

CONTRACT MANAGEMENT PERSONNEL

Introduction

- 4.1 As part of *Report 369, Australian Government Procurement*, the Committee examined the training and education of purchasing officers. It was found that the Commonwealth does not have a systematic approach to training and education.
- 4.2 At the same time, the Committee noted that the requirement in the Commonwealth Procurement Guidelines that all persons undertaking procurement functions, including those officers overseeing and/or approving procurement activities, meet appropriate Commonwealth Procurement Competency Standards' has been downgraded from 'mandatory' to 'best practice'.
- 4.3 This Chapter follows on from *Report 369* by examining the impact of skills, training and corporate memory on contract management. Contract managers in performing their tasks must have knowledge and skills ranging from interpersonal, communication, negotiation, project management, and legal. The approaches used by agencies in helping to establish this skill set will be examined.

Background

- 4.4 The Industry Commission (IC), as part of its inquiry into competitive tendering and contracting out, concluded that 'some government agencies may not currently have the necessary skills to manage the CTC process effectively.' Therefore, the IC recommended that agencies should focus on acquiring skills in 'contract specification, negotiation, tender evaluation, contract management and performance evaluation.'¹
- 4.5 The ANAO, as part of a multi-agency performance audit, found that 'in general, contract managers had established effective and professional working and communication relationships with service providers.' However, the ANAO also found instances of poor documentation of contract administration and negotiation.² The ANAO recommended that agencies should:
- develop and promulgate guidance to address communication protocols; and
 - document contract communication requirements to ensure a complete management trail is maintained.³
- 4.6 MAB/MIAC advises that the relevant skills for contract managers should include interpersonal skills comprising communication and negotiation skills, and project management skills. MAB/MIAC stated:
- Successful contract managers are also skilled in leveraging their positions and bargaining during the tender selection and contract development stages of CTC. Negotiation skills are vitally important in this process, especially when dealing with changing circumstances and flexible contracts.⁴
- 4.7 In addition, MAB/MIAC advised that contract managers should have subject-specific expertise including knowledge of, and skills related to:
- the relevant industry;
 - procurement;

1 Industry Commission, *Competitive Tendering and Contracting by Public Sector Agencies*, Report No. 48, AGPS, 1996, 373.

2 Australian National Audit Office, *Report No. 12, Management of Contracted Business Support Processes*, 1999–2000, p. 16.

3 Australian National Audit Office, *Report No. 12, Management of Contracted Business Support Processes*, 1999–2000, p. 18.

4 Management Advisory Board/Management Improvement Advisory Committee (MAB/MIAC), *Before you sign the dotted line, Ensuring contracts can be managed*, Report No. 23, Commonwealth of Australia, 1997, p. 54.

- accountability requirements and contract law;
 - financial management; and
 - human resource management.⁵
- 4.8 A knowledge of the relevant industry and the product requirement will assist contract managers to draft accurate specifications and monitor performance. MAB/MIAC suggest industry experience is particularly important when attempting to convert highly technical inputs into functional output specifications.⁶
- 4.9 Knowledge of procurement means understanding the Commonwealth Procurement Guidelines and having 'a hands on experience procuring goods and/or services for a public organisation'.⁷ In respect to accountability, MAB/MIAC suggest that contract managers should fully understand and comply with administrative law such as the *Privacy Act 1988*, *Freedom of Information Act 1982* and the *Administrative Decisions (Judicial Review) Act 1977*. In addition, contract managers should understand that public contracts can be scrutinised by the Auditor-General and Ombudsman. In relation to contract law, MAB/MIAC state:
- Contract managers need to be sure of their rights and responsibilities when dealing with the parties to a contract. An understanding of the essentials of contract law, especially the rights and obligations of all parties, contributes to the manager's capacity to deal effectively with providers. General knowledge will not replace specialised advice that can be received from a qualified legal practitioner.⁸
- 4.10 In addition to these skill needs, contract managers also need financial management, and human resource management skills and experience. The Office of Asset Sales and Information Technology Outsourcing (OASITO), from its perspective, suggested that the key contract management skills include commercial, legal and management as well as a knowledge of IT.⁹

5 MAB/MIAC, *Before you sign the dotted line, Ensuring contracts can be managed*, Report No. 23, Commonwealth of Australia, 1997, p. 54.

