

INTRODUCTION

Background

- 1.1 In June 1999 the Committee tabled *Report 369, Australian Government Procurement*. *Report 369* examined the key features of the Commonwealth Government purchasing framework focusing on the devolved arrangements, the adequacy of the Commonwealth Procurement Guidelines, Australian industry development objectives and electronic commerce and the statistical data base.¹
- 1.2 The overall assessment made in *Report 369* was that Commonwealth Government procurement has improved since 1994 when the Report by the House of Representatives Standing Committee on Industry, Science and Technology was tabled. However, there are still areas of government procurement that need further improvement.² In particular, it is essential that Chief Executive Officers of departments and agencies take a greater role in managing their purchasing responsibilities.
- 1.3 While the Government, in its response to *Report 369*, did not support all recommendations, the Committee notes that *Report 369* has positively influenced government administration. For example, a range of agencies during the inquiry into contract management indicated that they were developing centralised purchasing units to provide advice across the department. In addition, agencies reported that they were centralising the

1 Joint Committee of Public Accounts and Audit, *Report 369, Australian Government Procurement*, CanPrint, Canberra, June 1999.

2 House of Representatives Standing Committee on Industry, Science and Technology, *Australian Government Purchasing Policies: Buying Our Future*, First Report, AGPS, Canberra, March 1994.

processing of their purchasing responsibilities. These initiatives are consistent with key findings made by this Committee.

- 1.4 *Report 369* addressed some features of contract management. The Committee, however, considered that a separate inquiry could be devoted to this topic. In addition, it was felt that an inquiry into contract management would compliment the Committee's earlier work on government procurement.
- 1.5 On 25 August 1999 the Joint Committee of Public Accounts and Audit (the Committee) resolved to conduct an inquiry into contract management in the Australian Public Service (APS).

Reasons for the inquiry

- 1.6 The search for excellence in contract management is one of the most pressing challenges for the APS. With the move to greater outsourcing of programs and services, public sector agencies must equip themselves with a range of skills, knowledge and experience to ensure that contract management is efficient and effective. Contract management extends to the purchase of both goods and services. The following figures help to give some context to the scale of contract management in the APS:
 - in 1998–99, there were 111 753 purchasing transactions of goods and services of value greater than \$2 000 reported by Commonwealth Government agencies, totalling \$7.9 billion; and
 - over 30 000 suppliers are awarded contracts of value greater than \$2 000 by the Commonwealth annually.³
- 1.7 In view of the public monies allocated to purchasing goods and services, and the complexities of managing government contracts, it is essential that this aspect of public administration be given sufficient and ongoing scrutiny.

Objectives, scope and focus

- 1.8 To date, contract management in the APS has a chequered history. This is demonstrated by the Auditor-General's focus on contract management,

3 Department of Communications, Information Technology and the Arts, Commonwealth Electronic Procurement, Implementation Strategy, April 2000, p. 5.
[<http://www.ogo.gov.au/projects/eprocurement/EprocurementStrategy.htm>]

through a range of performance audits, and the identification of inadequacies. The Committee's overall objective is to assess the extent to which there are any systemic contract management problems and, in particular, whether better practice approaches can be identified.

- 1.9 The Committee is particularly interested in how effectively government agencies are managing highly complex contracts for the provision of goods over an extended time period, and for the provision of services to the public and to internal departmental clients. These types of contracts often run for extended periods and require constant attention and monitoring from contract management personnel.
- 1.10 Where relevant, the findings and recommendations of various Auditor-General performance audits have been used in the report. Through this process individual government contracts are examined and key findings are discussed if they have wider application. The Committee did not conduct detailed examinations of individual government contracts.
- 1.11 The following key issues were identified by the Committee as warranting close examination. Within each of these sections, which are reflected in the Chapter outline, the Committee identifies a range of objectives which it sought to achieve.

The accountability framework

- 1.12 Adequate and effective public accountability is a critical part of public administration. A focus of this inquiry is the extent to which there is adequate public scrutiny of government contracts. The key issue that has arisen as part of this and other inquiries is the growing extent to which executive government is applying commercial-in-confidence status to all or parts of government contracts. Previous inquiries have concluded that this trend is reducing parliamentary accountability and the public's right to know.⁴
- 1.13 The Committee has sought to clarify the key features of the existing accountability provisions relating to government contracts, and to develop enhancements for strengthening parliamentary scrutiny of government contracts. As part of this discussion, the Committee revisits the ongoing debate about contract access provisions by the Auditor-General.

