVID-19) referred to some security companies as 'preferred by Trades [Hall]' (Wilson, MSS, ISS) and others as not (Unified).

DJPR told us that it is not unusual for them to contact Trades Hall and unions. Although DJPR contacted Trades Hall and the Deputy Secretary, Delivery and Recovery (COVID-19) knows which companies Trades Hall prefer, the information before us does not indicate that the purpose of the contact with Trades Hall was to identify 'preferred firms' for engagement and receive Trades Hall's approval for the preferred firm. DJPR's use of Unified suggests that DJPR was not seeking approval from Trades Hall.

DJPR asserts that it did not share confidential procurement documents or information from suppliers with Trades Hall. However, when DJPR discussed the identity of security services and their performance with Trades Hall in the context of the Hotel Quarantine Program, it breached the probity principle of securing confidential market engagement information.

A lack of transparency and accountability in procurement

When DJPR engaged security services for the Hotel Quarantine Program it did not:

- maintain records of the Secretary's approval for the use of their signature on the Unified contract
- provide guidance for staff signing contracts remotely
- declare any conflict of interests in a timely manner
- disclose the contract within 60 days.

Signing contracts

On 9 April 2020, following a request from the Secretary's executive assistant, the Director, Office of the Secretary, added the Secretary's signature to the Unified contract. When the Director, Office of the Secretary, responded they said they did not feel comfortable witnessing a signature they had added themselves.

In his statement to the Quarantine Board of Inquiry, the Secretary said they gave their authority for the contract to be signed, but no records of their approval have come to our attention.

On 15 April 2020, the Associate Secretary asked the Director, Office of the Secretary to arrange for someone to witness the Secretary's electronic signature. The Director, Office of the Secretary, told us they had no guidance on how to witness documents remotely and witnessed the Secretary's electronic signature themselves.

Conflict of interest

DJPR's procurement policy requires that all staff involved in procurement activities be briefed on their responsibilities with regard to conflicts of interest, both before and during the procurement process.

DJPR staff did not declare any conflicts of interest when they started the process of engaging security services for the Hotel Quarantine Program. Two staff involved in the procurement later completed DJPR's electronic conflict of interest form. One submitted a form on 15 July 2020 (109 days after Unified started). The other submitted a form on 27 July 2020 (121 days after Unified started). Their managers

reviewed the forms on 11 and 12 August 2020, respectively. Both staff members declared they had no conflict of interest in this procurement.

DJPR told us that individuals who are not directly involved in the procurement process do not need to complete a declaration of conflict of interest. They told us, for this reason, neither the Deputy Secretary, Delivery and Recovery (COVID-19) nor the Executive Director, Employment and Inclusion made a declaration of any conflicts. Yet the Executive Director, Employment and Inclusion was integral to the decision to engage Unified between 27 and 30 March 2020.

Contract disclosure requirements

DJPR's procurement policy has a mandatory requirement for contracts with total estimated value equal to, or exceeding, \$10 million (GST inclusive) to be fully disclosed on the Contracts Publishing System within 60 days of contract award.

DJPR did not disclose its contract (for hotel quarantine security services provided for 94 days, between 29 March 2020 and 30 June 2020) with Unified on the Buying for Victoria website until 7 September 2020 or 147 days after it awarded the contract. However, DJPR is yet to fully disclose the contract value due to ongoing litigation with Unified (that relates to this contract). Between 20 April 2020 and 31 July 2020, DJPR paid Unified \$35.2 million for services provided to the Hotel Quarantine Program. DJPR told us it is yet to reach an agreement for the final contract amount.

3.4 What we recommend

We recommend that:

Response

Department of Jobs,
Precincts and Regions

1. revises its critical incident procurement policy so that it takes into account value for money, accountability and probity, to the extent possible under the circumstances, and includes:
 - accessible information and guidance for staff
 - procurement's role in checking and reviewing procurement decisions and record keeping during and following critical incidents.

Accepted

2. provides training and communications for staff so that they follow procurement policies and procedures and:
 - implement probity procedures
 - maintain contract confidentiality
 - maintain transparency and accountability in procurement.
 - adhere to contract disclosure requirements
 - declare any potential, perceived or actual conflicts of interest when participating in a procurement
 - use State Purchase Contracts when available.

Accepted

3. provides guidance and procedures for staff working remotely to:
 - seek approval (signatures)
 - witness signatures
 - ensure records of approval are maintained.

Accepted

4.

DHHS: Procuring community service providers

This chapter looks at how DHHS managed a tender process for the Victorian Family Preservation and Reunification Response (the response).

This chapter discusses:

- Essential background information
 - Perceived conflicts of interest
 - Concerns around the independence of referees
 - Issues with the way tenders were scored
-

4.1 Chapter snapshot

Did DHHS follow its procurement policies and procedures when it engaged community service providers to implement the response?

Background

In June and July 2020, DHHS ran a tender seeking Victorian-registered child and family service providers. Successful bidders would work with Aboriginal Community Controlled Organisations to support parents and caregivers to create safe and nurturing home environments.

We received a referral alleging that by procuring these services, DHHS may not have managed a perceived conflict of interest, and that it appointed providers that did not meet the tender criteria.

Who and what we examined

We examined how DHHS managed tenders for the response, relating to:

- conflicts of interest
- the independence of referees
- scoring tenders.

What we concluded

Nothing came to our attention that showed improper influence. However, DHHS's lack of adherence to process increased the risk of this occurring.

DHHS also said that the successful bidders met the key criteria. Nothing came to our attention that contradicts that assertion.

However, DHHS did not fully follow its procurement policies and processes when it engaged providers to implement the response.

DHHS failed to declare and manage a perceived conflict of interest. It also did not record whether it considered the independence of a referee.

Key facts



86

bids and 29 bidders



70

bids met all the criteria
and 12 not shortlisted



6

successful bidders



\$21.3m

total cost of initial
funding

Source: VAGO

4.2 Background

The response aims to support and build strong families with children who are safe, healthy, resilient, and thriving, and to support parents and other caregivers to create a safe and nurturing home environment.

DHHS's Victorian Family Preservation and Reunification Response

DHHS designed the response as a new way to support families to stay together or reunify them when children have been in care services, especially during the COVID-19 pandemic.

The response provides for a practitioner to work with families to understand their unique experience and support them with proven programs and strategies that make a difference for children and families.

Community service organisations deliver the response in partnership with Aboriginal Community Controlled Organisations.

Tendering for child and family service providers

In June and July 2020, DHHS invited tenders from Victorian-registered child and family service providers to implement the response. DHHS needed one provider to cover each of its 17 areas.

DHHS received 86 bids from 29 bidders.

For the tender process, DHHS established one evaluation panel for each area, except for the Brimbank Milton Area and the Western Melbourne Area, where one evaluation panel covered both.

DHHS's tender evaluation process

DHHS's information sheet for evaluation panel members on funding (see Appendix F) describes the tender evaluation process.