6 MAB/MIAC, *Before you sign the dotted line, Ensuring contracts can be managed*, Report No. 23, Commonwealth of Australia, 1997, p. 56.

7 MAB/MIAC, *Before you sign the dotted line, Ensuring contracts can be managed*, Report No. 23, Commonwealth of Australia, 1997, p. 56.

8 MAB/MIAC, *Before you sign the dotted line, Ensuring contracts can be managed*, Report No. 23, Commonwealth of Australia, 1997, p. 57.

9 Mr David Yarra, Office of Asset Sales and Information Technology Outsourcing, *Transcript*, p. 174.

- 4.11 During the inquiry, several issues arose relating to the skills and knowledge of contract managers including technical and legal skills, corporate memory, centralised purchasing units, and training approaches. These issues will be discussed in the sections that follow.

Technical and legal skills

- 4.12 The Institution of Engineers, Australia (IEA) suggests that there are insufficient technical skills, particularly engineering expertise, in the Australian Public Service. The IEA stated:

The institution is not arguing for more engineers to be employed by the Public Service. The critical issue is not where the technical expertise is located; the issue is that government has guaranteed access to specialist advice when it is required. Nor is the institution arguing that the necessity for technical expertise requires the contract manager to be an engineer.¹⁰

- 4.13 Similarly, the Canberra Business Council commented that, 'in a number of areas, technical expertise is not as robust as it was in the past and that is impacting on the tender specification and the relationship during the management of the contract.'¹¹

- 4.14 The IEA proposed a model that government agencies should employ so as 'to ensure that they have access to the appropriate level of technical expertise so they can be an informed buyer of engineering, information technology and other technical goods and services.'¹² This model includes the following four steps:

- examine the good or service to be procured to determine the level of technical expertise required to be an informed buyer;
- evaluate the relevant existing level of in-house and external technical expertise available;
- undertake a cost benefit analysis of in-house versus contracted-in expertise at each stage of the contracting process; and
- obtain and where appropriate, retain the required expertise.¹³

10 Mr John Boshier, Institution of Engineers, Australia, *Transcript*, p. 10.

11 Ms Helen Leayr, Canberra Business Council, *Transcript*, p. 36.

12 Institution of Engineers, Australia, *Submission*, p. S363.

13 Institution of Engineers, Australia, *Submission*, p. S363.

- 4.15 The ANAO advise that senior management must ensure that contract managers are appropriately equipped to perform their duties. The ANAO stresses that senior management must provide:
- contract managers with appropriate training and skills; and
 - ensure appropriate legal and technical advice is readily available.¹⁴
- 4.16 Dr Seddon, in relation to legal issues, suggested that 'every public servant who has to administer a contract should be legally aware as they are handling a legal thing and legal things can be nasty.'¹⁵ The Department of Transport and Regional Services indicated that it runs legal awareness courses within the department and the project officers in the line areas are invited to attend.¹⁶
- 4.17 Where necessary, agencies will need to employ external advice to assist with contract management. DoFA advises that an agencies' human resource management strategy should identify 'the skills required to implement and manage the CTC process, the training needs to upgrade the skills of current staff, and specialist skills that are not available within the agency but may be brought in-house on a permanent or ad hoc basis.'¹⁷
- 4.18 The Department of Family and Community Services (FACS) advised that its contract management services section 'also has a contractual arrangement with an external provider to provide specialist assistance and advice to FACS officers on tendering, contracting and purchasing matters.'¹⁸ The service includes procurement planning, tender preparation and evaluation, negotiating and finalising contracts and debriefing suppliers. The ANAO supports the need for external assistance but cautions that corporate memory is still something that agencies must maintain:

There is no doubt that where those skills are not available, agencies should be bringing in those skills on contract, on a retainer or whatever. Where the corporate knowledge becomes important is that ultimately someone still has to evolve policies and program delivery. More and more so the corporate knowledge

14 Australian National Audit Office, *Report No. 12, Management of Contracted Business Support Processes, 1999–2000*, p. 26.