4 See Administrative Review Council, *The Contracting Out of Government Services*, Report No. 42, CanPrint, Canberra, 1998, p. 52; Public Accounts and Estimates Committee, Parliament of Victoria, *Commercial in Confidence Material and the Public Interest*, March 2000, p. xxii; and Senate Finance and Public Administration References Committee, *Contracting out of Government Services, Second Report*, Senate Printing Unit, May 1998, p. 71.

Contracting fundamentals

- 1.14 In this section, the Committee focuses on some key contract management issues including contract specifications, performance measures and monitoring, payment schedules and the handling of contract disputes. Some groups, in evidence to the Committee, indicated that the preparation of appropriate contract specifications is the key to effective contract management. The different approaches of agencies will be examined focusing on the use of functional versus detailed process driven specifications.
- 1.15 The types of payment schedules will be examined. This discussion will seek to identify those payment systems which provide effective control for the contract manager and provide appropriate incentives for the contractor. In addition, the methods for resolving contract disputes will be assessed.
- 1.16 The Commonwealth's approach to risk management is that the party best able to manage risk takes responsibility for that risk. The practical application of this approach will be examined. In addition, the broader risk management practices of agencies will be examined focusing on risk identification, analysis, assessment and the treatment and monitoring of risk.

Contract management personnel

- 1.17 While appropriate contract specifications are the key to good contract management, highly skilled, experienced and trained contract management personnel are the key to good contract specifications. This section will review the key observations made about government contract management personnel, and agency views about the skills and experiences of their staff. The evidence suggests that there should be a continued focus on training and skills development and, in particular, the development of legal skills and awareness.

Contract management

- 1.18 Contract management involves a complex set of tasks which must be brought together to successfully negotiate and fulfil the objectives of a contract. The Management Advisory Board/Management Improvement Advisory Committee (MAB/MIAC), through its consultation with experienced government contract managers, identified key attributes which form the contract management cycle. The Committee's inquiry focuses on the period after the tender has been awarded, which deals with

contract development and ongoing management of the contract. Figure 1.1 shows the key features of effective contract management.

- 1.19 MAB/MIAC reported that identifying and securing skills for contracting is the critical factor influencing all parts of contract management.⁵ MAB/MIAC identified, in addition to strong subject matter skills, interpersonal skills and project management skills as essential attributes of an effective contract manager. The contract manager's subject matter skills should include knowledge of the relevant industry, procurement processes, accountability requirements, contract law, financial management and human resource management. In relation to interpersonal skills, contract managers should have strong communication, negotiation, facilitation and team-building abilities. In addition, contract managers must have strong project management skills so that they can develop a strategic plan and ensure that there is effective integration of people and tasks. MAB/MIAC state:

Strategic project planning, and a shared understanding of the expected contract inputs and outputs, will assist contract managers. Contract managers also need to be able to draw together, motivate and lead a team of people to achieve a common goal. Successful project managers are able to establish effective working relationships within the team and set assignments so that the disparate skills of the team are used effectively.⁶

- 1.20 The Commonwealth's guidelines for Competitive Tendering and Contracting identifies the following key points which 'will promote successful contract management':

