

No. 57 of 2001-2002—Performance Audit—Management framework for preventing unlawful entry into Australian territory: Department of Immigration and Multicultural and Indigenous Affairs (*presented to the Deputy President on 14 June 2002*).

No. 58 of 2001-2002—Performance Audit—Defence Property Management: Department of Defence (*presented to the President on 17 June 2002*).

#### **RETURNS TO ORDER PRESENTED TO THE PRESIDENT SINCE THE LAST SITTING OF THE SENATE**

Statement of compliance with the continuing order of the Senate of 30 May 1996, as amended on 3 December 1998, **relating to indexed lists of files** received from:

- Agencies within the Communications, Information Technology and the Arts portfolio (*presented to the President on 13 June 2002*).

Health—Nuclear testing—Documents received from the Minister Assisting the Minister for Defence (Mrs Vale) in response to a resolution of the Senate agreed to on 20 March 2002 (*presented to temporary chair of committees, Senator Forshaw, on 28 May 2002*).

*The government response read as follows—*

#### **GOVERNMENT RESPONSE TO SENATE FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE REPORT: COMMONWEALTH CONTRACTS: A NEW FRAMEWORK FOR ACCOUNTABILITY WHOLE OF GOVERNMENT RESPONSE TO RECOMMENDATIONS 1-4**

The Senate Finance and Public Administration References Committee report—Commonwealth Contracts: A New Framework for Accountability was tabled in the Senate on 26 September 2001. The report was the conclusion of an inquiry into the mechanism for providing accountability to the Senate in relation to government contracts that commenced on 12 April 2000. The key objective of the inquiry was to analyse the “mechanism contained in general business notice of motion no. 489, standing in the name of Senator Murray, providing for accountability to the Senate in relation to government contracts”.

The Government is keenly aware of the importance of transparency and accountability when managing Government contracts.

Accordingly, Financial Management and Accountability Act 1997 (FMA) agencies operate under a robust accountability framework that

enables detailed scrutiny of any contracts that they may enter into. The legislative and policy framework governing FMA agencies includes the:

- Financial Management and Accountability Act 1997
- Financial Management and Accountability Regulations
- Commonwealth Procurement Guidelines and Best Practice Guidance;
- Chief Executive’s Instructions;
- Freedom of Information Act 1982
- Ombudsman Act 1976
- Auditor-General Act 1997;
- Public Accounts and Audit Committee Act 1951;
- Public Works Committee Act 1969; and
- Mandatory Reporting of Commonwealth Contracts.

The current legislative and policy framework aims to provide an environment of accountability and transparency while also ensuring the positive economic benefits of contract management are not lost through excessive administrative requirements.

#### **Recommendation 1: Amendments to the Senate Order**

The committee recommends that the order passed by the Senate on 20 June 2001 be amended to read:

#### **LISTS OF DEPARTMENTAL AND AGENCY CONTRACTS—ORDER FOR PRODUCTION OF DOCUMENTS**

- (1) There be laid on the table, by each minister in the Senate, in respect of each agency administered by that minister, or by a minister in the House of Representatives represented by that minister, by not later than the tenth day of the spring and autumn sittings, a letter of advice that a list of contracts in accordance with paragraph (2) has been placed on the Internet, with access to the list through the department’s or agency’s home page.
- (2) The list of contracts referred to in paragraph (1) indicate:
  - (a) each contract entered into by the agency which has not been fully performed or which has been entered into during the previous 12 months, and which provides for a consideration to the value of \$100 000 or more;
  - (b) the contractor, the amount of the consideration and the subject matter of each such contract;

- (c) whether each such contract contains provisions requiring the parties to maintain confidentiality of any of its provisions, or whether there are any other requirements of confidentiality, and a statement of the reasons for the confidentiality; and
- (d) an estimate of the cost of complying with this order and a statement of the method used to make the estimate.
- (2A) If a list under paragraph (1) does not fully comply with the requirements of paragraph (2), the letter under paragraph (1) indicate the extent of, and reasons for, non-compliance, and when full compliance is expected to be achieved. Examples of non-compliance may include:
- i) the list is not up to date
  - ii) not all relevant agencies are included
  - ii) contracts all of which are confidential are not included.
- (2B) Where no contracts have been entered into by a department or agency, the letter under paragraph (1) is to advise accordingly.
- (3) In respect of contracts identified as containing provisions of the kind referred to in paragraph (2)(c), the Auditor-General be requested to provide to the Senate, within 6 months after each day mentioned in paragraph (1), a report indicating that the Auditor-General has examined a number of such contracts selected by the Auditor-General, and indicating whether any inappropriate use of such provisions was detected in that examination.
- (3A) In respect of letters including matter under paragraph (2A), the Auditor-General be requested to indicate in a report under paragraph (3) that the Auditor-General has examined a number of contracts, selected by the Auditor-General, which have not been included in a list, and to indicate whether the contracts should be listed.
- (4) The Finance and Public Administration References Committee consider and report on the first year of operation of this order.
- (5) This order has effect on and after 1 July 2001.
- (6) In this order:  
 “agency” means an agency within the meaning of the *Financial Management and Accountability Act 1997*;