15 Dr Nick Seddon, *Transcript*, p.129.

16 Mr John Bollard, Department of Transport and Regional Services, *Transcript*, p. 184.

17 Department of Finance and Administration, *Competitive Tendering and Contracting, Guidance for Manager*, March 1998, p. 37.

18 Department of Family and Community Services, *Submission*, p. S280.

and having the direct hands-on experience in being able to deliver certain parts of programs and advise on policy.¹⁹

Conclusions

- 4.19 Contract management, depending on the case, will require a mix of internal skills and knowledge, and access to external advice. In particular, the legal aspect of a contract is a prominent example where contract managers should be seeking expert advice whether from inside or external to the agency.
- 4.20 Legal aspects of contract management are critical. It is essential that all contract managers have legal awareness. Apart from day to day management, this legal awareness will ensure that a contract manager, who must have a broad range of skills, knows when and at what time to seek legal expertise. Agency CEOs have a responsibility to ensure that the right mix of skills and external advice are brought to bear in managing contracts. At the same time, CEOs must provide the training opportunities for contract staff to acquire critical skills and knowledge such as legal awareness.
- 4.21 The Committee notes the concerns raised by the Institution of Engineers, Australia and the Canberra Business Council that there are insufficient technical skills available in the public service. This is a timely reminder for agencies. They must ensure that, on a case-by-case basis, they bring to bear the appropriate skills and knowledge in managing their contracts. If this means obtaining external advice then this should be sought.

Corporate memory

- 4.22 Most agencies acknowledge the importance of corporate memory to effective contract management. The variety of approaches to maintaining corporate memory ranged from attracting and retaining staff to having well documented procedures.
- 4.23 AusAid indicated that there were 'difficulties and inefficiencies associated with the loss of corporate memory and re-training of staff', however there was no simple solution. AusAid indicated that specialist contract staff can stay in a contract area for about two years, increasing to four years for senior contract staff.²⁰

19 Mr Warren Cochrane, Australian National Audit Office, *Transcript*, p. 99.

20 AusAid, *Submission*, p. S126.

- 4.24 The IEA indicated that it had concerns about the retention of corporate knowledge, and proposed that there be a formal evaluation of how organisations are pushing knowledge management as a solution to capturing corporate knowledge.' In particular, the IEA stated that 'a number of our members have been very concerned about this whole concept of electronically capturing that information, as if that is some sort of substitute for an individual.'²¹ This view was supported by Streets Enterprises which suggested that effective corporate memory is predominantly the wealth of knowledge and experience retained by staff. Streets Enterprises stressed that effective corporate memory is not simply a product of efficient record keeping.²²
- 4.25 AusAid, for example, indicated that the focus of its corporate memory was its experienced staff.²³ The Department of Defence (Defence) identified the following five features of its administration which helped to preserve corporate memory:
- the experience and knowledge of its personnel, particularly the older more senior staff;
 - documentation, including manuals and instructions that are user-friendly and readily accessible to staff;
 - practices such as de-briefings, other presentations and forums whereby experiences and knowledge are conveyed to the larger corporate audiences;
 - various data bases that capture 'lessons learnt', histories of projects and contracts; and
 - training whereby policies, proven practices and experiences are incorporated into course contents.²⁴