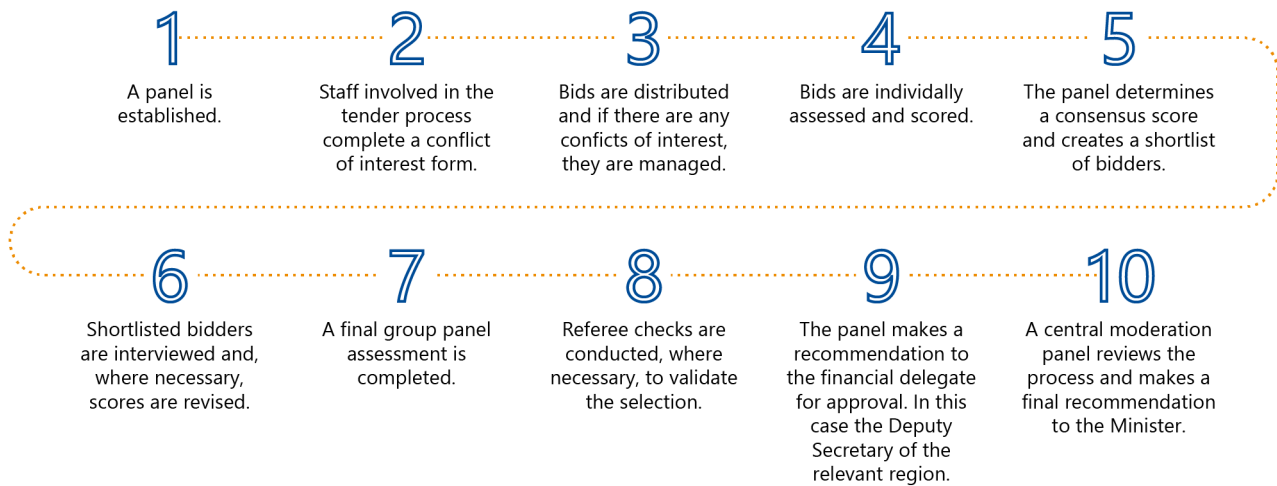
The process involves a panel chair, panel members, and a financial delegate who endorses the panel's recommendation. A procurement officer is also involved and provides advice. Uniquely, this tender process includes an additional step so that a central moderation panel can review the recommendations.

Figure 4A shows the key steps in DHHS's process for evaluating tenders.

In February 2021, **DHHS** became two new departments—the Department of Health and the Department of Families, Fairness and Housing. The latter now has responsibility for the response. DHHS is used in this report, other than in the recommendations and the Department of Families, Fairness and Housing's response to the recommendations.

DHHS divided Victoria into four **regions** (North, South, East and West) and its 17 departmental **areas** are split across the four regions.

FIGURE 4A: DHHS's key steps in tender evaluation



Source: VAGO based on information from DHHS.

4.3 What we found

The results of the response tender evaluation process

DHHS's call for funding submissions closed on 2 July 2020 and the formal recommendations of the panel were due on 15 July 2020. This provided each panel with less than two weeks to conduct the tender evaluation process.

Appendix G provides a table with a summary of the bids received for each area and the six successful bidders.

Staff conflicts of interest

When DHHS evaluated the tenders for the response, it did not:

- manage a perceived conflict of interest
- ensure all personnel involved in bid evaluation declared any conflict of interest.

Managing a perceived conflict of interest

On 21 November 2019, the Deputy Secretary (South) completed and signed their annual Declaration of Private Interests form (DOPI). Their signature was 'witnessed' on 3 April 2020, 135 days later. This form states:

Family member holds middle management role with funded organisation that delivers services in the catchment I am responsible for. The role is not one that I would have any direct contact with, nor am I directly involved in allocations etc, however it might give rise to a perceived conflict.

That funded organisation is Provider A in Appendix G. It would become the successful bidder in two of the four areas in the South region.

In the DOPI, the Deputy Secretary's (South) manager—the Deputy Secretary, Children, Families, Communities and Disability Division—assessed this declaration as 'no Conflict of Interest identified' and did not document a plan to manage this risk.

Seven months later, Provider A declared the potential conflict of interest with the Deputy Secretary (South) in their submission for the response.

The Deputy Secretary (South) approved the evaluation panel's recommendation of Provider A as the successful provider in two cases.

Provider A was successfully awarded contracts in nine of the 17 areas across Victoria.

Conflict of interest declaration forms not completed

During the tender process, seven key people did not complete a conflict of interest declaration form. These were:

- two panel chairs
- the Acting Deputy Secretary, Children, Families, Communities and Disability Division (a member of the central moderation panel)
- four regional Deputy Secretaries (North, South, East, West) who endorsed the recommendations of the panel.

DHHS told us that the regional Deputy Secretaries did not need to complete a conflict of interest form because they were only endorsing recommendations. In the process of tender evaluation, following the endorsement of recommendations by the Deputy Secretary, the central moderation panel reviews the recommendations. As we view the Deputy Secretary's endorsement as a step in the procurement process, we consider it necessary for them to complete a conflict of interest form.

The declaration and management of conflict of interest form states that 'any workplace participant as warranting a declaration on the basis of potential, perceived or actual conflict of interest risk' must complete the form.

In the case of the Deputy Secretary (South), they declared the perceived conflict of interest in their DOPI, and Provider A identified the potential conflict of interest in their tender. Despite the perceived conflict of interest, the Deputy Secretary (South) did not complete a conflict of interest form at the time of the response evaluation. Additionally, the panel did not report this perceived conflict of interest and DHHS did not have a documented plan to manage the conflict of interest that had been previously declared.

Independence of referees

Provider A had the same referee for the nine areas it was successfully awarded. That referee:

- had received funding from Provider A (\$177 000)
- was mentioned as a member of the service delivery team in Provider A's proposal.

We found no record that the panels in eight of those areas considered the independence of that referee. In the ninth area, the panel did not contact referees.

DHHS asserts the panel did consider the relationship between the referee and Provider A. It said they used this referee because there is a limited range of experts to act as referees.

DHHS told us that it plans to update the referee question template to include:

- consideration of any risks associated with perceived or potential conflicts of interest of the referee
- a question that confirms whether the referee currently receives any funding from the bidder.

Scoring tenders

The DHHS evaluation panels reviewed 86 bids. The tender documentation states that 70 of these bids met all the tender criteria. All the successful bids met all the criteria.

Requirement to interview shortlisted bidders

DHHS's information sheet for evaluation panel members states that 'Bidders that meet or exceed all the criteria are to be interviewed'. Despite this, eight bidders (five in the West and three in the South) that met or exceeded all the criteria were not shortlisted for interview.

DHHS's Acting Chief Procurement Officer told us a panel can decide not to interview all organisations. The panel must discuss the exclusion with the procurement officer prior to starting to score the bids. The Acting Chief Procurement Officer was not aware if this had happened.

DHHS told us that it is not standard practice to interview all bidders that met the criteria. It plans to update the information sheet for evaluation panel members to clarify that:

- not all bidders meeting the criteria must be interviewed
- a decision can be made by the evaluation panel chair, in consultation with procurement officers, to interview all bidders that meet the criteria.

Adjusting scores following referee input

DHHS requires that 'information obtained from referee checks should be used to validate the selection'.

During this tender process, all panels scored submissions at least twice—an initial score for shortlisting then a final revised score after interviews.

In two cases, the evaluation panels revised their score following comments from the referee mentioned above. In both cases these revisions meant the panels put forward Provider A.

In the case of the ...	The evaluation panel ...	Which resulted in ...
Bayside Peninsula Area	revised scores after seeking comments from the referee	the first and second place bidders (which had scores of 118 and 117) trading places, and Provider A became the recommended bidder.
North East Melbourne Area		one provider who was tied in first place (with a weighted score of 117) had their score reduced (to a score of 113) and Provider A (who was third with a score of 114) had their score increased and became the recommended bidder (with a score of 121). Neither of the losing bidders secured funding in other areas.

The two changes made by the Bayside Peninsula Area and North East Melbourne Area evaluation panels meant that Provider A was awarded an additional \$3.2 million (15 per cent of the overall funds). Overall, Provider A won 52 per cent of the total funding.

