

CHAPTER FOUR

EFFECTIVE AND EFFICIENT TENDERING PROCESS

In conducting the Project, the Commonwealth is seeking an outcome that will provide significant and sustainable benefits both to it and the Contractor. The Commonwealth recognises the need for sufficient flexibility to cater for the dynamic and iterative nature of complex, large-scale outsourcing transactions.

Request for Tender, Health Group¹

4.1 Before examining the tender process, this chapter provides an overview of the nature of the project and the risks and benefits associated with IT outsourcing under the Initiative. It refers to the principles set down in the *Commonwealth Procurement Guidelines: Core Policies and Principles* (CPGs) and takes note of private sector criticism of the process. The Committee then looks closely at tendering processes from the initial stage of establishing the scope of the project to the selection of the preferred tenderer. It examines in turn the various stages of the tendering process—pre-qualification, issuing the request for tender (RFT) and evaluation.

IT outsourcing—a maturing market

4.2 The global IT outsourcing market has expanded rapidly over the last decade. In keeping with this trend the Australian market, according to one study, is expected to grow to an estimated \$AUS 3.87 billion in 2002. In 1998 its value was put at \$AUS2.2 billion, indicating a 24 per cent annual growth rate between 1998 and 2002.²

4.3 IT outsourcing now operates in a mature, though still evolving, market and many of the difficulties associated with its early days have been overcome. While recent studies have shown that most organisations outsourcing their IT are not experiencing serious problems, there remains nonetheless ‘a sizeable minority of organisations that do have serious issues in certain areas’.³ An Organisation for Economic Cooperation and Development (OECD) review found that most OECD countries have experienced and continue to experience problems with managing large IT investments.⁴ Indeed, a related OECD study found that management problems with

1 Health Group, request for tender (RFT), released 30 November 1998, para 10, p. 43. And also Group 1, RFT, released 15 December 1999, para 6.1.1, p. 26 and Group 11, RFT, released 12 September 2000, para 10.1, p. 27.

2 Mary C Lacity and Leslie P. Willcocks, ‘Surveys of IT Outsourcing Experiences in US and UK Organizations’, *Journal of Global Information Management*, vol. 8, no. 2, April–June 2000, p. 5.

3 *ibid.*, p. 15 and p. 21.

4 OECD, ‘The Hidden Threat to E-Government: Avoiding Large Government IT Failures’, PUMA Policy Brief no. 8, March 2001, p. 1.

large IT projects lead to substantial direct and indirect costs, to demoralised staff and, occasionally, to a loss of public confidence in public sector management. It noted:

Most governments experience problems when implementing large IT projects. Budgets are exceeded, deadlines are over-run and often the quality of the new system is far below the standard agreed when the project was undertaken.⁵

4.4 Without fail, commentators agree that without careful planning and negotiation, the success of an IT outsourcing project may be jeopardised.⁶ In 1997, a study into outsourcing IT by state governments found:

As the public sector in Australia has been slower to adopt outsourcing of IT operations than many overseas counterparts, IT managers are in a position to maximise the advantages to be gained from international experience. This experience provides some clear indicators as to what to outsource and how, yet it appears that managers in Australia are not using this to their benefit.⁷

4.5 Four years on, the Committee seeks to determine whether the Commonwealth, as a relative latecomer to IT outsourcing, has learnt from its own early experiences and those of others. Clearly, there has been ample opportunity for the Commonwealth to review its policy and practices, particularly in light of a number of inquiries into the outsourcing of the Commonwealth's IT infrastructure.

A complex process

4.6 Words such as 'major' and 'complex' are commonly used to describe the Commonwealth's program to outsource IT. The Office of Asset Sales and Information Technology Outsourcing (OASITO), which was responsible for the strategic oversight and implementation of the Initiative, well understands the magnitude of this undertaking. Mr Mike Hutchinson, then Chief Executive of OASITO, told an estimates hearing in 1999 that the IT infrastructure outsourcing program was:

5 OECD, *Managing Large IT Projects in the Public Sector*, last up-dated 13 April 2001. <http://www.oecd.org/organise/puma/Risk/index.htm> (6 June 2001)

6 See for example comments made by Mr J. Humphreys, Department of Social Security, who stated: 'The real message I think from those [studies undertaken on outsourcing] is that outsourcing isn't something you go into without a lot of thought. You have got to be very careful, you have got to actually have a look at the risks. And that would be the way we would go into outsourcing—the way we have gone into outsourcing'. Community Affairs Legislation Committee, *Hansard*, 8 May 1997, p. 2. See also chapter 2 para 2.3–2.6 and chapter 3 para 3.39–3.40, 3.57 and 3.85–87.

7 Mary Graham and Helen Scarborough, Deakin University, 'Information Technology Outsourcing by State Governments in Australia', *Australian Journal of Public Administration*, 56(3): 30–39, September 1997, p. 38.

the largest program of its type in the world in aggregate. It is exceptionally complex. The government has some very ambitious aspirations for it, both in terms of industry development and savings.⁸

4.7 The ANAO report on the Initiative also recognised the challenge facing the Government in embarking on its IT outsourcing program. It went on to say that the Initiative involves the tendering of an unprecedented volume of business to industry in a limited period of time and also represents a major undertaking for Government, Commonwealth public sector agencies and the Australian information technology and telecommunications (IT&T) industry.⁹ The Minister for Finance and Administration agreed with this assessment.

4.8 The Committee recognises that the whole-of-government IT outsourcing project is a large-scale and complex undertaking that involves significant risks, both financial and to service delivery, should a failure occur.¹⁰

4.9 The Committee also recognises that IT outsourcing offers potential benefits which include increased flexibility in service delivery; greater focus on outputs and outcomes rather than inputs; freeing public sector managers to focus on higher priorities; encouraging suppliers to provide innovative solutions; and cost savings in providing services.¹¹ The Committee is further aware that to minimise risks and to reap the benefits from outsourcing IT, the process must be carefully planned, appropriately managed, monitored and evaluated.

Roles of OASITO and agencies in the tender process

4.10 Before examining the tender process, the Committee sets down the particular roles and responsibilities of OASITO and the agencies in this process.

4.11 OASITO provided strategic direction and leadership for the conduct of the Initiative. It identified and formed agency groupings and provided advice and assistance to agencies in the implementation of the whole-of-government arrangements.¹² For example, OASITO provided participating staff with a ‘march-in-kit’ containing an evaluation guide that specified—among other matters—timetable and resourcing, evaluation methodology, and guidelines for costing risk and for financial adjustments. OASITO also provided a Savings Model Use Guide and

8 Mr M. Hutchinson, Finance and Public Administration Legislation Committee, *Hansard*, 1 June 1999, p. 277. See also Mr B. Godfrey from the Department of Administrative Services (Business Services) who, in May 1997, told the Committee that OASITO’s concern in regard to the overall outsourcing was ‘that it is a very wide Initiative covering various aspects of IT’. Finance and Public Administration Legislation Committee, *Hansard*, 8 May 1997, p. 96.