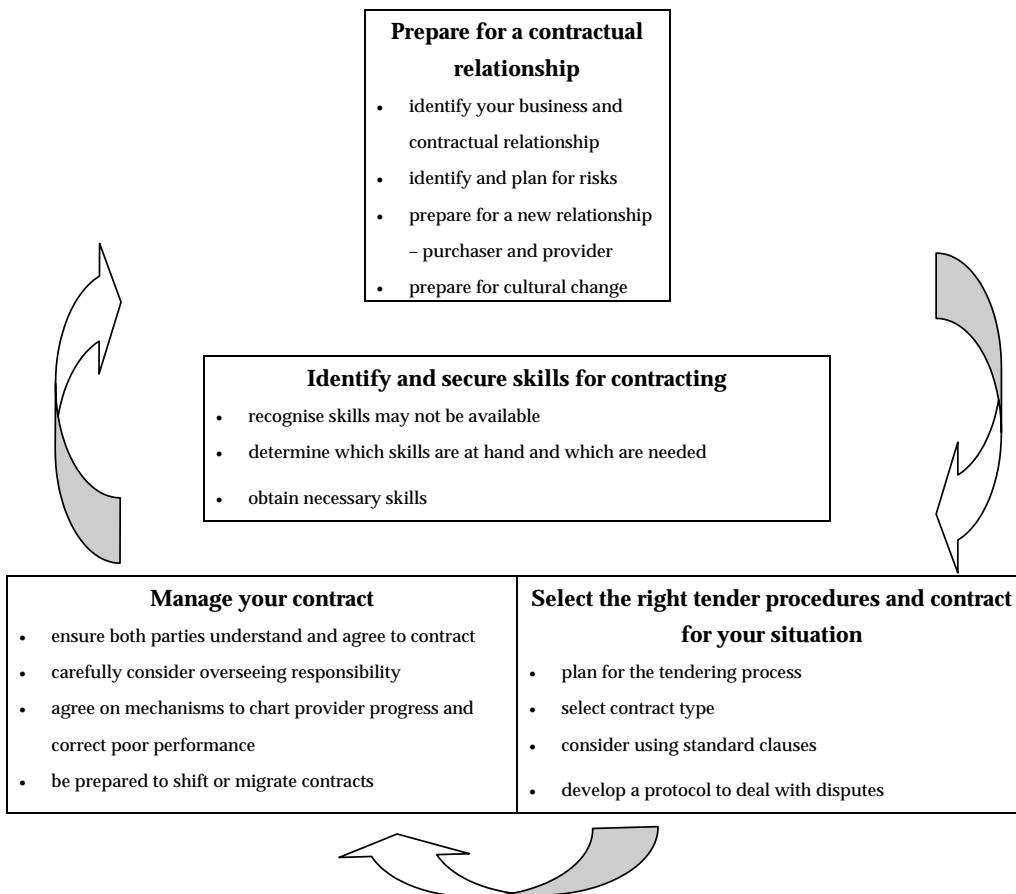
- the manager of the project team is given full support from senior management and the resources to do the job;
- the manager is as familiar as possible with the activity and the process from which the contract arose;
- the manager has the requisite skills or is being trained in contract management and any specialist skills required;
- the manager has sufficient authority for day-to-day management;
- the agency has a relationship of trust with the provider;
- a flexible attitude is taken to contract management but care is taken to stay within the limits of the contract requirements;

5 MAB/MIAC, *Before you sign the dotted line, Ensuring contracts can be managed*, Commonwealth of Australia, May 1997, p. 15.

6 MAB/MIAC, *Before you sign the dotted line, Ensuring contracts can be managed*, Commonwealth of Australia, May 1997, p. 55.

- there is a point of contact for both the agency and the contractor;
- disputes are handled diplomatically and immediately; and
- the project management team learns as it goes to continuously improve its tendering of the activity.⁷

Figure 1.1 Effective Contract Management



(Source: MAB/MIAC, *Before you sign the dotted line, Ensuring contracts can be managed*, Commonwealth of Australia, May 1997, p. 15)

⁷ Department of Finance and Administration, *Competitive Tendering and Contracting, Guidance for Managers*, March 1998, p. 29.

Competitive tendering and contracting

- 1.21 Competitive tendering and contracting out (CTC) is 'the process of selecting the most preferred provider of goods and services from a range of bidders by seeking offers and evaluating these against predetermined selection criteria'.⁸ The contracting out of government services is used interchangeably with the term 'outsourcing' to explain the arrangement whereby a contracting agency enters into a contract with a supplier from outside that agency for the provision of goods and or services which typically were provided by the government agency. Used less widely is the term 'contracting in' which refers to the case where a government agency contracts in services that will be provided directly to government.⁹
- 1.22 In 1996 the Industry Commission (IC) completed a report into CTC by public sector agencies.¹⁰ The IC concluded that 'when done well, CTC can lead to significant improvements in accountability, quality, and cost effectiveness, providing benefits to clients, taxpayers, and the broader community'.¹¹ In response to the IC's report, the Department of Finance and Administration (DoFA) reported that:

...the Government directed agency managers to systematically review activities to identify whether they should continue to remain the responsibility of the Commonwealth, or whether to privatise, discontinue or devolve activities if they fall outside the Commonwealth's domain.