21 Mr Athol Yates, Institution of Engineers, Australia, *Transcript*, p. 13.

22 Mr Dennis Street, Streets Enterprises, *Transcript*, p. 290.

23 Dr Peter McCawley, AusAid, *Transcript*, p. 21

24 Department of Defence, *Submission*, p. S506.

- 4.26 The Department of Health and Aged Care acknowledged the importance of corporate memory and indicated in cases where this was lacking, it would contract-in people with additional skills and experience.²⁵ The Office of Asset Sales and Information Technology Outsourcing (OASITO) suggested that staff retention was not just the sole method of preserving corporate memory. In addition, OASITO also mentioned standard form contracts, ANAO performance audits, the development of guidelines and documents developed for previous projects made available on the internet.
- 4.27 The ANAO recommended that agencies should 'strengthen continuous improvement mechanisms to ensure contract lessons learnt are reflected in policies and practices and form part of the organisation's corporate knowledge.'²⁶

Conclusions

- 4.28 Corporate memory is a vital part of effective contract management. The preservation of corporate memory is influenced by the experience and knowledge retained by staff, well recorded and documented information and decisions, internal communication strategies, effective contract management databases, and relevant training. All these factors are essential and CEOs should be striving for best practice.
- 4.29 Agencies recognise the value of corporate memory but acknowledge that there are no simple solutions. AusAid, for example, reported that the average turnover of a contract manager is about two years and for a senior contract manager the time is about four years.

25 Mr Neville Tomkins, Department of Health and Aged Care, *Transcript*, p. 247.

26 Australian National Audit Office, *Report No. 12, Management of Contracted Business Support Processes, 1999–2000*, p. 17.

- 4.30 While agencies understand the value of the knowledge held by their experienced contract managers, there was little information on strategies for retaining and strengthening this knowledge base. It is ultimately the responsibility of CEOs to attract and retain effective staff not just for contract management but across their departments. This means that CEOs must be aware of their agency's recruitment and staffing patterns and be taking positive action to address shortcomings. **Therefore, the Committee suggests that agency CEOs, with significant contracting responsibilities, should undertake an internal audit of contract staff focusing on skills, expertise, and separation patterns. Where the audit shows that the skill base and or separation patterns are found to be unacceptable then the CEO should implement corrective strategies.**

Centralised purchasing units

- 4.31 Some agencies indicated that they were moving back to centralised purchasing units (CPUs). CPUs provide a centre of skills and expertise which departmental staff can draw on for advice. In addition, it was suggested that CPUs help to maintain corporate memory. The Department of Foreign Affairs and Trade commented 'last year the department created the Competitive Tendering and Contracting unit to provide best practice advice to departmental managers.' This 'unit reviews tendering and contract documentation being prepared by departmental managers and refers its clients to departmental legal officers where required.'²⁷
- 4.32 Similarly, the Department of Health and Aged Care (DHAC) commented that 'the department has centralised the development and provision of advice, support and training for contract management.'²⁸ The Department of Family and Community Services stated:

We do appreciate and value the benefit that contracting has from specialist skills. Therefore, we have undertaken a number of initiatives to support staff in line areas when they undertake this practice. Examples are setting up a contract management services unit—effectively a central servicing and assistance unit—a team that is staffed with people with quite a lot of expertise in contract management processes, and legal people within that team. They provide a number of immediate services, but can also become part of teams if they are engaged in quite large contracts, and help

27 Department of Foreign Affairs and Trade, *Submission*, p. S309.

28 Mr Neville Tomkins, Department of Health and Aged Care, *Transcript*, p. 239.

through the process. We also draw on some external expertise on an outsourcing basis from a firm that gives us immediate commercial and market information to help us where we find that desirable.²⁹