9 Media Release, Minister for Finance and Administration, the Hon John Fahey, ‘IT Outsourcing Initiative—Review of Implementation Risks’, No. 63/00, 7 November 2000.

10 See Bernard Levy, ‘The Telecommunications Outsourcing Trade-Off’, *Australian Communications*, March 1997, p. 91.

11 Canberra Business Council (CBC), submission no. 15.

12 OASITO, submission no. 4.

Detailed Financial Models and Instructions.¹³ In particular, it provided the ‘template’ Request for Tender documents including a draft Services Agreement to assist agencies develop their tender documentation. According to OASITO, agencies used this reference document to ‘prompt, guide and structure their thinking on articulating their own RFT requirements’.

4.12 OASITO engaged Shaw Pittman Potts and Trowbridge (Shaw Pittman), a principal legal firm from the USA, to advise it on the tendering process. It explained that it had chosen this firm because they had:

a unique expertise in the strategic, commercial and technical issues associated with IT outsourcing and as a practice had a policy of representing customers but not vendors. Therefore, their unique expertise was coupled with a unique lack of conflict of interest.

4.13 Even though Shaw Pittman is a legal firm, OASITO explained that it was engaged to provide strategic, technical and commercial advice on IT outsourcing rather than legal advice. OASITO was of the opinion that Shaw Pittman was ‘at the leading edge of IT outsourcing globally’.¹⁴

4.14 Mr Hutchinson informed the Finance and Public Administration Legislation Committee in 1999 that Shaw Pitmann provided strategic advice on the management and implementation of the Initiative which covered a comprehensive range of services related to the whole substance of the program. In effect, they essentially advanced the bid from ‘draft documentation through to final documentation and final agreement’.¹⁵ They were also involved in negotiations. Mr Michael Murphy, the key strategic adviser from Shaw Pitmann, was responsible for implementing the program and worked across all tendering and contracting processes. His main job was to help the Office of Government Information Technology (OGIT)/OASITO set the negotiation strategies, the IT initiatives and decide how the groups would be formed and when they would go to tender.¹⁶

4.15 In March 1998, OASITO had three people from Shaw Pittman working full time in its offices as part of an integrated team of officers and consultants. Between 1996 and 1998 the firm was paid fees and expenses of \$7.18 million for services in respect of the Initiative.

4.16 OASITO also sought agency input on all tender documents and text; gave agencies access to the Initiative’s strategic, probity and legal advisers as required; and overall managed the tender process. This entailed setting the tender schedule,

13 ATO, submission no. 22.

14 Finance and Public Administration Legislation Committee, *Hansard*, 1 June 1999, p. 277.

15 *ibid.*, p. 272.

16 *ibid.*, p. 276. See also Finance and Public Administration Legislation Committee, *Hansard*, 24 November 1997, p. 468.

convening drafting meetings, and arranging training and other information sessions to assist agencies to understand the tender process and the principles underpinning key tender documents. OASITO conducted bidder due diligence once the RFT was issued which included managing bidder interaction with agencies at industry briefings, site visits, agency briefings of bidders and agencies' written answers to questions submitted by tenderers.¹⁷

4.17 Although OASITO had a central and dominate role in the process, it appears that agencies were closely involved throughout the outsourcing process and during the subsequent contract negotiation stage. Each agency was responsible for defining its business and technical requirements, evaluating the IT services component of the tenders in accordance with an approved evaluation methodology, and preparing the agency for transition and contract management.¹⁸

4.18 In preparing the request for tender documents, each agency determined the service level measures that they required, described their current IT operations, and determined the information that the bidders should provide in the applications.

4.19 Mr Edward Killesteyn, Department of Immigration and Multicultural Affairs (DIMA), gives an agency's perspective of the respective roles of OASITO and agencies:

OASITO clearly took the lead in terms of framing the way in which the project was conducted—providing the templates in relation to the contract, the cost models and so forth. The agency role was particularly focused on ensuring that the services that were ultimately delivered and the standards at which those services were to be delivered were properly specified. There was a dual role, if you like. Our focus was on ensuring that services were right; OASITO's focus was essentially on the process of creating the RFT, negotiating with the tenderers and reaching a conclusion about the tenderers that provided best value for money.¹⁹

4.20 As noted in the previous chapter, at times considerable tension developed between OASITO and the agencies. With OASITO no longer having a direct role in the Initiative following the Humphry Review, this general description of OASITO's role provides an indication of the responsibilities that each agency will now assume.

The tendering process

4.21 The fundamental objective of Commonwealth procurement is to provide the means to deliver government programs efficiently and effectively. A core principle underpinning this objective is open and effective competition. To ensure that an

17 See OASITO, answers to supplementary questions, 7 February 2001.

18 See Richard Humphry, *Review of the Whole of Government Information Technology Outsourcing Initiative*, Commonwealth of Australia, December 2000, p. 93. Appendix 10, 'Roles and Responsibilities for Agencies, OASITO and DCITA in the IT Outsourcing Initiative'.

19 Committee, *Hansard*, 15 March 2001, p. 217.

agency gets the best possible outcome from the market, it should make certain that there is reasonable access for suppliers to participate in the tendering process. The CPGs recommend, *inter alia*, that:

Adequate and timely information is provided to suppliers to enable them to bid; and

The costs of bidding for opportunities do not deter competent suppliers.²⁰

4.22 With these recommendations in mind, the Committee looks at the tendering processes undertaken so far in order to identify problems and suggest ways of improving the process.

General concerns

4.23 The Information Industries Development Board (IIDB) consulted extensively in developing its submission to this inquiry and found that there is a widespread view in the ACT business community that many aspects of the process existing before the Humphry Review were flawed or created undesirable results.²¹

4.24 One of the major concerns raised by some sections of the private sector relate to the complexity of the tendering process which, they suggest, inhibits competition in the market place and adds unnecessary expense to the process.

4.25 The Australian Information Industry Association (AIIA) found the existing process too complex, time consuming and costly, which, it asserted, discourages or precludes many companies from participating in government tenders. It quoted a member who stated:

we feel the current tendering process has improved somewhat over previous bids with the inclusion of interviews and more 'face' time with the end users. Nevertheless we find the process arduous, exceedingly complex and Commonwealth supplied information repeatedly incomplete.²²

4.26 One large IT company supported AIIA's observations, stating that its task was very significantly affected by 'extended and complex tender processes and contract negotiations, conducted in a largely adversarial approach by the Commonwealth'.²³

4.27 In commenting on the tender process, the Canberra Business Council also referred to complex bids and expensive tender preparation that deter many firms from participating in the tender. It cited the example of one member with a turnover of \$20 million per annum, who estimated that the cost of participating as a sub-contractor to a

20 Department of Finance and Administration (DOFA), *Commonwealth Procurement Guidelines: Core Policies and Principles* (CPGs), March 1998, p. 7.