Where it is decided activities should remain the responsibility of the Commonwealth, agencies are encouraged to use CTC as a tool to improve efficiency and effectiveness. CTC is a means of improving service delivery as well as capturing skills not readily available in the public sector.¹²

8 Department of Finance and Administration, *Competitive Tendering and Contracting, Guidance for Managers*, March 1998, p. 7.

9 Industry Commission, *Competitive Tendering and Contracting by Public Sector Agencies*, Report No. 48, AGPS, Melbourne, January 1996, p. xix; Administrative Review Council, *The Contracting Out of Government Services*, Report to the Attorney-General, Report No. 48, CanPrint, Canberra, August 1998, p. 2.

10 Industry Commission, *Competitive Tendering and Contracting by Public Sector Agencies*, Report 48, 1996.

11 Industry Commission, *Competitive Tendering and Contracting by Public Sector Agencies*, Report 48, 1996, p. 1.

12 Department of Finance and Administration, *Submission*, p. S233.

- 1.23 The purpose of the Committee's inquiry is not to assess the merits or otherwise of outsourcing but, in the event that outsourcing is chosen, to assess the adequacy of contract management. It is evident that as greater use is made of CTC then greater demands and expectations will be placed on the skills, quality and performance of government contract managers.

Contract meaning

- 1.24 One of the key components of CTC is the development and management of a contract to govern the provision of goods or services. Put simply, a contract is an agreement between parties to do or deliver something. The primary aim of a contract 'is to ensure that the terms of agreement in a relationship existing between the parties are specified'. In this way, 'the concept of contract is fundamental to the creation of a commercial relationships'.¹³ In addition, contracts also provide a framework for planning, task allocation and risk allocation.
- 1.25 A key feature of a contract which distinguishes it from other agreements is that it is legally enforceable.¹⁴ Another important point is that subsequent communications, even orally, can alter the terms of a formal written contract. Officers engaged in ongoing management of a contract need to be particularly aware of this possibility.
- 1.26 The Commonwealth *Mandatory Reporting Requirements Handbook* defines a contract as 'an agreement for the procurement of goods and services under which an agency is obliged to make payment of public money to a supplier.'¹⁵
- 1.27 Dr Seddon, a specialist in contract law at the Australian National University, indicates that government contracts can cover a number of types and can be divided into roughly four categories:
- procurement – for example, the purchase of tea bags or Anzac ships;
 - purchase of services to the government previously provided from within government such as legal services and IT;
 - purchase of goods and services to be provided to the public, previously provided by government such as services to the unemployed; and
 - selling of goods and services such as surplus assets or spectrum licences.¹⁶

13 Dutton, M., et.al, *Contract Management*, Major Training Services, 1999, p. 14.

14 Seddon, N., *Government Contracts, Federal, State and Local*, 2ed, Federation Press, Sydney, 1999, p. 29.

15 Office for Government Online, *Mandatory Reporting Requirements Handbook*, Version 2, p. 9.

16 Dr Nick Seddon, *Submission*, p. S14.

- 1.28 It is important to note that while contracts are normally formal written documents, other forms of communication can influence contractual relationships. The MAB/MIAC states:

Contracts are often formal documents, but at law a contractual relationship can exist independently of any written documents. They can be made through correspondence (known as exchange of letters), orally, through other acts or omissions of the contracting parties, or a combination of these elements – even if the parties did not intentionally set out to form a contract. The basic test is whether the parties have conducted themselves in a way that is consistent with an intention to create binding rights and obligations.¹⁷

- 1.29 In view of these contractual complexities, MAB/MIAC advised that 'agencies should consider seeking legal advice before entering into any contractual relationship'.¹⁸

- 1.30 Domberger provides a useful definition which highlights the components of quality, payments, timeframe, and the development and regulation of the contractual relationship :

The formal contract that is entered into then binds the parties to the exchange of services of a pre-determined quality and for agreed financial payments. The transaction typically spans a period of a year or more, and the contract becomes the instrument through which relations between the parties are managed and regulated.¹⁹

The extent of Commonwealth outsourcing

- 1.31 In seeking to determine the extent of Commonwealth government outsourcing it is not sufficient to merely cite the value of goods and services purchased on an annual basis. In the Committee's *Report 369*, the value of goods and services purchased by Commonwealth agencies in 1997–98 was about \$8.8 billion. In 1998–99, this figure totalled \$7.9 billion and there were 111 753 purchasing transactions of goods and services of value greater than \$2 000 reported by Commonwealth government agencies.