4.4 What we recommend

We recommend that:	Response
Department of Families, Fairness and Housing <ol style="list-style-type: none"> 1. provides ongoing training and communications for staff so that they follow procurement policies and procedures and: <ul style="list-style-type: none"> • declare any potential, perceived or actual conflicts of interest when participating in a procurement • sign Declaration of Private Interests forms (and other official documents) in the presence of the witness • follow guidelines when shortlisting bidders. 	Accepted
<ol style="list-style-type: none"> 2. revises its existing procurement policies and procedures and ensures staff are provided with guidance on: <ul style="list-style-type: none"> • witnessing signatures • managing perceived and potential conflicts of interest • responding to referee input. 	Accepted

5.

Parks Victoria: Procuring archaeological surveys

This chapter looks at how Parks Victoria engaged an archaeological surveyor as a sole supplier to assess and record Aboriginal rock art sites. It covers eight contracts between May 2016 and June 2020.

This chapter discusses:

- Essential background information
 - Engaging the surveyor as a sole supplier
 - A potential conflict of interest
 - Possible contract splitting to avoid scrutiny
 - Not disclosing expenditure as a consultancy
-

5.1 Chapter snapshot

Did Parks Victoria follow its procurement procedures when engaging an archaeological surveyor as a sole supplier to assess and record Aboriginal rock art sites?

Background

Between May 2016 and June 2020 Parks Victoria entered into eight short-term contracts with an archaeological surveyor to assess and record Aboriginal rock art sites at selected locations. The total value of the contracts was \$199 260 including GST.

We received a referral that alleged that Parks Victoria:

- did not use a competitive tender process to appoint the surveyor, even though this is its policy
- possibly split up the contracts to avoid scrutiny.

Who and what we examined

We considered whether Parks Victoria followed relevant procurement procedures when engaging the surveyor. This included examining Parks Victoria's decision to exempt itself from following some standard procedures.

We did not examine the surveyor, nor do we make any findings about the quality or suitability of their work.

What we concluded

Parks Victoria used a series of short-term contracts to engage

the archaeological surveyor. It says this was to manage the scope of the surveyor's work and not to avoid scrutiny. Nothing has come to our attention that contradicts this assertion.

However, Parks Victoria did not fully follow its own procedures when it contracted the surveyor. It obtained exemptions to engage the surveyor without a competitive process but gave conflicting advice about the level of expertise the contractor needed. Parks Victoria also did not manage a conflict of interest when its contract manager and the surveyor co-authored two papers during the same period.

Key facts



contracts between
May 2016 and June 2020



\$199 260
total/combined
contract value



\$133 590
total value of 3 contracts
in 2019–20



exemptions granted
that fully adhered to
Parks Victoria's
procurement procedure

Source: VAGO

5.2 Background

As part of its Managing Country Together Framework, Parks Victoria works with Traditional Owners to preserve Aboriginal cultural heritage. This includes identifying, assessing and protecting ancient and unique rock art across the parks estate.

Procured services

Across eight short-term contracts over four years, Parks Victoria engaged a surveyor to:

- record and catalogue preliminary reports of rock art at selected locations
- complete place inspection forms for recorded rock art shelters
- identify threats, impacts and management recommendations for each place inspected
- train Traditional Owners and Parks Victoria staff on cataloguing rock art places and completing new recording and inspection forms.

As shown in Figure 5A, the total value of the contracts was \$199 260 including GST.

FIGURE 5A: **Relevant Parks Victoria contracts**

Start date	Value (inc GST)
May 2016 ^(a)	\$16 665
March 2017 ^(a)	\$16 830
October 2017 ^(a)	\$3 960
13 March 2018	\$825
14 March 2018	\$27 390
6 November 2019	\$52 965
27 March 2020	\$10 625
29 May 2020	\$70 000
	\$199 260

Note: ^(a) Parks Victoria did not have access to exact dates at the time of this review.

Source: Parks Victoria.

Parks Victoria's procurement procedure

Parks Victoria's procurement procedure sets the mandatory requirements for all procurements. It states that 'all purchases must be undertaken through an open, fair, transparent and accountable process that demonstrates value for money'.

Figure 5B summarises the procedure's key requirements for procuring goods and services across different value thresholds.

Parks Victoria's **Managing Country Together Framework** aims to strengthen partnerships with Traditional Owners, protect Aboriginal cultural heritage and support Aboriginal people to work in park management.

FIGURE 5B: **Parks Victoria's value thresholds for procuring goods and services**

Procurement value	Key requirements
Less than \$2 000	Obtain at least one verbal quote
\$2 000 to \$50 000	Seek at least two written quotes
\$50 001 to \$150 000	Seek at least three written quotes
\$150 001 to \$1 999 999	Conduct an open tender
\$2 million and above	Conduct an open tender after obtaining board approval

Note: The above thresholds apply only where there is no government contract, Parks Victoria panel arrangement, Recognition and Settlement Agreement or other joint management arrangements with Traditional Owner Groups that contain procurement considerations.

Note: Parks Victoria's previous procurement procedure did not require a competitive process for individual engagements valued below \$25 000.

Source: Parks Victoria.

The procedure and its manual detail when and how Parks Victoria can procure outside of the standard process.

Where Parks Victoria intends to...	It must...
conduct a standard procurement	comply with the requirements set out in the procurement procedure and the procurement operations manual (based on the value and nature of the procurement).
procure outside of the procedure	<ul style="list-style-type: none"> obtain an exemption certificate at least six months before going to market have the certificate approved by the Chief Financial Officer (CFO) and the procurement unit (where the procurement value is below \$150 000) ensure that the circumstances are rare and exceptional—such as when the services sought can only be provided by a single specialist supplier only grant exemptions retrospectively for genuine emergency management purposes never grant exemptions because staff failed to allow sufficient time to manage a procurement.

5.3 What we found

Engaging the surveyor as a sole supplier

Parks Victoria did not use a competitive process for any of the eight contracts it entered with the one surveyor. Based on their value, this was not required for the first four contracts.

Parks Victoria did ...	Because the procurement procedure ...
not have to follow a competitive process for the first three contracts (valued between \$3 960 and \$16 860)	in effect at the time did not require a competitive process for individual engagements valued below \$25 000.
not have to follow a competitive process for the fourth contract (valued at \$825)	now in effect does not require a competitive process for engagements valued below \$2 000.
require an approved exemption certificate in order not to use a competitive process for the remaining four contracts (valued between \$10 625 and \$70 000)	now in effect requires a competitive process for engagements valued at \$2 000 and above.

For the four most recent contracts, Parks Victoria engaged the surveyor as a sole supplier. It did not follow a competitive process after determining that 'the cataloguing of rock art is a highly specialised role with [name redacted] being the only qualified person to complete this task in the state'.

While several other heritage advisors in Victoria offer similar services, Parks Victoria maintains that no other suitable surveyors had the required reputation with Traditional Owners and knowledge of the local landscape.

Park Victoria's exemptions process

In line with its procurement procedure, Parks Victoria's Chief Financial Officer and procurement unit approved exemption certificates to engage the surveyor as a sole supplier for the four most recent contracts. However, the exemption forms give limited information to justify this decision. Parks Victoria advised us that its staff offset this lack of detail by discussing the procurement with the Chief Financial Officer.

Parks Victoria acknowledges that it did not fully comply with its procurement procedures for applying exemptions, especially in relation to the timing of the certificates. As shown in Figure 5C, Parks Victoria:

- did not obtain approval at least six months before approaching the surveyor for any of the contracts
- approved the certificate after it approached the surveyor in three of the four cases
- approved the certificate after the surveyor had begun work in two cases.