21 Information Industries Development Board (IIDB), submission no. 8.

22 Australian Information Industry Association (AIIA), submission to the Humphry Review.

23 Information supplied to the Committee.

prime bidder is of the order of \$250 000 per major bid. The cost of the total bid is clearly several magnitudes higher.²⁴

4.28 This view was supported by the Sausage Group, which asserted that a large tender will cost several million dollars to mount, all of it at commercial risk. It noted that this is generally untenable for SMEs and even the largest companies can afford to mount only one bid at a time.²⁵

4.29 In brief, the Canberra Business Council suggested that improvements were needed in the implementation of the project including the cost of tendering, the size of contracts, management by an agency, pricing and contract management.²⁶

4.30 Overall, the private sector sees the cost of tendering, compounded in part by the complexity and length of the process, as one of the major hurdles to participating in the Initiative. It argues that the high cost of tendering effectively precludes even large companies from entering the process. The Committee believes that the Government should be seeking ways to minimise these barriers, especially if it wants to encourage open and competitive tendering.

4.31 When considering the cost and duration of the process, criticism was not only directed towards the Commonwealth. The Health Group in particular, suggested that the vendors contributed to the complexity of an already complex process. Mr Peter Moran, Assistant Secretary, Corporate Services Division, Department of Health and Aged Care (DHAC), asserted that there was a considerable amount of misunderstanding or lack of understanding by the tenderers of what was being sought. He told the Committee:

It became quite clear very early on that there was mismatch between the understanding of all of the tenderers in terms of exactly what was being asked for—and that is not unusual, as it was a very complex tender document. It is also the case that the prices were far in excess of what we thought we would have a business case for. So it was decided fairly early on that there would be one or possibly two repricings.

...

There was a considerable amount of detailed non-compliance—in other words, they either chose not to comply or, by accident, did not comply. This is all of the tenders. It is also the case that there were, to be blunt, many mistakes in the bids by all of the tenders. Some of them were quite fundamental; some of them were simply arithmetic errors.²⁷

24 Canberra Business Council (CBC), submission to the Humphry Review.

25 The Sausage Group, submission no. 7. The Sausage Group is not an outsourcing incumbent but was leading a response to the Group 11 request for tender (RFT).

26 CBC, submission no. 15.

27 Committee, *Hansard*, 17 May 2001, p. 494.

4.32 Dr Harmer, Managing Director, Health Insurance Commission (HIC), explained that the agencies had put an enormous effort into the preparation of the tender documentation. He suggested that the initial lack of clarity in understanding probably ‘reflects more the complexity of the business’. Mr Podger, Secretary, DHAC, added, however, that the Health Group was disappointed with aspects of the tender process.²⁸ Mr Moran of DHAC, advised that:

While it was fair to say that bidders made mistakes and there were some genuine misunderstandings, a lot of the unsatisfactory nature of the tenders when they were first received was also a case of tactics or strategy adopted by each of the 3 bidders.²⁹

Planning

4.33 Mr Max Moore-Wilton, Secretary, Department of the Prime Minister and Cabinet (PM&C), told an audience at the launch of a guide on contract management in 1997, that successful contracting requires ‘Planning, planning and more planning’.³⁰

4.34 The private sector agrees. One loud and consistent criticism coming from the private sector was the simple lack of planning given by the Commonwealth agencies to the project. This was evident in such simple matters as the Commonwealth failing to provide accurate, relevant and complete information to potential bidders. Indeed, the Canberra Business Council maintained that this lack of detail, research and strategic planning makes it difficult for a vendor to respond to the tender, to develop innovative and cost savings options, and to maximise the mutual benefits to both parties. In summary, it regards time invested in proper planning by the agency as essential to both the agency and the future supplier, and fundamental to a much better outcome.³¹

4.35 IT Newcom Sourcing Consultants reinforced this view. It argued that in order to maximise benefits, the outsourcing process must be properly planned and implemented.³²

4.36 The Serco Group Pty Ltd, maintained that poor tendering methodology destroys competition. It submitted that responding to tenders is expensive and companies like Serco select opportunities carefully. It noted:

28 *ibid.*, p. 496.

29 *ibid.*, p. 497.

30 Mr M. Moore-Wilton, Secretary, Department of the Prime Minister and Cabinet (PM&C), Launch of the MAB/MIAC Publication ‘Before you sign the dotted line...Ensuring contracts can be managed’, 1 May 1997.

31 CBC, submission to the Humphry Review and CBC, submission no. 15.

32 IT Newcom Sourcing Consultants, submission no. 18.

One of our key bid/no bid decision criteria is the quality of the customer's tendering methodology. Where we have had confidence in a customer's methodology we have spent a lot of money responding to tenders.³³

4.37 Although bidders are ultimately responsible for preparing and promoting their own tender, the agency has a crucial role in facilitating open access to the tendering process and ensuring that those bidding for the contract are able to demonstrate their ability to meet the obligations of the contract. As part of laying a solid foundation for the tendering process, the agency should pay close attention to the quality of information it provides to the marketplace and how widely this information is disseminated. The amount of time spent at this early stage in formulating a tender strategy, preparing documentation and developing performance measures often saves time later in the clarification and evaluation stages of the tendering process. To a large degree the quality of decisions made during this preparatory phase governs the success of the contract objectives.

4.38 Although this point about the need for analysis and strategic planning before embarking on an IT outsourcing project has been repeated over the years by academics, various parliamentary inquiries and other studies, and auditors, the tendency still remains to hurry the process. The Committee adds its voice once again to this call for diligence in planning for IT outsourcing.

4.39 The very first stage in a tendering process is to establish the scope of the project. IT Newcom Sourcing Consultants suggests that the Commonwealth use a robust objective methodology to assess the benefit of an outsourcing decision.³⁴ The organisation should establish the reasons for outsourcing, how the decision to outsource will be evaluated and how its success will be measured.

4.40 As identified previously, one of the main motives for outsourcing of Commonwealth IT is the expectation of cost savings. Indeed, as encapsulated in the 1997 Budget speech, the Government's stated objective was to make savings. It has been noted previously that there are other major reasons for considering outsourcing, such as gaining access to high level expertise, enhancing flexibility and allowing the agency to concentrate on its core business.³⁵

4.41 The Department of Transport and Regional Services (DTRS) recognised one of the main benefits of IT outsourcing was that a group of people assumed responsibility for a specialist area. The department acknowledged that it was working on an old network operating environment and further that it did not possess the relevant skills to move 'to a new network environment where product was easily

33 Serco Group Pty Ltd, submission no. 26.

34 IT Newcom Sourcing Consultants, submission no. 18.

35 Mr B. Welsh, Managing Director and Consultant, IT Newcom Sourcing Consultants, Committee, *Hansard*, 9 March 2001, p. 206.

attainable.’ It appreciated that it did not have the experience or necessary skills to be able to do that.³⁶

4.42 The department was active early on in finding cluster partners that it could work with to obtain benefits. It actively sought out partners amongst other agencies and in fact approached OASITO indicating that it was interested in finding like organisations.³⁷