“autumn sittings” means the period of sittings of the Senate first commencing on a day after 1 January in any year;

“previous 12 months” means the period of 12 months ending on the day before the first day of sitting of the autumn or spring sittings, as the case may be;

“spring sittings” means the period of sittings of the Senate first commencing on a day after 31 July in any year.

**Response: Agree in principle**

On Thursday, 27 September 2001 Senator George Campbell moved, and the Senate passed, a motion that the Senate order on departmental and agency contracts be amended in line with this recommendation.

The Government will comply with the spirit of the amended order on the same terms as the original order.

The amended Senate order clarifies that agencies’ lists of contracts are to cover the period of 12 months ending on the day before the first day of sitting of the autumn or spring sittings (as the case may be).

As ministers are required, under the Senate order, to table letters of advice in the Senate by not later than the tenth day of the relevant sittings, this clarification means that there is a relatively small ‘window’ for agencies to bring their lists up to date, brief their ministers on the lists, including sensitivities, and for ministers to table their letters of advice.

The Government notes that it will be challenging for agencies, particularly those with large numbers of contracts to be listed, to complete their preparations in sufficient time to enable the tabling deadline to be met.

As material assessed as Commercial in Confidence (CIC) can change over time, agencies may need to periodically reassess their classification of contractual material.

The Government notes that the Auditor-General is examining a selection of the contracts listed on the Internet to assess whether there was any inappropriate use of confidentiality provisions, as requested in the Senate order.

**Recommendation 2: Changes to the Gazette Publishing System (GaPS)**

- a) The committee recommends that GaPS be amended to provide:
  - An extra field, or another additional facility to record data, that can be used to notify the public of the existence of each confidentiality clause;

- A set of codes that specifically indicate the reason for each restriction, for example, national security, personal privacy or commercial sensitivity (including the relevant ANAO criterion);
- Information about the end date, renewal, extension of and amendment to, contracts listed; and
- The capacity to sort information in GaPS by agency, contract value and whether the fields notifying confidentiality is filled.

**Response: Noted**

- a) The Department of Finance and Administration recently undertook a strategic and technical review of the Gazette Publishing System (GaPS). The aims of the review were to examine the current objectives of the gazettal of Government procurement information to determine the ongoing relevance of the objectives against emerging demands and stakeholder needs and to undertake an assessment of the capacity of the system to meet these needs.

The amendments to GaPS recommended by the Senate Finance and Public Administration References Committee have been considered as part of this review.

The Committee will be advised of the Government's decisions on changes to the GaPS system once they are finalised.

**Recommendation 2: Changes to the Gazette Publishing System (GaPS)**

- b) The committee also recommends that where the secretary of a department or agency head has decided to exclude a contract from notification in GaPS the reasons should be documented and made available to the Auditor-General on request.

**Response: Agree**

- b) The recommendation that reasons for excluding a contract from notification in GaPS should be documented and made available to the Auditor-General on request is consistent with current policy.

The *Commonwealth Procurement Guidelines and Best Practice Guidance—February 2002* require that Chief Executives can issue a direction, in writing, not to gazette contracts or standing orders that are exempt matters under the *Freedom of Information Act 1982*. This direction should include the reason for non-gazettal and be kept on file for audit purposes.

**Recommendation 3: Changes to annual reporting requirements**

The committee recommends that annual reports of Financial Management and Accountability Act agencies provide the following information:

- The web address of lists of contracts of \$100 000 more;
- A report on compliance with the Senate order;
- A report on training completed by officers undertaking procurement functions;
- A report on the inclusion in RFTs and contracts of advice about public and parliamentary accountability responsibilities; and
- A report on the agency's compliance with mandatory reporting requirements and steps taken to improve the integrity of its data in GaPS.