FIGURE 5C: **Exemption certificates that Parks Victoria granted when engaging the surveyor**

Exemption certificate	Exemption approval ^(a)			
	Due	Granted	Supplier approached	Work commenced
Certificate 1	8 Sep 2017	6 Mar 2018	8 Mar 2018 (2 days after approval)	4 April 2018 (29 days after approval)
Certificate 2	2 Jan 2019	9 Aug 2019	2 Jul 2019 (38 days before approval ^(b))	11 July 2019 (29 days before approval)
Certificate 3	3 Sep 2019	20 Apr 2020	On or before 3 March 2020 (48 days before approval ^(b))	27 Apr 2020 (7 days after approval)
Certificate 4	13 Nov 2019	27 May 2020	13 May 2020 (14 days before approval)	26 May 2020 (1 day before approval)

Note: ^(a) Exemption approval date is six months prior to the date that Parks Victoria approached the supplier.

Note: ^(b) Supplier approach date is on or before the listed date based on information from Parks Victoria.

Source: VAGO based on information from Parks Victoria.

Additionally, the exemption forms stated that 'procurement will occur via a vendor panel RFQ [request for quote]'. This did not occur.

Parks Victoria advised us that it has recently provided procurement refresher training to over 1 000 employees on:

- improving staff documentation of market analysis and justifications for supplier selection when undertaking a procurement
- improving the timeliness of when staff seek procurement approvals.

In a **panel arrangement**, an entity seeks quotes for the required goods or services from a predetermined list of suppliers

Conflict of interest

The Parks Victoria staff member who initiated and managed the four most recent contracts (between March 2018 and June 2020) had co-authored two academic papers with the surveyor during 2019 and 2020. This represents, at the least, a perceived conflict of interest. The Parks Victoria staff member's working relationship with the surveyor could have influenced the decisions to engage them as a sole supplier.

Parks Victoria requires that all employees complete a conflict of interest declaration when:

- completing their Performance and Development Plan process each year
- participating in any procurement, regardless of whether a conflict exists.

All Parks Victoria staff named on the procurement exemption forms, including the contract manager, completed conflict of interest declarations as part of their Performance and Development Plan process for 2018–19 and 2019–20. However, none completed a declaration as part of Parks Victoria's procurement of the surveyor.

At no point did the contract manager declare their relationship with the surveyor as a potential, perceived or actual conflict of interest.

Parks Victoria advised us that:

- the contract manager sought senior management's approval prior to the paper being published and this helped to offset the absence of a formal declaration
- the paper sought to initiate a public conversation about rock art conservation and was not driven by self-interest
- it has recently enhanced its procurement practices and will deliver mandatory training to all staff so that they consistently declare any potential, perceived or actual conflicts of interest.

Possible contract splitting to avoid scrutiny

Parks Victoria engaged the surveyor across eight short-term contracts between May 2016 and May 2020.

Parks Victoria advised us that it used multiple short-term contracts because it needed to progressively scope its site assessment program based on ongoing advice from Traditional Owners and other stakeholders. It says it did not split the engagements to avoid scrutiny.

However, these conditions should not have prevented Parks Victoria from combining multiple engagements into one contract.

During 2019–20, Parks Victoria engaged the surveyor three times at a total cost of \$133 590. Instead of having three separate contracts, Parks Victoria could have engaged the surveyor through one overarching contract that broadly defined the scope of work, with further details clarified as the project progressed.

Not disclosing expenditure as a consultancy

Parks Victoria gave us conflicting advice about its decision to not publicly disclose its payments to the surveyor.

The Department of Treasury and Finance's (DTF) Financial Reporting Direction 22H requires government entities to disclose details of any individual consultancy valued at \$10 000 or greater. However, although Parks Victoria paid the surveyor \$133 590 during 2019–20, it did not disclose this expenditure in its 2019–20 annual report.

Parks Victoria advised that it considered the surveyor to be a 'contractor' and not a 'consultant' as defined in Financial Reporting Direction 22H.

Contract splitting involves the deliberate breaking up of purchases to avoid triggering specific procurement rules. Such rules include mandated public reporting of purchases above a certain value.

Financial Reporting Direction 22H imposes requirements on government entities regarding reporting on their operations.

DTF's direction defines a ...	As ...	While Parks Victoria advised us that ...
contractor	someone who performs services on behalf of an entity	it contracted the surveyor 'to complete assessments of rock art places on behalf of Parks Victoria'.
		it was 'work that we could and sometimes deliver through Parks Victoria employees, but we can't always cover all the urgent work ourselves'.
consultant	a type of contractor who performs a discrete task for an entity that facilitates decision-making through: <ul style="list-style-type: none"> • expert analysis and advice, and/or • development of a written report or other intellectual output 	the decision-making, advice and intellectual output associated with this work came from Traditional Owners and Parks Victoria staff rather than the surveyor.

This position:

- contradicts Parks Victoria's view that the surveyor was the only person in Victoria qualified to catalogue the rock art sites
- contradicts Parks Victoria's own transaction records, which classify all payments to the surveyor since October 2019 as a consultancy and not a contractor
- brings into question Parks Victoria's decision to engage the surveyor without a competitive procurement process.

5.4 What we recommend

We recommend that:

Response

Parks Victoria	1. revises its procurement procedures and provide ongoing communications and training for staff so that: <ul style="list-style-type: none"> • they consistently declare any potential, perceived or actual conflicts of interest when participating in a procurement • conflicts of interest do not influence procurement decisions • it applies valid exemptions from its procurement procedures in an evidence-based manner and in accordance with required timeframes 	Accepted
	2. consistently discloses payments made to consultants in accordance with Financial Reporting Direction 22H.	Accepted in principle

APPENDIX A

Submissions and comments

We have consulted with the Department of Families, Fairness and Housing, Parks Victoria, the Department of Health and the Department of Jobs, Precincts and Regions, and we considered their views when reaching our conclusions. As required by the *Audit Act 1994*, we gave a draft copy of this report, or relevant extracts, to those agencies and asked for their submissions and comments.

Responsibility for the accuracy, fairness and balance of those comments rests solely with the agency head.

Responses were received as follows:

Department of Health.....	40
Department of Jobs, Precincts and Regions	44
Department of Families, Fairness and Housing.....	47
Parks Victoria.....	50



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Auditor-General
Victorian Auditor-General's Office

via e-mail: andrew.greaves@audit.vic.gov.au

Dear Mr Greaves

Limited assurance review: *Managing conflicts of interest in procurement*

Thank you for sending us the latest iteration of the report of the limited assurance review, *Managing conflicts of interest in procurement* on 27 August 2021, which included an acquittal of the matters raised in my letter of 26 August 2021.

My department would make the further responses:

1. (a) The challenges that staff encounter may provide context for a procurement decision that does not comply with policies or procedures. However, they do not justify non-compliance (p. 5)

DH Response:

The example of non-compliance identified by VAGO relates to an issue of input of data into the Critical Incident Procurement policy (CIPP) database, rather than a finding of non-compliance. The latter suggests more substantive issues with CIPP processes than data input.

In addition, there are several points in the Overview chapter which refer to failures of 'two' agencies, neither of which apply to the Department.

DH Response:

My preference would be that VAGO explicitly identifies which agencies are referred to with respect to procedural failures. These references could be taken from the agency report chapters.



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(b) (p. 8) What we concluded: Nothing came to our attention to show that the contract for medical services was improperly awarded to the medical services provider because of undisclosed conflicts of interest

DH Response:

Thank you. Could I also ask that the conclusion includes additional wording as follows:

Nothing came to our attention to show that:

- *the contract for medical services was improperly awarded to the medical services provider because of undisclosed conflicts of interest; and*
 - ***the department displayed a lack of regard for how the public might perceive conflict of interest***
2. The referrals allege that DHHS improperly awarded a contract to a provider delivering medical services, including to the Hotel Quarantine Program and pop-up testing, a call centre, and a hotline for the broader community, based on undisclosed conflicts of interest.