We were part of a group and there were some synergies involved in being part of that, in terms of opportunities for us as an organisation both now and into the future. As I understand it the department, as a small organisation, was already having difficulties in maintaining a strong presence in terms of technical support on site and would have required quite an investment in future to maintain the sorts of levels of assistance that we would like to have if we are going to be an organisation that is a very effective provider of services to its own staff. An important consideration is that staff actually have the wherewithal to do their work, and IT support is obviously an important part of that. Being part of a larger group and accessing an outsourced provider with stronger links into the technology and innovation side of things provided an opportunity for the development that was taken up.³⁸

4.43 The Civil Aviation Safety Authority (CASA) was another agency that recognised the advantages in forming a cluster. Mr Raymond Comer told the Committee that CASA took into account the benefits when it voluntarily joined the cluster arrangements.³⁹

we are a group of 8 which do not have any particular business connection or common strategic direction. But, at a very simplistic level, you would assume that a cluster agency has better buying power than a smaller agency like CASA. So I think we would look very seriously at being able to leverage with other people. You might choose different partners perhaps, but I think you would always seek to cluster yourself in some way to get maximum buying power.⁴⁰

4.44 On the other hand, other agencies have said emphatically that IT outsourcing is simply not a feasible undertaking for them. The Committee received a number of submissions from science and knowledge-based agencies, such as the Bureau of Meteorology, or groups working in these agencies highlighting their concerns that IT

36 See Mr C. Simpson, Manager IT&T Contracts, Department of Transport and Regional Services (DTRS), Committee, *Hansard*, 9 March 2001, pp. 176–7.

37 Ms R. Kava, First Assistant Secretary, Corporate Division, DTRS, Committee, *Hansard*, 9 March 2001, p. 186.

38 *ibid.*, pp. 176–7.

39 Mr R. Comer, Civil Aviation Safety Authority (CASA), Committee, *Hansard*, 9 March 2001, p. 204.

40 *ibid.*, p. 203.

outsourcing would hinder their ability to undertake the primary roles of research and development.⁴¹ ANSTO Combined Unions submitted:

Outsourcing IT will dismantle integration of IT with science and weaken the scientific staff's ability to gainfully apply it and computation. Staff with special skills will be lost and they underpin ANSTO's scientific effort.⁴²

4.45 The Bureau of Meteorology explained that it was not opposed to the outsourcing of its IT infrastructure where it is operationally and administratively safe and cost effective to do so. It pointed out that it already outsources much of its communications and IT maintenance activities on a selective and carefully designed basis. It insisted, however, that:

Extensive analysis of Bureau systems has already been undertaken as part of the IT initiative to date and the Bureau accepts that market testing the functions of its desktop and corporate systems is appropriate. However, the Bureau has concluded that it is inappropriate and high risk to outsource its mission critical infrastructure, other than the purchase and installation of hardware, and would result in real risks to public safety (loss of life and damage to property) and to the strategic capability of defence services whenever they are conducting weather sensitive operations.⁴³

4.46 Undoubtedly, each agency needs to look at its own circumstances to determine whether outsourcing or partial or selective outsourcing provides the best way of providing IT services and whether joining a cluster best suits its needs.⁴⁴ The Committee agrees that decisions to supply any function externally are best made in the agency itself and that, while external advice may be productive, the Initiative has demonstrated that external pressure should be avoided.⁴⁵

41 Australian Nuclear Science and Technology Organisation (ANSTO) Combined Unions, submission no. 12. See also the Commonwealth Scientific and Industrial Research Organisation (CSIRO) Staff Association which argued that OASITO's attempt to scope the contract for Group 9 was significantly flawed and did not address the strategic business concerns of the science agencies. CSIRO Staff Association, submission no. 14.

42 ANSTO Combined Unions, submission no. 12.

43 Bureau of Meteorology, submission no. 17. See also Australian Federal Police (AFP), submission no. 20. The AFP which had serious concerns about the outsourcing of its IT, stated: 'The Australian Federal Police is a knowledge driven organisation, which leverages the information of its systems and people to produce effective crime fighting strategies. These strategies are in a large part dependent on the knowledge capital of its employees. The AFP has been described by the Department of Finance and Administration as a 'strong performer' in market testing its corporate support areas. The AFP is, however, resistant to outsourcing where this would constitute a risk to the integrity of its information and intelligence holdings and consequently, to the security of its operations.'

44 See for example, Mr. E. Killesteyn, Executive Coordinator, Business Solutions, Department of Immigration and Multicultural Affairs (DIMA), Committee, *Hansard*, 15 March 2001, pp. 222–3.

45 ANSTO Combined Unions, submission no. 12. See also The Association of Professional Engineers, Scientists and Managers Australia (APESMA), submission no. 16.

4.47 Regardless of whether an agency decides to join a cluster or not, defining needs, objectives and finally the scope of the project is crucial. An accurate and clear initial understanding of needs and expectations is the starting point for any agency. If a business case exists for IT outsourcing and a decision is taken to proceed, the agency needs to prepare itself fully for the process.

Advanced notice of the Commonwealth's intention to outsource

4.48 Mr Anthony Robey from IIDB argued that a major difficulty for companies at the moment is that they see a tender come up in the press that is going to close in three weeks time or thereabouts. He observed, 'In fact that sort of period is quite often the time frame, even though there was a commitment at one stage that tenders would not close in anything less than four weeks'.⁴⁶

4.49 The Management Advisory Board⁴⁷ (MAB) was clear on this point about allowing an early period for preparation of tender material especially with large scale projects. In a joint publication with its Management Improvement Advisory Committee (MIAC), it stated:

When complex or high cost contracts are involved, it may be desirable to phase the tender process. A multi-phased process might involve:

- A request for information or proposal—where an agency is seeking to test the market and explore new and innovative solutions, or perhaps is seeking a strategic partner for a highly complex task that will require considerable analysis and development.
- An invitation to register interest—from which a short list of bidders is selected.
- Formal request for tender or quotation...⁴⁸

46 Mr. A. Robey, IIDB, Committee, *Hansard*, 18 May 2001, p. 547. The CPGs advise that, 'In the case of information technology requirements, agencies must make requests for tender available to potential tenderers in draft form for at least one month to allow for comment before finalisation. In complex requirements for other goods and services, it may be beneficial to give industry an opportunity to comment on draft request for offer documents before finalisation so that potential competition is not inadvertently compromised'. DOFA, *CPGs*, March 1998, p. 8.

47 The Management Advisory Board (MAB) was charged under the then Public Service Act to advise the Commonwealth Government, through the Prime Minister, on 'significant issues on the management of the Australian Public Service (APS)'.⁴⁸

48 MAB/MIAC Report No. 23 May 1997, *Before You Sign the Dotted Line*, p. 18. The *Defence Procurement Manual* explains that a Request for Proposal (RFP) 'is used to encourage suppliers to propose solutions to meet desired outcomes or resolve problems. The intention is to leave scope for variety and innovation in situations where there may be a range of viable options. As RFP seeks information on potential suppliers and their capabilities or capacities to ascertain what solution exists to meet problems or needs.'