17 MAB/MIAC, *Before you sign the dotted line, Ensuring contracts can be managed*, Commonwealth of Australia, May 1997, p. 36.

18 MAB/MIAC, *Before you sign the dotted line, Ensuring contracts can be managed*, Commonwealth of Australia, May 1997, p. 36.

19 cited in MAB/MIAC, *Before you sign the dotted line, Ensuring contracts can be managed*, Commonwealth of Australia, May 1997, p. 63.

- 1.32 However, from the available statistical evidence, it is difficult to determine the proportion of government spending that accounts just for the provision of services. The IC identified this same problem in its 1996 inquiry into CTC. The IC's focus was on the provision of services and not goods. The IC estimated that in 1994–95, the total Commonwealth budget sector contract expenditure on services would have been around \$4.5 billion, excluding construction services.²⁰
- 1.33 The *Commonwealth Procurement Guidelines, Core Policies and Principles*, March 1998, requires that agencies subject to the *Financial Management and Accountability Act 1997* publish contracts and standing offers with a value of \$2 000 or more in the *Commonwealth Purchasing and Disposals Gazette*. From the *Gazette*, the Office for Government Online (OGO) has extracted statistical information for inclusion in the *Purchasing Statistics Bulletin 1999*. While this bulletin shows the total value of purchasing by government agencies for the previous four years, it also separates contract notifications by industry sector which helps to show the value of purchasing on services. Table 1.1 shows the value of government purchasing by sector for the years 1995–96 to 1998–99. Table 1.1 shows that in 1998–99, of the \$7.9 billion spent on government procurement, \$4.3 billion was spent on services.

Table 1.1 Contract notification by industry sector, 1995–96 to 1998–99

Sector	1995–96	1996–97	1997–98	1998–99
Primary sector	\$44 392 790	\$94 274 085	\$74 712 989	\$144 189 582
Manufacturing sector	\$3 979 444 078	\$2 079 847 106	\$4 701 744 319	\$3 535 049 364
Services sector	\$4 540 838 558	\$2 942 828 227	\$4 024 246 455	\$4 232 182 986
Total	\$8 564 675 426	\$5 116 949 418	\$8 800 703 763	\$7 911 421 932

(Source: Office for Government Online, *Purchasing Statistics Bulletin 1999*, p. 7)

- 1.34 The Department of Defence, in most years, accounts for over 50 per cent of government expenditure on goods and services. For example, in 1998–99, the value of Defence spending was \$5.107 billion or 64.5 per cent of all government spending by Budget funded agencies. The influence of Defence upon government spending is also demonstrated by examining the top 10 suppliers for 1998–99 which are shown in Table 1.2.

²⁰ Industry Commission, *Competitive Tendering and Contracting by Public Sector Agencies*, Report No. 48, 1996, p. 59.

Table 1.2 Contract notification for the top 10 suppliers, 1998–99

Rank	Supplier	Value of notification	Number of notifications
1	ADI Limited	\$1 382 364 410	1 297
2	IBM Australia Limited	\$178 663 850	378
3	British Aerospace Australia Ltd	\$176 530 301	251
4	KFPW Pty Ltd	\$142 981 941	696
5	Thiess Contractors Pty Ltd	\$142 974 497	19
6	Lockheed Martin Australia Pty Ltd	\$128 278 966	18
7	Telstra Corporation Limited	\$125 022 957	2 252
8	Tenix Defence Systems Pty Ltd	\$121 437 740	259
9	Serco Defence Services Pty Ltd	\$105 355 019	1
10	CSC Australia Pty Ltd	\$71 735 188	204
	Total of top 10 suppliers	\$2 575 344 868	5 375
	Total of all other suppliers	\$5 336 077 064	112 954
	Grand total of all suppliers	\$7 911 421 932	118 329

(Source: Office for Government Online, *Purchasing Statistics Bulletin 1999*, p. 26)

Relevant reports and reviews

- 1.35 In recent years, contract management has been the subject of a range of reviews and inquiries. The Committee's consideration of previous reports is not comprehensive but seeks to identify some of the key contract management issues that are relevant to this inquiry.
- 1.36 In 1996 the IC released a report which considered the merits of competitive tendering and contracting of government services.²¹ With respect to accountability, the IC stressed that 'while responsibility to do certain things can be transferred, accountability for the results cannot'.²² The IC concluded that contracting out can enhance accountability through