**Response: Disagree**

The recommendations are already largely accommodated by existing measures. Relevant agencies report against guidelines, called the *Requirements for Annual Reports* (the Requirements), approved on behalf of the Parliament by the Joint Committee of Public Accounts and Audit under subsections 63(2) and 70(2) of the *Public Service Act 1999*.

The aim of the Requirements is to provide a clear and concise framework for annual reports which is consistent with standards of accountability but which also minimises duplication with other annual whole-of-government reporting, the availability of information through the Internet, and other reporting regimes such as applies under the amended Senate order.

The Government has provided additional clarification for each sub point of the recommendation below.

- The web address of lists of contracts of \$100 000 more;

In line with the amended Senate order, lists of appropriate contracts are posted on departmental and agency homepages. Department's are required to include their homepage addresses in annual reports under existing agency annual reporting requirements.

- A report on compliance with the Senate order;

The requirement of the amended Senate order for letters of compliance to be tabled in the Senate twice a year provides transparency of agency compliance, exclusive of being included in the annual report requirements. This process would

duplicate the tabling requirement and information already available in Hansard.

- A report on training completed by officers undertaking procurement functions.

Many agencies have devolved procurement functions throughout the organisation. Therefore, under the broad scope of “training completed by officers undertaking procurement functions”, some agencies would be required to report the training undertaken by the majority of their staff.

While the Government does not support a separate reporting requirement on training, it notes that the Requirements detail that agencies must provide an assessment of their effectiveness in managing and developing staff to achieve objectives. This extends to key training and development strategies, the outcomes of training and development, and evaluation of effectiveness. Reporting on this training separately would duplicate effort.

- A report on the inclusion in RFTs and contracts of advice about public and parliamentary accountability responsibilities.

The *Commonwealth Procurement Guidelines and Best Practice Guidance—February 2002* require that “Agencies should include provisions in tender documentation and contracts that alert prospective providers to the public accountability requirements of the Commonwealth, including disclosure to Parliament and its Committees.”

Under *Financial Management and Accountability Regulation 8* “an official who takes action that is not consistent with the Guidelines must make a written record of his or her reasons for doing so”.

- A report on the agency’s compliance with mandatory reporting requirements and steps taken to improve the integrity of its data in GaPS.

Reporting requirements are mandatory, therefore compliance is non-discretionary. As a result all agencies would be required to report full compliance.

The recently completed Strategic and Technical Review of GaPS conducted by the Department of Finance and Administration examined data integrity issues. The Committee will be advised of the Government’s decisions on changes to the GaPS system once they are finalised.

#### **Recommendation 4: Accountability to the Senate**

The committee recommends that potential and actual partners to a government contract be informed that contracts and contract related material may be requested by Parliament and ‘that there are no areas in connection with the expen-

diture of public funds where any person has a discretion to withhold details or explanations from the parliament or its committee unless the Parliament has expressly provided otherwise’.

#### **Response: Agree in principle**

The Government is supportive of making suppliers to Government aware that contracts and contract related material may be requested by and provided to Parliament and its Committees, recognising, where appropriate, the application of public interest immunity.

The Whole-of-Government response to ANAO report No.38: *The Use of Confidentiality Provisions in Government Contracts*, supported the recommendation that “agencies should include provisions in tender documentation that alert prospective tenderers or contractors to the implications of the public accountability responsibilities of agencies”.

The *Commonwealth Procurement Guidelines and Best Practice Guidance—February 2002* require that “Agencies should include provisions in tender documentation and contracts that alert prospective providers to the public accountability requirements of the Commonwealth, including disclosure to Parliament and its Committees.”

Ordered that the reports of the Standing Committee on Appropriations and Staffing and the Legal and Constitutional Legislation Committee be printed.

Ordered that consideration of the report of the Standing Committee on Appropriations and Staffing and the government response to a parliamentary committee report be listed on the *Notice Paper* as separate orders of the day.

## **BUDGET**

### **Portfolio Budget Statements**

**Senator IAN CAMPBELL** (*Western Australia—Manager of Government Business in the Senate*) (3.40 p.m.)—I table corrigenda to the portfolio budget statements 2002-03 for the Education, Science and Training portfolio and the Employment and Workplace Relations portfolio. I advise senators that copies are available from the Senate Table Office.