An Invitation to Register Interest (ITR) 'is a request in which the Commonwealth outlines through a public advertisement its intention to acquire goods and services and invites suppliers to indicate their interest in meeting the requirement. At this stage the requirement may not be clearly defined but a

4.50 A DOFA publication, *Competitive Tendering and Contracting: A Guide for Managers*, states:

There may be value in an agency releasing draft tender documents for industry and client comment, before formal release. Consultation can help agencies clarify the appropriateness of their approach to the process.⁴⁹

4.51 The Department of Defence offers similar advice, particularly for complex and high value procurements. It especially recommends a staged acquisition strategy where the solution to the requirement calls for considerable analysis and clarification and where the tendering costs to industry are significant, making it desirable to identify competitive suppliers early in the procurement cycle.⁵⁰

4.52 The Committee notes that the expense incurred in responding to a request for information or an invitation to register interest is relatively low compared with that of preparing a detailed tender. It understands that those who are clearly ineligible can withdraw from the process early before incurring heavier costs. Furthermore, it appreciates that such an approach provides the agency with a clearer indication of the state of the market—of what industry has to offer and at what cost.

4.53 A pre-qualifying period that involves issuing a request for interest would provide an agency with the ideal opportunity to engage agency stakeholders and industry experts early in the process and thereby lead both parties to a greater appreciation and clarification of each other's expectations.

4.54 Another complaint from the private sector was that the tender cycle was too long, particularly the evaluation stage. One company suggested that time and resources could be saved by pre-qualifying prospective outsourcing suppliers so that actual tender development, tender evaluation, agreement on core terms and conditions can be expedited.⁵¹ It also proposed that the possible publication of baseline costs in the RFT documentation could facilitate competitive pricing and reduce negotiation time.⁵²

general description should allow the supplier to assess their ability to supply.' *Defence Procurement Policy Manual*, version 2.1, July 1999, Section 5, Chapter 6, para 605.

49 DOFA, *Competitive Tendering and Contracting: A Guide for Managers*, March 1998, p. 24. This document is under review. See also Procurement Branch, Department of Treasury and Finance, Government of Victoria, 2.01—Invitation Documents and Process for Major Acquisitions Policy, which advises 'For major, non standard or complex requirements, departments are encouraged to make their RFT available in draft form to the market place to allow for comment before the document is finalised. this can be accomplished through the ROI process or pre tender briefing meetings. It allows suppliers to put their case to departments where they consider that the draft RFT could be improved, is deficient, onerous or biased.' <http://www.vgpb.vic.gov.au/polguid/pol1201.htm> (18 July 2001)

50 *Defence Procurement Policy Manual*, section 5, chapter 6 version 2.1, July 1999, para 605–606.

51 Information given to the Humphry Review.

52 *ibid.*

4.55 The IIDB supported the proposal for a pre-qualification period. It suggested that tendering costs might be lowered by a process of shortlisting and selecting of preferred suppliers. Once selected, the parties can concentrate on structuring a negotiated outcome. A preferred supplier is likely to be more willing to incur costs at this stage.⁵³

4.56 Although the above suggestions imply a formalised process involving the agency and prospective bidders, a pre-qualifying period does not necessarily have to be highly structured. Early notice of an agency's intention to outsource its IT services and issuing an invitation to suppliers to indicate their interest in meeting the requirement would be a form of pre-qualification. At this stage the agency's needs may not be sharply defined but a general description would allow potential suppliers the opportunity to assess their ability to meet the requirements. This involvement of industry at an earlier stage would also provide the agency with a clearer idea of what the market place has to offer and so allow it to refine further its requirements and reassess costs and levels of services.

4.57 For a complex and large project such as IT outsourcing, a graded preparatory stage allows an agency to plan a well-defined and structured procurement process. It is a means of ensuring that the specifications and other aspects of the tender are clearly defined prior to issuing the RFT.

4.58 Mr Robey from the IIDB told the Committee:

I am suggesting that the Commonwealth should be in a position well in advance of the time when they release tenders, which is usually the first formal notification. That is the way industry finds out something. They should be able, well in advance of that, 6 to 12 months in advance of it, depending on where you are in the budget cycle and so on, to say, 'we are planning an initiative in this area; these are the major factors,' because at that point it can be very high level. As long as that is well published, in a site that the Australian industry at large understands is there, the industry can select itself. It does not require the Commonwealth to understand the industry; the industry only has to understand what the Commonwealth's initiatives are that are coming up over the next 12 months and they can say 'that's right where we are; we'll pick on that particular one. We'll go and talk to that department, we'll get in there early...'⁵⁴

4.59 Department of Employment, Education, Training and Youth Affairs (DEETYA) and Employment National (EN) formed an early cluster of agencies which released its RFT in late February 1998 with tenders to close on 14 April 1998. Although industry was given preliminary notice of the release of this RFT on 30 January 1998, according to Mr Wayne Gibbons, Deputy Secretary, DEETYA, the group did not issue a request for interest. He thought there was a low likelihood that

53 AIIA, submission to the Humphry Review.

54 Mr A. Robey, IIDB, Committee, *Hansard*, 18 May 2001, p. 543.

industry would not be able to offer a response that the group would find attractive, but he could not be certain. He stated:

We know a good deal about the cost structure of this industry, and our expectation is that we will make some improvements on the existing cost of providing the infrastructure in-house, but until we see the commitment that industry is prepared to make in response to our statement of requirement, I cannot be certain. That is part of establishing the business case—looking at what industry says when it sees in black and white what we want, how it can deliver it and at what cost.⁵⁵

4.60 As it turned out, at the close of tenders only one bid had been received and after being evaluated was found not to have offered an acceptable competitive solution.⁵⁶ At this late point in the tendering process, the Government discontinued the tender.

4.61 The Minister for Finance and Administration glossed over the breakdown of this tendering process by asserting that:

You have seen the Government's commitment to ensure adequate savings are achieved before deciding to outsource, as evidenced by the withdrawal of the...DEETYA/Employment National tender. Industry was given every opportunity to bid for, and to offer an acceptable service and cost solution for the DEETYA/Employment National tender. This did not occur, so the Government, as it was entitled to do, withdrew the Tender.⁵⁷

4.62 The Committee notes that the Government has offered no explanation for the failure to recognise much earlier in the process that there was little likelihood of a satisfactory bid and for allowing the tendering to continue until such a late stage.

4.63 The Minister chose not to mention that this particular tendering process did not have an effective pre-qualification period and, further, that the time allowed to prepare the tender was short.

4.64 The Committee believes that the DEETYA/EN tendering process may well have benefited from a phased tender process. An invitation requesting information or expressions of interest would have presented the agencies with opportunities to assess the marketplace and to gauge much earlier in the tender process the likelihood of whether a bid would satisfy the requirements of the draft RFT as it then stood.

55 Mr W. Gibbons, Employment, Education and Training Legislation Committee, *Hansard*, 27 February 1998, p. 198.

56 Media Release, Minister for Finance and Administration, the Hon John Fahey, 'Information Technology Infrastructure Outsourcing Discontinuation of DEETYA/EN Request for Tender', No. 54/98, 11 June 1998.