DH Response:

Accept VAGO's amendments

3. & 4. DHHS could have sought quotes from the two AMD Services that the NWHPN recommended. Or, concurrent with the initial engagement, DHHS could have run a tender process to identify whether the current entity, or another, would deliver the best value for money.

VAGO stated that the department urgently engaged a single entity but did not review its process to ensure value for money.

VAGO understands that DHHS could not do more than ask the Commonwealth Department of Health and NWHPN for advice when they urgently needed to establish the services. However, VAGO finds that DHHS could have reviewed the value for money once the critical incident procurement was in effect.

DH Response:

My department accepts that a subsequent review of the market to confirm value for money could have been undertaken after the acute phase of the pandemic eased. However, I am satisfied that there was no opportunity for the team to have undertaken a quotation process concurrent with the initial engagement. Further, the department is satisfied that DHHS conducted an appropriate sounding of the market in consultation with the Commonwealth Government and a Primary Health Network to identify organisations with the capability and capacity to deliver the services, which confirmed that only one accredited medical deputising service had the requisite capacity.

5. VAGO did not accept DH's following wording: 'As a result of insurance limitations, DHHS was unable to enter into a contract with Medi7 for the period 7 - 27 April 2020.'

2



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Response provided by the Secretary, Department of Health—continued

DH Response:

DH accepts the wording.

The actions that the department will undertake to address the two procurement-related report recommendations are included in the Action Table at **Attachment 1**.

I and my department appreciate the diligence and patience of your team when working with the us on this review. We are committed to continued strengthening of our procurement processes and practices.

Yours sincerely



Professor Euan M Wallace AM
Secretary

30/08/2021

Response provided by the Secretary, Department of Health—continued

Department of Health action table to address recommendations from *Procurement for the Hotel Quarantine Program*

Re c No	VAGO recommendation	Department al response	Action	Completion date
1	<p>DH to revise its critical incident procurement policy so that it ensures value for money, accountability and probity, and includes:</p> <ul style="list-style-type: none"> • accessible information and guidance for staff; and • procurement's role in ensuring procurement decisions and record keeping comply with policies and procedures. 	Accept	The department to revise its Critical Incident Procurement policy.	30 Sep 2021
2	<p>DH to provide training and communications for staff so that they follow procurement procedures and:</p> <ul style="list-style-type: none"> • take into account value for money, accountability, and probity in procurement • consistently adopt mandatory and minimum recordkeeping • maintain transparency and accountability in procurement • adhere to contract disclosure requirements; and • declare any potential, perceived or actual conflicts of interest when participating in a procurement. 	Accept	The department to develop a training and communications strategy for staff to enable them to follow both standard procurement procedures and the critical incident procurement policy.	28 Feb 2022

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Department of Jobs, Precincts and Regions

Ref: BSEC-2-21-15355

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Mr Andrew Greaves
Auditor-General of Victoria
Victorian Auditor-General's Office
Level 31, 35 Collins Street
MELBOURNE VIC 3000

Dear Mr Greaves

VAGO's Proposed Report – Managing Conflicts of Interest in Procurement limited assurance review

Thank you for your letter of 19 August 2021, providing the department with the proposed report for VAGO's limited assurance review on Managing Conflicts of Interest in Procurement.

On Friday 27 March 2020, the National Cabinet agreed that, from 11.59 pm Saturday 28 March 2020, all travellers arriving in Australia would undertake mandatory 14-day self-isolation at designated facilities.

As you highlight in your report, in less than 36 hours, the Department of Jobs, Precincts and Regions identified hotels, arranged transport for travellers, and security to staff Victoria's Hotel Quarantine Program. This planning and initial set-up occurred over a weekend with staff across government working remotely.

This unique situation presented numerous challenges for the department. I therefore welcome the recommendations in your report covering policy revisions and the provision of training, procedures and guidance for staff. I note that a number of activities are already underway or completed, and refer you to our enclosed Action Plan for further detail.

The department recognises the importance of maintaining integrity, impartiality and accountability including during a State of Emergency. I note the allegations raised in the report and your finding that probity was not breached and DJPR staff did not inappropriately approve contracts on my behalf.

I appreciate the professional and diligent way this limited assurance review has been conducted.

If you require further information, please contact Justin Perkov, Director Audit & Assurance on 0491 614 371 or justin.x.perkov@ecodev.vic.gov.au.

Yours sincerely

Simon Phemister
Secretary

27/ 08 / 2021



Response provided by the Secretary, Department of Jobs, Precincts and Regions—continued

DJPR action plan to address recommendations from the VAGO Conflict of Interest in Procurement limited assurance review

No	VAGO recommendation	Action	Completion date
	That DJPR:		
1	<p>revise its critical incident procurement policy so that it takes into account value for money, accountability and probity to the extent possible under the circumstances and includes:</p> <ul style="list-style-type: none"> • accessible information and guidance for staff • procurement's role in checking and reviewing procurement decisions and record keeping during and following critical incidents 	<p>Accepted</p> <p>The DJPR Critical Incident procurement policy requires staff undertaking critical incident procurements to take into account value for money, accountability and probity to the extent that they can be applied given the severity and urgency of the incident.</p> <p>During a critical incident, DJPR will continue to use State Purchase Contracts where appropriate and to extract value from pre-existing suppliers to the extent practical.</p> <p>DJPR will review its procedures and guidance material to determine if further clarity is required for staff regarding value for money, accountability and probity and include specific guidance on the use of State Purchase Contracts, procurement's role in checking and reviewing procurement decisions and record keeping during and following critical incidents.</p>	August 2021
2	<p>provide training and communication for staff so that they follow procurement policies and procedures and:</p> <ul style="list-style-type: none"> • implement probity procedures • maintain contract confidentiality • maintain transparency and accountability in procurement • adhere to contract disclosure requirements • declare any potential, perceived or actual conflicts of interest when participating in a procurement • use state purchase contracts when available 	<p>Accepted</p> <p>DJPR has refreshed its training modules on procurement introducing specific training and guidance on Contract Management Essentials, an Overview of Procurement, and on Critical Incidents.</p> <p>The training and guidance material includes a focus on probity, the declaration and management of conflicts of interest, use of state purchase contracts, contract confidentiality, transparency and accountability, and contract disclosure requirements.</p>	August 2021

Response provided by the Secretary, Department of Jobs, Precincts and Regions—continued

No	VAGO recommendation	Action	Completion date
3	<p>provide guidance and procedures for staff working remotely to:</p> <ul style="list-style-type: none"> • seek approval (signatures) • witness signature • ensure records of approval are maintained. 	<p>Accepted</p> <p>DJPR published guidance material for staff regarding the execution and witnessing of contracts when working remotely in April 2020. DJPR has refreshed this material to include the latest information on electronic signatures and maintaining records of approval.</p>	Aug 2021



Secretary

Department of Families, Fairness and Housing

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BAC-CO-17967

Mr Andrew Greaves
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Victorian Auditor-General's Office
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MELBOURNE VIC 3000

Dear Mr Greaves

Proposed report: *Managing conflicts of interest in procurement*

Thank you for providing the department with the Managing conflicts of interest in procurement proposed report, specifically Chapter 4 titled *DHHS: Procuring community service providers*.

The department has considered the review findings and accepts the recommendations.

I note that your report concludes that nothing came to your attention that showed improper influence associated with the perceived conflict of interest or that the successful bidders did not meet the key evaluation criteria.