- 4.33 The Department of Veterans Affairs (DVA) indicated that it applies a continuous improvement approach to its purchasing arrangements. In order to promote best practice, DVA 'established a Contract Advisory Unit (CAU).' DVA commented that the CAU was set up to provide the department with a high-level professional capability to advise and assist in all aspects of procuring goods and services, especially health services.' In addition, the CAU provides 'procurement policy, training, advice and expertise to DVA staff involved in procurement.' DVA indicated that 'consultation with the CAU is mandatory within DVA for all procurement except that which is less than \$2 000 or low risk and less than \$10 000.'³⁰
- 4.34 The ANAO, as part of a multi-agency performance audit, noted that 'where it occurred, the devolution of contract management led to a lack of consistency in related policies and in the application of those policies in practice.'³¹ The ANAO concluded that a part of contract management better practice was the creation of a centralised unit which promotes 'continuous improvement and provides an overall management - administrative role for organisation contracts.'³²

Conclusions

- 4.35 As part of *Report 369, Australian Government Procurement*, the Committee examined the extent to which purchasing functions were distributed within agencies. While some agencies had decentralised arrangements, there was a trend towards centralised purchasing units. Evidence from the Department of Foreign Affairs and Trade and Telstra indicated that there was greater efficiency and effectiveness from having certain purchasing functions centralised. The Committee, at that time, concluded that all agencies should review their purchasing arrangements with a focus on evaluating the efficiency and effectiveness of the distribution of functions or task within an agency.

29 Dr David Rosalky, Department of Family and Community Services, *Transcript*, pp. 201–202.

30 Department of Veterans Affairs, Correspondence, dated 13 July 2000, containing follow-up information relating to *Report 369, Australian Government Procurement*.

31 Australian National Audit Office, *Report No. 12, Management of Contracted Business Support Processes*, 1999–2000, p. 15.

32 Australian National Audit Office, *Report No. 12, Management of Contracted Business Support Processes*, 1999–2000, p. 20.

- 4.36 As part of the inquiry into contract management, the Committee is pleased that more agencies are reporting that they have centralised purchasing units which provide a source of procurement and contract management expertise from which other staff can draw on for guidance and advice. The Department of Family and Community Services, for example, has established a contract management services unit which consists of people with contract management and legal expertise. At the same time, this unit can draw on external expertise when necessary. **The Committee considers that this type of arrangement has considerable merit and should be considered by other agencies.**

Training approaches

- 4.37 As part of *Report 369, Australian Government Procurement*, the training and education of purchasing officers was examined.³³ The Committee gave high priority to training and rejected, through a recommendation, the Government's decision to downgrade from 'mandatory' to 'best practice' the need for all persons undertaking procurement functions to meet appropriate Commonwealth Procurement Competency Standards. Regrettably, despite a weight of support for mandatory training, the Government rejected the Committee's recommendation.
- 4.38 As part of the inquiry into contract management, the training and education approaches used by agencies was examined. The ANAO, as part of a multi-agency performance audit, found that there was an informal approach to training. The ANAO commented that 'training was found to be unstructured and usually the responsibility of individual contract managers.'³⁴ The ANAO stated:

Contract management training and continuous improvement initiatives were found, in most instances, to be informal. Many organisations relied on the skills and experience of their current contract managers and had not developed a formal training or development program that recognised the changing contract environment.³⁵

33 Joint Committee of Public Accounts and Audit, *Report 369, Australian Government Procurement*, CanPrint, Canberra, 1999, pp. 43–49.

34 Australian National Audit Office, *Report No. 12, Management of Contracted Business Support Processes*, 1999–2000, p. 27.

35 Australian National Audit Office, *Report No. 12, Management of Contracted Business Support Processes*, 1999–2000, p. 15.