57 Minister for Finance and Administration, the Hon John Fahey, an address to the Information Technology Outsourcing Seminar, Freehill, Hollingdale & Page, Sydney, 29 July 1998.

4.65 The Committee notes that the CPGs, issued in March 1998, advise that:

In the case of information technology requirements, agencies must make requests for tender available to potential tenderers in draft form for at least one month to allow for comment before finalisation.

4.66 The Committee is also pleased to note that the tendering process of Group 1 had a pre-qualification stage. A Request for Proposals was released 28 April 1999, due 19 May, which identified four tenderers as pre-qualified to take part in the tender process.⁵⁸ The tender was later abandoned as a consequence of the recommendations of the Humphry Review and for reasons other than an unsatisfactory tendering process.⁵⁹

4.67 Nonetheless, the Committee is concerned that measures need to be taken to ensure that the advice offered in the CPGs is heeded.

Recommendation No. 2

The Committee recommends that as part of the strategic planning for IT outsourcing and, in particular, where the value exceeds \$10 million, agencies be required to set aside ample time to prepare and release draft tender documents for industry comment. It further recommends that agencies consider releasing an invitation to register interest as part of a pre-qualification phase of the tender process with follow-up public information seminars and briefs.

4.68 This preliminary stage would establish the likelihood of whether there are genuine suppliers able and willing to satisfy the agency's tender specifications. It allows both agencies and vendors to make considered and better informed judgments about their respective expectations. Beginning the process of clarification much earlier in the tendering process would result in an RFT with more complete and accurate information. This would help guard against the costs of tendering becoming so great that they deter bidders.

Specifications

4.69 The Committee regards the preparation of the RFT as the corner stone of the tendering process. This document defines the objectives and outcomes, specifies the performance levels expected and sets down the evaluation criteria to be used in deciding the preferred vendor. In effect, it sets the course of the tendering process and forms the basis of the contract. Indeed, the statement of work, which describes what the agency wants, is 'drafted specifically to dump straight into the contract'.⁶⁰

58 *OASITO Annual Report 1999-2000*, p. 27.

59 See pages 68-70 for a discussion of the Group 1 tendering process and its eventual discontinuation.

60 Mr D. Yarra, DOFA, Finance and Public Administration Legislation Committee, *Hansard*, 4 June 1998, p. 420.

4.70 It would be in the interest of the buyer to keep its tender as simple as possible while specifying its requirements accurately and precisely. During the inquiry a number of examples were provided indicating that such a deliberate and strategic plan was not always adopted.

4.71 As noted earlier, some private sector organisations drew attention to the poor quality of information supplied to industry in tender documents. The AIIA maintained that tender documentation should be clear and concise, with appropriate guides to direct prospective bidders through the documentation. It should state clearly the objectives to be achieved, and provide all the information necessary to develop an appropriate business solution.⁶¹ The AIIA recorded the views of a member who supported the opinion that the tender documentation is complex and the Commonwealth supplied information is repeatedly incomplete or unavailable. According to this member, the information required to develop a business solution, rather than a prescriptive technical solution, was frequently not available.

4.72 It goes without saying that all Commonwealth information supplied by the Commonwealth should be complete and accurate. Thus, in preparing the RFT agencies should ensure that they provide adequate information to all prospective suppliers so they can prepare their offers. They should clearly identify and articulate their requirements and expectations in the RFT.

4.73 In presenting evidence to this Committee, officials were well aware of the need to be involved in preparing the specifications in the RFT and to take care when drafting specifications.⁶²

4.74 Ms Dianne Jay from Medibank Private noted that one of the lessons they had learned in the process of separating from the Health Insurance Commission (HIC) was the need to be very specific about the service levels required.⁶³

4.75 At an early stage of the project planning for the Health Group, the department went to some length, in conjunction with its IT services branch, which was the one being outsourced, to measure the service levels across the range of services to be outsourced. Mr Moran told the Committee that they went to considerable lengths to

61 See AIIA, submission to the Humphry Review.

62 See for example, Mr P. Moran, Department of Health & Aged Care (DHAC), Committee, *Hansard*, 9 March, 2001, p. 119. Also, Mr Killesteyn from the Department of Immigration and Multicultural Affairs (DIMA) told the Committee: 'Our responsibility was to specify what we wanted. No one else could do that for us. So as part of the process of providing and developing the request for tender, there were people and teams within Immigration—that set about the task of determining what our requirements were. That was done on the basis of engaging business areas to ensure that their requirements were understood, as well as—in terms of, for instance, the standards levels that had to be met by the outsourcer—research in both the standards that we were currently achieving from an in-house operation and what was happening in industry generally. This was to ensure that we were specifying standards that were not only meeting our requirements but also general industry practice.' Mr E. Killesteyn, Executive Coordinator, Business Solutions, DIMA, Committee, *Hansard*, 15 March 2001, p. 218.

63 Ms D. Jay, Medibank Private, Committee, *Hansard*, 9 March 2001, p. 139.

caucus with each of the business areas across the department to have them describe in specific terms their business needs as they related to their IT needs. The needs were then documented in an extensive schedule to the RFT on which they tested each vendor's ability to understand the department's IT needs in respect of business requirements.⁶⁴

4.76 Despite being aware of the importance of specifying requirements clearly and accurately, the evidence indicates that agencies must improve this aspect of the tendering process. The Canberra Business Council noted in particular that changes in specification issued mid-way through the tender process resulted in unnecessary costs to tenderers.⁶⁵

4.77 Raising again the issue of delays, the Council explained further that some members have found that agencies have underestimated the time and effort required to prepare the tender. It noted that critical dates had changed during the IT outsourcing process. According to the Council, the critical dates from a tender's perspective are the release of the tender documentation, date of announcement of outcome and closing date of tender. While the first two dates are estimates, it maintained that changing the latter date may unfairly prejudice a tenderer who has worked to comply with the date initially set. It suggests that a more realistic initial assessment of the timeframes for bids is required. Although recognising that sometimes changes are justified, it argued that additional costs to tenderers should be minimised.⁶⁶

4.78 The successful vendor for Cluster 3, CSC, reinforced this view. It stated that the time frames between RFT advertising and handover date to the preferred outsource provider may be minimised if each agency provided more detailed definition of its technical, business and governance requirements. Put succinctly 'minimal changes to requirement after issue of the RFT will be of substantial benefit'.⁶⁷

4.79 Mr Colin Cronin from the ANAO drew the Committee's attention to the Group 5 tendering process. He noted that the tender closed in August 1998 but the preferred bidder was not selected for seven months. Confusion about assets and lease liability led to delays as bidders sought clarification and made adjustments accordingly. It appeared to him that tenderers did not fully understand what they were bidding for.⁶⁸ He maintained:

if people clearly understand what they are bidding for, the bidding process tends to be very quick and efficient. It is where there is confusion that it may