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

22 Industry Commission, *Competitive Tendering and Contracting by Public Sector Agencies*, Report No. 48, 1996, p. 4.

the need to more clearly specify the goods and services to be delivered and the precise responsibilities between agency and contractor. The IC examined the conflict that exists between public scrutiny and the claims for commercial confidentiality of contracts. The IC recommended:

Recognising the balance between commercial confidentiality and accountability, governments should make public as much information as possible to enable interested people to assess contracting decisions made by agencies. Of particular importance is information on the specifications of the service, the criteria for tender evaluation, the criteria for the measurement of performance and how well the service provider has performed against those criteria.²³

- 1.37 The IC also examined the need for government agencies to ensure that they have efficient and effective contract managers. The IC advised that if agencies did not have suitable human resources then they should consider 'drawing on the experience of individuals and organisations outside the agency through recruitment or skills transfer'.²⁴
- 1.38 In 1998 the Administrative Review Council (ARC) released its report, *The Contracting Out Of Government Services*.²⁵ The ARC examined and made recommendations about the administrative law implications of contracting out of government services. The key principle of the ARC's report is 'that the rights and remedies which are available to members of the public when services are delivered by government agencies should not be lost or diminished as a result of contracting out'.²⁶ The ARC's report focused on contract drafting and management, access to information, complaints and compensation, and administrative review.
- 1.39 In relation to accountability and reporting, the ARC recommended that 'agencies should include provisions in their contracts that require contractors to keep and provide sufficient information to allow for proper parliamentary scrutiny of the contract and its management'.²⁷

23 Industry Commission, *Competitive Tendering and Contracting by Public Sector Agencies*, Report No. 48, 1996, p. 6.

24 Industry Commission, *Competitive Tendering and Contracting by Public Sector Agencies*, Report No. 48, 1996, p. 42.

25 Administrative Review Council, *The Contracting Out of Government Services*, Report No. 42, CanPrint, Canberra, 1998.

26 Administrative Review Council, *The Contracting Out of Government Services*, Report No. 42, p. 1.

27 Administrative Review Council, *The Contracting Out of Government Services*, Report No. 42, p. vii.

- 1.40 In November 1997, May 1998, and June 2000 the Senate Finance and Public Administration References Committee tabled three reports on the contracting out of government services.²⁸ In its second report, the Senate Committee supported advice from the Australian National Audit Office (ANAO) and the Ombudsman that a reverse onus of proof test should apply to the production of commercially sensitive documents. In addition, the Senate Committee recommended that where it was considered that arguments for non-disclosure were inadequate, the ANAO should act as an independent arbiter.²⁹
- 1.41 In March 2000 the Public Accounts and Estimates Committee (PAEC), Parliament of Victoria, tabled two reports related to government contracting.³⁰ The PAEC in its report, *Commercial in Confidence Material and the Public Interest* warned that contracting out could lead to less public and parliamentary scrutiny. The PAEC found that 'the wide interpretation and common usage of the term commercial in confidence throughout the public sector has resulted in a broadening of the scope of commercial confidentiality beyond that which is legally warranted.'³¹ The PAEC concluded, therefore, that 'the use of confidentiality clauses should be kept to an absolute minimum and that contracts should instead contain specific terms stating that their contents are *prima facie* public.'³²
- 1.42 Some of the key Commonwealth Government reports and guidelines which seek to assist contract managers include:
- Department of Finance and Administration, *Competitive Tendering and Contracting, Guidance for Managers*, March 1998;
 - Department of Finance and Administration, *Commonwealth Procurement Guidelines*, March 1998;
 - Department of Finance and Administration, *Commonwealth Procurement Circulars*;

28 Senate Finance and Public Administration References Committee, *Contracting Out of Government Services, First Report, Information Technology*, Senate Printing Unit, November 1997; *Contracting out of Government Services, Second Report*, Senate Printing Unit, May 1998; and *Inquiry into the Mechanism for Providing Accountability to the Senate in Relation to Government Contracts*, Senate Printing Unit, June 2000.

29 Senate Finance and Public Administration References Committee, *Contracting Out of Government Services, Second Report*, Senate Printing Unit, May 1998, p. 52.