Our actions proposed to address the audit recommendations are included in the attached table.

Yours sincerely

Sandy Pitcher
Secretary

26 / 08 / 2021



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Attachment 1

DFFH Action Table in response to Recommendations Procuring community service providers

Rec No.	Recommendation	Response	Proposed Action	Proposed Completion Date
1	<p>DFFH provide ongoing training and communications for staff so that they follow procurement policies and procedures and:</p> <ul style="list-style-type: none"> • declare any potential, perceived or actual conflicts of interest when participating in a procurement • sign DOPI forms (and other official documents) in the presence of the witness • follow guidelines when shortlisting bidders. 	Accept	<p>The department will review current procurement guides and processes to ensure all requirements in relation to Conflict of Interests are clear for all departmental staff.</p> <p>The department's eLearning procurement training module (currently under development) will include a section in relation to Conflict of Interest to better educate staff.</p> <p>The department is in the process of developing an online system for Conflict of Interests and Declaration of Private Interests. This system will support greater compliance with staff identifying, documenting, and managing conflict of interests. The new online system for Conflict of Interest and Declaration of Private Interest Forms will include a requirement for manager approval for all declarations being completed.</p> <p>The department will provide training for procurement staff to ensure a clear understanding of the shortlisting and evaluation process.</p>	30 November 2021

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Rec No.	Recommendation	Response	Proposed Action	Proposed Completion Date
2	<p>DFFH revise its existing procurement policies and procedures and ensure staff are provided with guidance on:</p> <ul style="list-style-type: none"> • witnessing signatures • managing perceived and potential conflicts of interest • responding to referee input. 	<p>Accept</p>	<p>The department is in the process of developing an online system for Conflict of Interests and Declaration of Private Interests. This system will support greater compliance with staff declaring any potential, perceived or actual conflicts of interest and remove the requirement for witnessing signatures.</p> <p>The department will provide training for procurement staff to ensure a clear understanding how referee input is to be considered during the evaluation process.</p> <p>The department will review and updated current procurement guides and processes to ensure staff only use referee checks to validate evaluation scores, and not to revise evaluation scores.</p> <p>The department will update referee request template to include consideration of any risks associated with perceived or potential conflicts of interest of the referee</p> <p>The department will include a question that confirms whether the referee currently receives any funding from the bidder in the referee request template.</p>	<p>30 November 2021</p>

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Parks Victoria
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 Melbourne Victoria 3000
www.parks.vic.gov.au
 ABN 95 337 637 697

30 August 2021

Mr. Andrew Greaves
 Auditor-General
 Victorian Auditor-General's Office
 Level 31/35 Collins Street
 MELBOURNE VICTORIA 3000

Dear Mr Greaves

PROPOSED ASSURANCE REVIEW REPORT—MANAGING CONFLICT OF INTEREST IN PROCUREMENT

Thank you for your letter dated 19 August 2021, regarding the Proposed Assurance Review Report—Managing Conflicts of Interest in Procurement. I would like to acknowledge the receipt of this letter and the associated report (the Report).

With regards to the findings and recommendations within the Report, please find our responses below:

VAGO Recommendation	Parks Victoria's Response
<p>1. That Parks Victoria revise its procurement procedures and provide ongoing communications and training for staff so that:</p> <ul style="list-style-type: none"> ▪ they consistently declare any potential, perceived or actual conflicts of interest when participating in a procurement ▪ conflicts of interest do not influence procurement decisions ▪ it applies valid exemptions from its procurement procedures in an evidence-based manner and in accordance with required timeframes 	<p>Accepted by Parks Victoria</p> <p>Parks Victoria welcomes VAGO's findings that nothing has come to VAGO's attention which indicates self-interest unduly influenced the procurement outcome or contradicts with Parks Victoria's assertion that it used a series of short-term contracts to engage the supplier to progressively manage the scope of the work rather than to avoid scrutiny.</p> <p>As part of our Managing Country Together Framework, Parks Victoria is strongly committed to working with Traditional Owners to preserve Aboriginal culture heritage. Parks Victoria remains of the view that the supplier engaged was the only suitable rock art surveyor who had the knowledge of the particular local landscape and the required reputation with Traditional Owners.</p> <p>Parks Victoria fully accepts VAGO's recommendations to revise its procurement procedures and provide ongoing communications and training to staff members to continue to improve the management of perceived, potential or actual Conflicts of Interest in procurement and its procurement exemption process.</p>

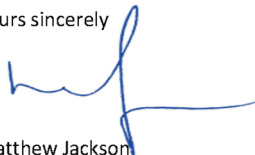


Response provided by the Chief Executive Officer, Parks Victoria—continued

VAGO Recommendation	Parks Victoria’s Response
	<p>Parks Victoria has provided a procurement training to over 1,000 staff members in April – May 2021. The all-staff training offered has sections dedicated to the topics of “Conflict of Interest in Procurement” and “Procurement Exemptions”.</p> <p>Parks Victoria will further review and enhance its procurement procedure and documentation by 31 October 2021 to ensure that Conflict of Interest considerations are embedded throughout the procurement process and all procurers must actively consider Conflict of Interest implications when conducting procurement activities and ensure any perceived, potential or actual Conflicts of Interest do not (or are not perceived to) influence procurement decisions. In addition to the existing Conflict of Interest declaration process, a dedicated procurement section in the standard Parks Victoria Conflict of Interest declaration template will also be added for the identification and management of Conflicts of Interest in procurement activities.</p> <p>Parks Victoria has undertaken a significant amount of work in the recent months in strengthening its procurement exemptions process. Procurers are required to document a greater level of justification and evidence for exemption requests to be considered for approval. Further updates to the procurement exemption template to provide increased guidance for the exemption process will be provided by 31 October 2021.</p>
<p>2. That Parks Victoria consistently discloses payments made to consultants in accordance with Financial Reporting Direction 22H.</p>	<p>Accepted in principle by Parks Victoria</p> <p>Parks Victoria will continue to disclose payments made to consultants in accordance with Financial Reporting Direction (FRD) 22H.</p> <p>Parks Victoria will provide training to procurers by 31 October 2021 relating to the classifications of contractors vs. consultants in accordance with FRD 22H and the appropriate transaction coding in its financial system.</p>

Should you require further advice on this matter please contact Frances Li, Chief Financial Officer, Parks Victoria on 03 8427 3881 or frances.li@parks.vic.gov.au.

Yours sincerely



Matthew Jackson
Chief Executive Officer



APPENDIX B

Acronyms and abbreviations

Acronyms

AMD Service	Accredited Medical Deputising Service
DH	Department of Health
DHHS	Department of Health and Human Services
DJPR	Department of Jobs, Precincts and Regions
DOPI	Declaration of Private Interests
DTF	Department of Treasury and Finance
NWPHN	North West Primary Health Network
SPC	State Purchase Contract
VAGO	Victorian Auditor-General's Office

Abbreviations

COVID-19	Coronavirus
MSS	MSS Security
the response	Victorian Family Preservation and Reunification Response
Trades Hall	Victorian Trades Hall Council
Unified	Unified Security Group
Wilson	Wilson Security

APPENDIX C

About this assurance review

Matters referred to the Auditor-General

During September and October 2020 the Auditor-General received separate referrals relating to procurement activities at DHHS, Parks Victoria and DJPR.

One referral alleged that DHHS, in engaging community service providers to deliver the Victorian Family Preservation and Reunification Response:

- may not have managed a perceived conflict of interest
- appointed providers that did not meet the tender criteria.

A second referral alleged that Parks Victoria:

- did not use a competitive tender process to appoint an archaeological surveyor, even though this is its policy
- possibly split up the contracts to avoid scrutiny.