64 Mr P. Moran, Department of Health and Aged Care (DHAC), Committee, *Hansard*, 9 March 2001, p. 131.

65 CBC, submission to the Humphry Review. See also submission no. 15.

66 CBC, submission to the Humphry Review.

67 CSC, submission to the Humphry Review.

68 Mr C. Cronin, Australian National Audit Office (ANAO), Committee, *Hansard*, 5 December 2000, pp. 37-8.

tend to be delayed as clarification is sought, and a considerable amount of clarification is required on these contracts because of their complexity.⁶⁹

4.80 The Committee also draws attention to evidence presented by OASITO that again reflects the need for clear and accurate specifications. Mr Smith, CEO, OASITO, accepted that it was quite normal for OASITO to make adjustments to specifications contained in the RFT. He provided an example of a process where:

the bidders were told in the scope that the help desk was going to be manned 24 hours, it was manned 24 hours a day, seven days a week and they committed something like 15 resources full time for that. In clarification it was discovered that, at 6 o'clock, someone had taken a mobile phone home and did not connect back into the full resource until 8 a.m. the next day. That particular clarification, which occurred in the interaction, meant millions of dollars of change in price, because of the interpretation...that went on through all of the processes that we conducted, as people went into the complexity of the way in which this service was going to be delivered, the clarification occurred right up to the last minute on all of our transactions. That is not unusual.⁷⁰

4.81 The Committee understands that the Commonwealth must protect its interests during the tendering process and has no difficulty in accepting provisions in the RFT that allow for changes and amendments. For example clause 10.2.1 in the Health Group RFT states:

The Commonwealth may at its sole discretion add to, vary or amend the information, terms, procedures and protocols set out in this RFT. Tenderers will have no claim against the Commonwealth of Australia, any Group Agency, or the officers, directors, employees or advisers of the Commonwealth of Australia or of any Group Agency, with respect to the exercise of, or failure to exercise, such right.

4.82 The Committee is, however, deeply concerned that at times a lack of strategic planning and care in preparing tender documentation is creating unnecessary complications and delays. The Committee has already referred to complaints from the private sector that adequate and timely information was not provided to suppliers to enable them to tender effectively. This failure adds to the costs of bidding and may deter some competent suppliers from tendering.

4.83 While the Committee underlines the need for agencies to take care in defining their requirements, it emphasises that agencies are also responsible for keeping the tender process as focused and direct as possible. During the Health Group bid, the scope of the tender changed because DHAC, after an analysis of the bids received,

69 *ibid.*, p. 38.

70 Mr R. Smith, Office of Asset Sales and Information Technology Outsourcing (OASITO), Committee, *Hansard*, 19 June 2001, p. 641.

decided that it would not proceed with voice telecommunications within the scope of the tender. Mr Smith of OASITO told the Committee:

it is appropriate if agencies wish to test the market on things outside our scope to see how the industry will respond to their requirements. It is a very useful way for them to get a feel for whether they can then competitively benchmark their in-house operations on those things outside our scope. We are happy to provide that opportunity for them. In this case, we tested the market and they chose for their own reasons to withdraw it out of scope.⁷¹

4.84 Mr David Yarra, Executive Director, OASITO, made the point that where anticipated changes in scope would occur, 'they have always been put in the RFT with big flags on them saying 'This is a discretionary area of scope'.⁷²

4.85 Nonetheless, in light of the concerns raised by the private sector about the cost and complexity of the tendering process, the Committee suggests that agencies do all that is possible to keep the process simple and streamlined. Using the tendering process to gather intelligence may be acceptable in the preliminary stages of market testing but, the Committee suggests, it is not acceptable once the tendering process has entered the formal stage.

4.86 In other words, the initial stage of a tendering process, when agencies send out a request for information or invite suppliers to register an interest in tendering, could be used to test the market place for services. Otherwise the main tendering stage should not be used for such a purpose. Suppliers expend unnecessary resources in preparing aspects of their tenders that may well be excluded during the evaluation process. The Committee further notes the advice given in *Competitive Tendering and Contracting*:

Agencies will also lose credibility if they seek bids from the market when there is no intention of letting a contract. Bids should not be used as a way of unfairly acquiring intellectual property or of using industry for unpaid research.⁷³

4.87 The Committee accepts that as the tender progresses, particularly during the clarification stage, specifications may have to change as both the agency and the tenderer come to a better understanding of the requirements and how they can be best met. The Committee is concerned, however, that insufficient attention is being given at this very early stage of the tender process to have specifications as clearly defined as possible before issuing the request for tender documentation. To this time, the Committee is not convinced that all agencies have shown responsibility, focus and discipline when drafting the RFT. Devolving responsibility for IT outsourcing to the

71 Mr R. Smith, OASITO, Finance and Public Administration Legislation Committee, *Hansard*, 8 February 2000, p. 226.

72 *ibid.*, p. 233.

73 DOFA, *Competitive Tendering and Contracting: Guidance for Managers*, March 1998, p. 10.

agency head and proper consideration of a realistic timeframe for the exercise may well help solve this problem. Nonetheless, the Committee believes that it is important to highlight this weakness in the tender process and to alert agency heads to the importance of this early phase in a tender process.

Evaluation

4.88 Having prepared the groundwork for issuing the RFT by clearly identifying and defining the specifications, the tender process moves to the evaluation stage. At the outset, the Committee makes clear that the Minister, despite a number of requests, has provided the Committee with evaluation reports that have had substantial sections excised from the documents. They have been of little value to the Committee in assessing this part of the tendering process.⁷⁴

4.89 Furthermore, OASITO refused, until late July 2001, to provide the Committee with a copy of the evaluation guide (also called the evaluation plan) that was produced for the tender process. In February 2001, it offered the following explanation for not releasing the guides:

An IT Evaluation Guide was developed for each tender process. The methodology contained in the Guide was approved by the Probity Auditor.

The government declines to provide a copy of any Evaluation Guides as commercially sensitive material is contained therein.⁷⁵

4.90 The Committee found OASITO's explanation absurd. From the onset, the Committee did not believe that providing documents to a parliamentary committee, particularly evaluation guides, would result in an unreasonable disclosure of information with commercial value. Indeed, the Committee was unconvinced that even if provision led to public disclosure of such material, it would in any way prejudice the Commonwealth's interest or compromise the commercial interests of tenderers. On finally receiving a copy of an evaluation guide, the Committee's beliefs were confirmed.

4.91 The Committee is disappointed that in providing the evaluation plan so late in the inquiry process, OASITO has effectively denied the Committee the opportunity to question the relevant agencies on this most important document.

4.92 Before looking at the evaluation phase, the Committee describes the roles of OASITO and the agencies in this process. The evaluation process was structured so that there was a services evaluation and an industry development evaluation. The two components were evaluated separately and independently and there was a probity

74 See Finance and Public Administration References Committee, Interim Report, *Accountability Issues; Two Case Studies*, June 2000, pp. 15—22.

75 OASITO, answer to supplementary question, 7 February 2001.

auditor in place to ensure that the separation was enforced.⁷⁶ The industry development component is dealt with in full in chapter nine.