30 Public Accounts and Estimates Committee, Parliament of Victoria, *Outsourcing of Government Services in the Victorian Public Sector*, Government Printer for the State of Victoria, March 2000; and *Commercial in Confidence Material and the Public Interest*, March 2000.

31 Public Accounts and Estimates Committee, Parliament of Victoria, *Commercial in Confidence Material and the Public Interest*, March 2000, p. xxii.

32 Public Accounts and Estimates Committee, Parliament of Victoria, *Commercial in Confidence Material and the Public Interest*, March 2000, p. xxix.

- MAB/MIAC, *Before you sign the dotted line...Ensuring contracts can be managed*, 1997; and
- Office for Government Online, *Mandatory Reporting Requirements Handbook, Government Procurement*, 2000

Auditor-General Performance Audits

- 1.43 In May 1998 the Auditor-General, Mr Pat Barrett, addressed senior executives in the public service and commented that one of their most pressing challenges is the requirement for project and contract management expertise.³³ The Auditor-General stated:

Recent audit reports have noted significant costs associated with less than adequate project and contract management skills in the APS. We know we cannot outsource accountability. It may be surprising that, over such a long period of time, the APS has acquired relatively limited really good project management skills. But perhaps not so surprising, is our minimal contract management skills basically because they have been in limited demand.³⁴

- 1.44 In highlighting his point, the Auditor-General drew attention to the less than adequate contract management outcomes associated with the Jindalee Operational Radar Network and the Collins Class Submarine Projects. With respect to these projects, the Auditor-General stated that 'the Commonwealth was unnecessarily exposed to financial risks over which it apparently left itself limited room for recourse with the suppliers concerned despite the 'apparent protection' of 'fixed price' contracts.³⁵

- 1.45 In view of the Auditor-General's concern about the quality of contract management in the Australian Public Service, a range of performance audits have been conducted into aspects of contract management. Some of the Auditor-General's relevant performance audits, and their findings, include³⁶:

- *Audit Report No. 24, 1997–1998, *Matters Relevant to a Contract with South Pacific Cruise Lines Limited*;

33 Mr Pat Barrett, AM, Auditor-General for Australia, *Address to Senior Executive Leadership Program – Presentation Day Hill Station*, Canberra, 19 May 1998, p. 29.

34 Mr Pat Barrett, AM, Auditor-General for Australia, *Address to Senior Executive Leadership Program – Presentation Day Hill Station*, Canberra, 19 May 1998, p. 29.

35 Mr Pat Barrett, AM, Auditor-General for Australia, *Address to Senior Executive Leadership Program – Presentation Day Hill Station*, Canberra, 19 May 1998, p. 30.

36 Australian National Audit Office, *Submission*, pp. S143–159.

- ⇒ the report concluded that there were significant problems with the management of this contract and that the Commonwealth had been exposed to unnecessary risk and possible misdirection of program funds. The cruise ship project serves as a reminder that managing risk is an integral part of sound business practice and should be a commonplace activity across the APS;
- *Audit Report No. 34, 1997–98, *New Submarine Project*, Department of Defence;
 - ⇒ the contract provides only modest recourse by the Commonwealth by way of financial guarantees and liquidated damages in the event of late delivery or under-performance;
 - ⇒ by January 1998 prime contract expenditure exceeded 95 per cent of the contract sum while Navy had provisionally accepted only two submarines;
- *Audit Report No. 47, 1997-1998, *Management of Commonwealth Guarantees, Indemnities and Letters of Comfort*;
 - ⇒ the ANAO found that relatively few agencies had adopted contract registers as an adjunct to a main or central document registry system for the management of the Commonwealth's guarantees, indemnities and letters of comfort;
- Audit Report No. 17, 1998–1999, *Acquisition of Aerospace Simulators*;
 - ⇒ this audit commented on adverse effects of high staff turnover on some acquisition project teams and the need to have the right project management experience;
- Audit Report No. 24, 1998–99, *DAS Business Unit Sales*;
 - ⇒ the ANAO considered that for future asset sales, administrative procedures could be strengthened through proper contract management;
- *Audit Report No. 29, 1998–1999, *Provision of Migrant Settlement Services by the Department of Immigration and Multicultural Affairs (DIMA)*,
 - ⇒ staff were not clear about contract management procedures and the required contract management meetings were not being held regularly;
 - ⇒ there was no systematic process to ensure effective monitoring and verification of reports provided by the contractor, including those relating to expenditure, rent and debtors, resulting in one State not reviewing the reports at all;