The third referral alleged that DHHS improperly awarded a contract to a medical services provider based on undisclosed conflicts of interest:

- The owners of the entity engaged to deliver the services are donors to, and one is an ex-official of, the Victorian Labor Party.
- The daughter of one of the owners of the entity is a ministerial adviser to the Premier of Victoria.

The fourth referral alleged that DJPR breached probity when:

- it awarded a contract for security services at the Hotel Quarantine Program based on approval from Victorian Trades Hall Council
- its staff inappropriately approved contracts on the Secretary's behalf.

Review objective, scope and approach

Who we reviewed	What we assessed	What the review cost
DHHS Parks Victoria DJPR	<p>We assessed whether DHHS (now Department of Families, Fairness and Housing) followed its procurement policies and procedures when it engaged community service providers to implement the Victorian Family Preservation and Reunification Response</p> <p>We assessed whether Parks Victoria followed its procurement procedures when it engaged an archaeological surveyor as a sole supplier to assess and record Aboriginal rock art sites.</p> <p>We assessed whether DHHS (now DH) followed relevant procurement policies and procedures when it engaged medical services for people in the Hotel Quarantine Program.</p> <p>We also assessed whether DJPR followed relevant procurement policies and procedures when it engaged security services for the Hotel Quarantine Program.</p>	The cost of this review was \$300 000.

We conducted this limited assurance review in accordance with the *Audit Act 1994* and Australian Standard on Assurance Engagements ASAE 3000 *Assurance Engagements Other than Audits or Reviews of Historical Financial Information*.

A review is a limited assurance engagement that is less in scope than an audit conducted in accordance with Australian Auditing Standards. Consequently, it does not enable us to obtain reasonable assurance that we would become aware of all significant matters that might be identified in a reasonable assurance engagement.

Our review procedures included investigating:

- DHHS's, DJPR's and Parks Victoria's procurement policies and procedures
- how DHHS, DJPR and Parks Victoria followed these policies and procedures during each procurement.

We also provided a copy of the report to the Department of Premier and Cabinet and the DTF.

Unless otherwise indicated, any persons named in this report are not the subject of adverse comment or opinion.

APPENDIX D

DHHS's procurement procedures

Critical incident procurement

DHHS's critical incident procurement policy stated that critical incident procurement protocols may be invoked by the Secretary or accountable officer as a result of:

- an emergency within the meaning of the *Emergency Management Act 2013*
- an incident that causes the department's business continuity plan to be activated
- an incident that represents a serious and urgent threat to the health, safety or security of a person or property
- a situation that represents a serious or urgent disruption to services provided by the department.

The critical incident procurement policy includes mandatory and minimum requirements, described in Figure D1.

FIGURE D1: **Mandatory and minimum requirements in DHHS's critical incident procurement policy**

Mandatory requirements

Once the critical incident procurement is in effect, the department will:

- take into account value for money, accountability, and probity to the extent that they can be applied given the severity and urgency of the incident
- adopt minimum record keeping processes
- adhere to contract disclosure requirements.

Note: During a critical incident, all other VGPB supply policies do not apply to the extent that the critical incident makes it impractical to apply them.

Minimum information required

To demonstrate accountability for decisions in relation to critical incident procurement activities, the department will adopt a format for recording the following minimum information:

- the good/service being procured
- the purpose of the procurement activity
- the total value of the procurement (including GST)
- the name and contact details of the supplier
- a short summary of the procurement process
- contact details of the party managing the procurement.

Mandatory requirements

Minimum information required

If required, the department's annual report will separately disclose the following information regarding procurement activity during a critical incident:

- total value of goods or services purchased
 - the nature of the critical incident to which the procurement values relate.
-

Source: DHHS.

Probity and conflict of interest

DHHS's probity in procurement and contract management policy also states 'the requirement to comply with probity principles when undertaking any funding or procurement processes never diminishes' and 'a conflict of interest declaration must be completed by all staff involved in a procurement assessment process, whether a conflict exists or not. All conflicts, whether actual, potential or perceived, must be identified and registered, and managed and monitored by a senior manager.'

DHHS must also disclose the full contract information for contracts worth more than \$10 million on the contract publishing system (the Tenders Victoria website) within 60 days of the award of the contract.

APPENDIX E

DJPR's procurement procedures

DJPR's procurement policy (April 2019) includes provision for management of critical incidents.

Section 3.5 provides information about exemptions. Section 3.5.2 explains that a critical incident is automatic grounds for an exemption from the prescribed market approach (amongst others). Section 3.5.3 offers a process for an exemption from using a mandatory SPC.

Section 6.1 includes information about the fundamental principle of probity.

Section 11 explains the requirements under a critical incident.

The information in these sections is presented in Figure E1.

FIGURE E1: **Information in DJPR's critical incident procurement policy**

Section	Policy
Section 3.5 Exemptions	Although an appropriate competitive procurement process best supports the department's procurement principles, there may be occasions when this approach cannot be adopted, or, if adopted will be (or is highly likely to be) inappropriate, unfeasible or unduly prohibitive. In such circumstances, an exemption from the prescribed market approach could be considered.
Section 3.5.2 Exemptions – Automatic Grounds	A small number of circumstances, and goods and service types, qualify for automatic exemption from adopting the prescribed market approach. The following list of procurement activities do not require approval of an exemption from procurement process requirements as per Section 3.5.1. The Financial Delegate from the relevant Business Unit can approve the Exemption Brief for transactions under the following categories, regardless of the value of the procurement: <ul style="list-style-type: none">• Critical incidents as referred to in Section 11 of this Policy

Section

Policy

Section 3.5.3 Exemptions – Mandatory State Purchase Contracts	<ul style="list-style-type: none">• If a mandatory State Purchase Contract exists for particular goods or services, then this must be used (for all contract values) unless an SPC exemption has been approved by the Executive Director of Finance and Procurement and the relevant SPC category manager (within the SPC lead department).• The SPC exemption process requires the Project Manager to put forward their rationale for the exemption to a member of the Strategic Procurement Unit, by email. If supported by the Executive Director of Finance and Procurement, the Strategic Procurement Unit will then submit the exemption request to the SPC lead department and advise the Project Manager of the outcome.• The Strategic Procurement Unit will keep a central record of all SPC exemption requests, including the outcome. The business area must ensure that within the contract record created in the Contract Management System, the “SPC Exemption” option is selected within the “Pre-qualified or Panel Supplier” field.
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Section 6.1 Probity Overview	<p>Probity is a fundamental VGPB procurement principle, which must be adopted throughout all stages of the procurement process, as outlined in Section 2 of this Policy. The department has a high regard to probity and staff must apply appropriate behaviours and actions in the conduct of procurement processes including:</p> <ul style="list-style-type: none">• Identifying, preventing and managing conflicts of interest• Acting with integrity and impartiality, and reducing the risk of corruption• Securing confidential market engagement information• Applying and documenting consistent and transparent processes• Engaging a probity practitioner(s) where the complexity of the procurement activity warrants independent process oversight.
---------------------------------	--

Section 11 Management of critical incidents	<p>Critical incident protocols and processes are invoked when a relevant Minister, Accountable Officer or Executive Director of Finance and Procurement declares a critical incident to exist in relation to the operation of procurement processes by reason of:</p> <ul style="list-style-type: none">• An emergency within the meaning of the <i>Emergency Management Act 1986</i>• An incident that causes the department’s business continuity plan to be activated• An incident that represents a serious and urgent threat to the health, safety or security of a person or property• A situation that represents a serious or urgent disruption to services provided by the department. <hr/> <p>During a critical incident the department will:</p> <ul style="list-style-type: none">• Take into account value for money, accountability and probity to the extent that they can be applied given the severity and urgency of the incident• Adopt record keeping processes to the extent that they can be applied given the severity and urgency of the incident• Adhere to contract disclosure requirements.
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Source: DJPR.