- 4.39 In view of this, the ANAO recommended that agencies 'develop contract management expertise through structured training and skills acquisition programs.³⁶ The Department of Civil and Environmental Engineering, University of Melbourne claimed that as part of its training of people from Federal government departments and private organisations it was 'frequently surprised at the lack of expertise in the management of contracts by people who have very senior positions.'³⁷
- 4.40 PriceWaterhouseCoopers (PWC) advised that training 'be compulsory for people involved in contract management within the agency, that it be coordinated centrally and that there be an ongoing education campaign.'³⁸ In addition, PWC argued that the quality of training should form part of a CEO's performance agreement. Similarly, the Institution of Engineers, Australia commented that 'accredited procurement training should be mandatory for government purchasing officers, particularly for complex, engineering purchases of high value.'³⁹
- 4.41 The response from some agencies suggested that there was improved recognition of the importance of contract management training. DETYA acknowledged that much of its business was dominated by contract management functions, and consequently risk management and contract management expertise are considered core functions of managers. In view of this, DETYA has supported these management requirements with appropriate risk management and contract management training. In the last 18 months, DETYA has put 500 people through both sets of training.⁴⁰ Similarly, the Department of Family and Community Services (FACS) indicated that it has formal contract management training of which 100 people have been through.⁴¹
- 4.42 OASITO indicated that it has developed a contract manager's manual. In addition, OASITO is 'conducting contract management seminars with agencies and we are working with them to make sure that they identify and recruit early the key people involved.'⁴²

36 Australian National Audit Office, *Report No. 12, Management of Contracted Business Support Processes, 1999–2000*, p. 28.

37 Mr Colin Duffield, The Department of Civil and Environmental Engineering, University of Melbourne, *Transcript*, p. 67.

38 Ms Michelle Narracott, PriceWaterhouseCoopers, *Transcript*, p. 44.

39 Institution of Engineers, Australia, *Submission*, p. S373.

40 Mr Stephen Sedgwick, Department of Education, Training and Youth Affairs, *Transcript*, pp. 156–157.

41 Mr Richard Landsdown, Department of Family and Community Services, *Transcript*, p. 208.

42 Mr Ross Smith, Office of Asset Sales and Information Technology Outsourcing, *Transcript*, p. 170.

- 4.43 Centrelink indicated that it has two procurement units with a staff total of about 25 to 30 of whom 70 per cent have qualifications mostly at the certificate four and the graduate certificate in strategic procurement.⁴³ AusAid described a strategy comprising formal training and specialist external advice:

We have got a series of short courses covering the following sorts of things: introduction to contracting, contracting terms and conditions, managing the contract – contract law is quite a popular one – and so on. We are pumping out the message to our staff that, while they cannot be specialists in this area, they have got to know enough about it to run the show. We also hire specialists, by the way, where we need specialists. We have an in-house lawyer who sits just a few doors away from each of us. That in-house lawyer is outsourced from the Attorney-General's Department. He has been with us for quite a while now, so he knows us quite well. There is a regular stream going to see this guy all the time, talking about all of these aspects. This is in the contract services branch.⁴⁴

Conclusions

- 4.44 Training and skills development is an essential part of the contract management framework. As part of *Report 369, Australian Government Procurement*, the Committee recommended that the achievement of Commonwealth Procurement Competency Standards by purchasing officers should be mandatory. The government rejected this and insisted that the achievement of competency standards should be 'best practice'.
- 4.45 In October 1999 the Australian National Audit Office commented that 'training was found to be unstructured and usually the responsibility of individual contract managers.' It is unacceptable for contracting agencies not to provide structured training. The Committee will not retreat from the priority it places on contract management training and skills development. Therefore, the Committee suggests that agency CEOs, with significant contracting responsibilities, should undertake an internal audit reviewing the adequacy of training programs and outcomes for contract management staff. Where inadequacies are identified, CEOs should develop enhanced training approaches.

43 Mr Alan Welburn, Centrelink, *Transcript*, p. 238.

44 Dr Peter McCawley, AusAid, *Transcript*, p. 21.

- 4.46 The training aspect of contract management should form part of an integrated approach to contract management comprising technical and legal skills development, the retention of corporate memory, and the development of centralised purchasing units which together seek to raise the competitiveness of agencies by maximising human resources. Agencies have an obligation to maximise outcomes in each area.

Bob Charles, MP

Chairman

11 October 2000