- Audit Report No. 3, 1999–2000, *Electronic Travel Authority System, Department of Immigration and Multicultural Affairs (DIMA);*
 - ⇒ DIMA's contract management practices were less than effective and consequently did not provide adequate assurances that the Commonwealth's interests were adequately protected;
 - ⇒ there had been no formal monitoring of the contract; and
 - ⇒ DIMA did not have any mechanisms in place to provide independent verification that invoiced services had been delivered;
- Audit Report No. 12, 1999–2000, *Management of Contracted Business Support Processes*. This audit reviewed eight agencies and recommended that organisations:
 - ⇒ develop contract management expertise through structured training and skills acquisition programs;
 - ⇒ establish formal processes for handling disputes;
 - ⇒ establish clearly the processes for establishing, monitoring and review of contract performance measures; and
 - ⇒ ensure that their contracts allow for the Auditor-General to have sufficient access to assist in the performance of the Auditor-General's functions;
- *Audit Report No. 13, 1999–2000, *Management of Major Equipment Acquisition Projects*, Department of Defence;
 - ⇒ the audit found that despite the \$2.4 billion spent on major acquisition projects each year, Defence has not yet established the career structures it requires to be reasonably self-reliant in developing suitably experienced professional project managers, with the acquisitions organisation reliant to some extent on contracted in projected managers;
- Audit Report No. 15, 1999–2000, *AusAid – Management of the Australian Development Scholarship Scheme*:
 - ⇒ differences in contract management practices were noted between State offices;
 - ⇒ the contract focused on the delivery of specified services, but did not specify any performance outcomes that institutions aim to deliver for ADS students through the provision of these services;
 - ⇒ the audit noted that there would be value in drawing on independent expert advice on contract design and negotiation; and
- *Audit Report No. 24, 1999–2000, *Commonwealth Management and Regulation of Plasma Fractionation*, Department of Health and Aged Care (DHAC);

- ⇒ there has been an absence of adequate financial controls over payments by DHAC under the plasma derived products agreement. Between 1 January 1994 and April 1999, DHAC paid out more than \$400 million of Commonwealth funds without a formal process in place to confirm that products it had been invoiced for had actually been received by the designated recipients.
- 1.46 The Audit Reports marked with an * have been reviewed by the Committee as part of its quarterly review of Auditor-General performance audits. The quarterly review process includes a round table public hearing with the audited agency and the Australian National Audit Office. From the evidence collected, a report is prepared and presented to the Parliament.

Conduct of the inquiry

- 1.47 On 4 and 10 September 1999, the Committee advertised in *The Weekend Australian* and the *Australian Financial Review*, terms of reference for an inquiry into contract management in the APS and invited submissions from interested individuals and organisations. In addition, the Committee wrote to a range of industry organisations and government agencies seeking submissions. The terms of reference and other information about the inquiry were also advertised on the Committee's internet homepage at:
- <http://www.aph.gov.au/house/committee/jpaa/index.htm>
- 1.48 Over 75 submissions were received which are listed at Appendix A. The Committee also received 36 exhibits which are listed at Appendix B.
- 1.49 Evidence was taken at public hearings held in Canberra, Melbourne and Brisbane during February, March and June 2000. A list of witnesses appearing at the hearings can be found at Appendix C.
- 1.50 Copies of the transcript of evidence from the public hearings and the volume of submissions are available from the Committee secretariat and for inspection at the National Library of Australia. The transcripts of evidence are also available on the Hansard website at:
- <http://www.aph.gov.au/hansard/>
- 1.51 The Committee appreciates the assistance of the Law and Bills Digest Research Group, Parliamentary Library, for providing advice during the writing of the report.

Report structure

- 1.52 The report structure reflects the key inquiry objectives. Chapter Two examines the adequacy of the accountability framework relating to government contracts.
- 1.53 Chapter Three reviews some key contracting requirements including contract specifications, performance measures and monitoring, payment schedules, dealing with contract disputes, and risk management.
- 1.54 The final chapter examines issues affecting contract management personnel such as legal skills and awareness, and retention of corporate memory.