APPENDIX F

DHHS's Information sheet for evaluation panel members

Information sheet for evaluation panel members - funding

Department of Health and Human Services

It is very important that Evaluation Panel Members DO NOT show or discuss submissions from bidders with anyone outside of the Evaluation Panel. Printed documents should be locked away when not actually being used. They must not be left unattended on desks.

Process

1. A preliminary meeting prior to the funding submission closing time should be held to discuss the evaluation process. Please invite your Procurement Officer to facilitate and lead this discussion.
2. All evaluation panel members and anyone else involved in the preparation of the request for submissions must complete a Conflict of Interest declaration form.
Note: Non-Victorian Public Servants must also complete a Deed of Confidentiality, available from your Procurement Officer.

If you have any concerns in relation to any potential conflicts, discuss these with your Procurement Officer. Further information on Conflict of Interest is available on the intranet:
<https://intranet.dhhs.vic.gov.au/search/conflict%20of%20interest>.
3. Once submissions have been received, the panel chair should distribute them to panel members to confirm the initial Conflict of Interest declarations remain correct (or amend if a Conflict of Interest is identified). A Panel Chair should be elected prior to the first evaluation team meeting.
4. Each panel member is to separately read through the bids and undertake an individual assessment prior to the first evaluation meeting. (Refer *Individual Assessment* below.)
5. The next step is to undertake an Initial Group Assessment and shortlist for interview. At this meeting, the panel chair should collect all signed conflict of interest declarations and place on the project file. (Refer *Initial Group Assessment* below.) Your Procurement Officer should be invited to this meeting.
6. Evaluation panel to interview shortlisted organisations and include evaluation scores (refer *Final Group Assessment* below).
7. Undertake referee checks of the preferred bidder if appropriate. These should be conducted by a member of the panel.
8. A best and final offer (BAFO) process is mandatory for funding submissions >\$50,000. This should be undertaken with the preferred bidder(s) and this final price will be used in making a value for money assessment to arrive at the recommended bidder.
9. The next step is to undertake a Final Group Assessment. Your Procurement Officer should be invited to this meeting. Refer detailed information below.
10. A Selection Report documenting the process and assessments is to be prepared for review and signature by the Panel Members, your Procurement Officer and then approved by the financial delegate.
11. Once the evaluation process has been completed and the service agreement has been signed, Panel Members are required to securely dispose of (i.e. in a security bin) any printed hard copies of the submissions. Do not place in normal waste disposal bins. Also remove/ delete soft copies from local drives.

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Individual Assessment

Using the scoring sheet, make your assessment of the bids against the selection criteria (make sure you assess the actual submission, not what you know of the organisation). Give each bid a score using the scoring matrix included in request for funding submissions document (do not use partial scores, e.g. 1.5 or 2.5) – see detailed information below (What Scores Mean).

Assessments should include:

- comments to fully justify the score (be specific where an organisation fails or exceeds aspects of a criterion)
- concerns and clarifications to be raised with bidders if shortlisted
- specific examples of how a bidder 'fails', 'meets' or 'exceeds' the requirement(s) of the criterion.

It is important that bids are not compared against each other at this stage of the process as you are determining the capability of each bidder to deliver the service. Cost is not a factor at this stage.

Initial Group Assessment

The Panel will meet to discuss each bid and determine a consensus score and comments for the bid against each criterion. These initial scores will determine the shortlist of bidders to be interviewed. Bidders that meet or exceed all of the criteria are to be interviewed. Clarification questions for shortlisted bidders should be proposed and dates for interviews determined.

Interviews for funded agencies may not be required where sufficient justification is provided. Discuss with your Procurement Officer.

Final Group Assessment

At the completion of interviews, the Panel will again discuss each shortlisted bid and will either confirm the initial scores or revise them up or down, including justifying comments. Check with your Procurement Officer in relation to the requirement to conduct referee checks. Information obtained from referee checks should be used to validate the selection.

What Scores Mean

Raw Scores

Evaluation	Score
Exceeds all aspects of the selection/evaluation criterion	10
Exceeds some aspects of selection/evaluation criterion (and meets all other aspects of the selection/evaluation criterion)	6–9
Meets the selection/evaluation criterion	5
Fails some aspects of the selection criterion	1–4
Fails all aspects of the selection criterion	0

Mandatory criteria are **not scored**. These are normally limited to industry standards, certifications or memberships of particular associations. If mandatory criteria are not met, the bidder is immediately eliminated from further consideration.

Terminology

Bidder(s) are the entities that have responded to a request for funding submission

Shortlisted are those bidder(s) that have been selected to move to the next phase of the evaluation process, i.e. interview.

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Preferred are those bidder(s) that have met or exceeded the selection criteria - (after interviews and referee checks, etc.). They will normally be asked to provide a BAFO.

Recommended is the bidder who provides the best value for money to the department based on cost and final scores. This is the bidder that the department will enter into a service agreement with.

To receive this publication in an accessible format email

<mailto:Procurement.services@dhhs.vic.gov.au>

Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.

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Source: DHHS.

APPENDIX G

DHHS's summary of bids in tender for the response

FIGURE G1: Bids for DHHS's tender for the response

Evaluation panels	<i>Bids from providers successful in one or more regions</i>						Bids from other 23 providers	Total bids
	Provider A	Provider B	Provider C	Provider D	Provider E	Provider F		
DHHS East region								
Goulburn		Awarded			Failed		3	5
Inner Eastern Melbourne	Awarded	Failed			Failed		3	6
Outer Eastern Melbourne	Awarded	Failed			Failed		1	4
Ovens Murray	Awarded				Failed		3	5
Total bids East	3	3	0	0	4	0	10	20
DHHS North region								
Hume Moreland	Awarded				Failed		3	5
Loddon	Awarded						2	3
Mallee	Awarded						2	3
North East Melbourne	Awarded						4	5
Total bids North	4	0	0	0	1	0	11	16
DHHS South Region								
Bayside Peninsula	Awarded	Failed		Failed	Failed		5	9
Inner Gippsland				Awarded	Failed		2	4
Outer Gippsland					Awarded		3	4
Southern Melbourne	Awarded	Failed		Failed	Failed		2	6
Total bids South	2	2	0	3	4	0	12	23

Bids from providers successful in one or more regions

Evaluation panels	<i>Bids from providers successful in one or more regions</i>						Bids from other 23 providers	Total bids
	Provider A	Provider B	Provider C	Provider D	Provider E	Provider F		
DHHS West Region								
Barwon	Failed		Awarded				1	3
Brimbank Melton & Western Melbourne	Failed x 2	Awarded x 2		Failed x 2			10	16
Central Highlands					Failed	Awarded	3	5
Western District	Failed		Awarded		Failed		0	3
Total bids West	4	2	2	2	2	1	14	27
Total bids	13	7	2	5	11	1	47	86
Total successful	9	3	2	1	1	1	0	17

Source: VAGO based on information from DHHS.

Auditor-General's reports tabled during 2021–22

Report title

<i>Integrated Transport Planning</i> (2021–22: 01)	August 2021
<i>Major Infrastructure Program Delivery Capability</i> (2021–22: 02)	August 2021
<i>Clinical Governance: Department of Health</i> (2021–22: 03)	September 2021
<i>Managing Conflicts of Interest in Procurement</i> (2021–22: 04)	September 2021

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