4.93 OASITO chaired the IT Services Evaluation Committee, the IT Services Steering Committee and the Options Committee, and was a member of the three specialist evaluation committees—technical, corporate capability and financial which were chaired by agency staff. It provided, among other services, physically secure evaluation facilities and gave agency evaluation staff access to its legal, strategic, probity and financial advisers.⁷⁷

4.94 OASITO's strategic advisers, Shaw Pittman, again figured prominently at this stage. They provided guidance to the evaluation teams that included mainly agency staff and were also involved in discussions on the evaluation strategy.⁷⁸

4.95 Agencies assigned representatives to conduct the evaluation of IT services. They were to determine whether each tender met their service requirements and to prepare evaluation reports in consultation with OASITO and its advisers for submission to the Evaluation and Steering committees for consideration and finalisation.⁷⁹

4.96 Clearly, agencies had a vital interest in the evaluation process and assessed the tenders in light of their own particular interests. Mr Killesteyn of DIMA noted succinctly:

We had a vested interest in ensuring that the whole process, from specification through to evaluation and negotiation, met our best interests because we were the ones ultimately that had to live with the result. Our role was very strong in all parts of the process.⁸⁰

76 Mr M. Sutton, DOCITA, Committee, *Hansard*, 15 March 2001, p. 260.

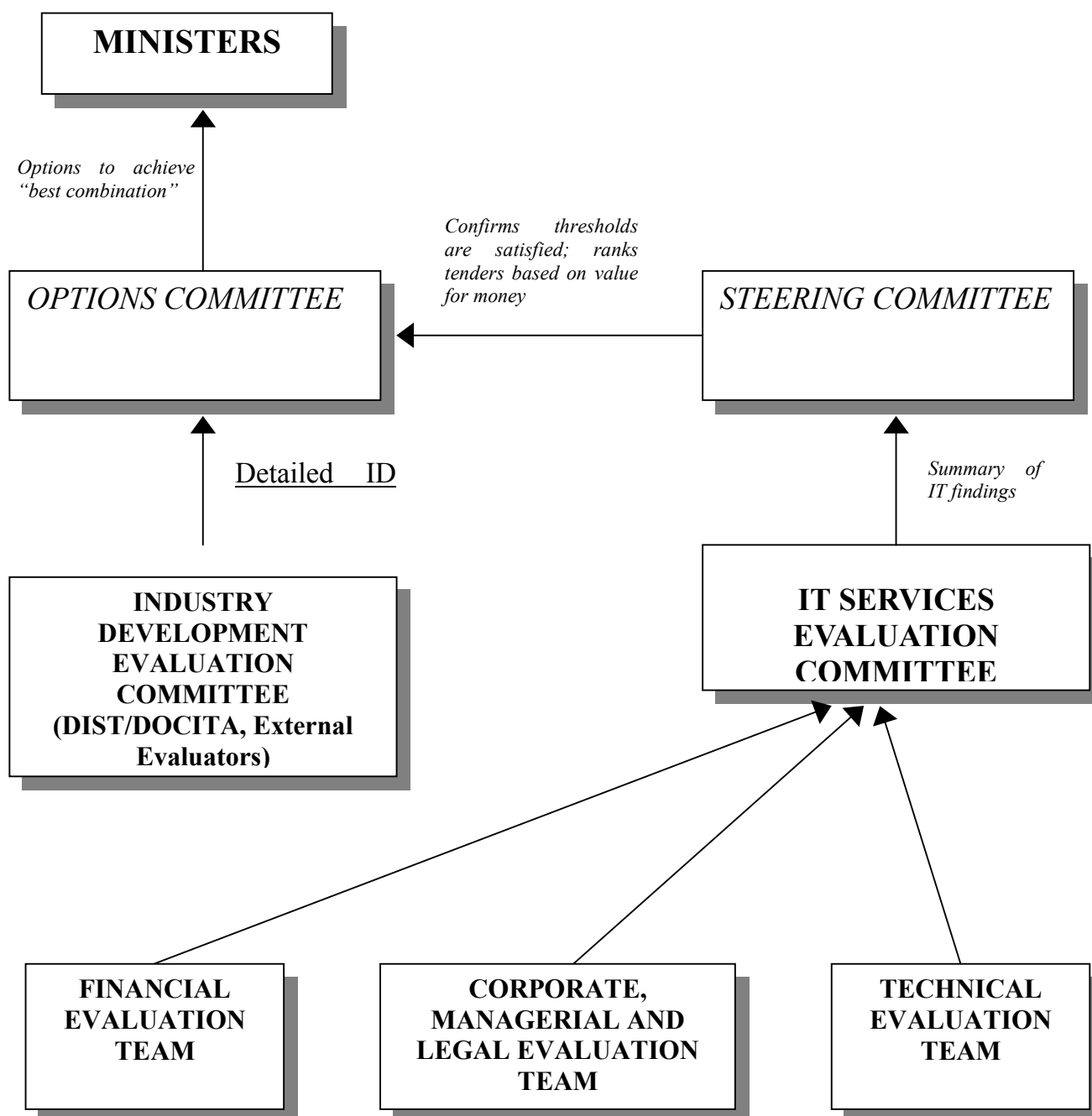
77 OASITO, answer to supplementary question, 7 February 2001.

78 Finance and Public Administration Legislation Committee, *Hansard*, 1 June 1999, p. 276.

79 OASITO, answer to supplementary question, 7 February 2001.

80 Mr E. Killesteyn, DIMA, Committee, *Hansard*, 15 March 2001, p. 217. See also, for example, Ms D. Jay who explained that Medibank staff were on the evaluation teams for the Health Group tender and that they were making assessments from a Medibank Private point of view on the information made available to them. She told the Committee, 'We looked to make a decision for Medibank Private that was rational for its business'. Committee, *Hansard*, 9 March 2001, p. 150.

Figure 2: Evaluation Management Reporting Structure



Source: OASITO, answer to question on notice, 7 February 2001.

Ranking evaluation criteria

4.97 The CPGs stipulate that the evaluation criteria should clearly identify the relative importance of all relevant factors, and provide a sound basis for a procurement decision. In evaluating each offer, the evaluators are to apply only the evaluation criteria and methodology notified to bidders in the RFT documentation.⁸¹

4.98 The RFTs for the Initiative, in their evaluation criteria, do not provide this level of detail on the relative importance assigned to the separate components. For example, the RFT for Group 11, released in September 2000 after the Auditor-General's report, stipulates that having met the technical and corporate criteria and demonstrated financial benefits under the financial criteria:

- a) each of the tenders will be ranked in terms of the relative merit of the Tender's offer in respect of the Technical Criteria and Corporate Criteria and their demonstrated financial benefits under the Financial Criteria;
- b) the Commonwealth will separately rank tenders in terms of the relative merit of the Tenderer's offer in respect of the Industry Development Criteria;
- c) the Commonwealth will then compare tenders to ascertain the offer that provides the best overall 'value for money' which will be determined by reference to the comparative rankings obtained against the technical, corporate criteria and the net financial benefit delivered by individual tenders.

4.99 A clause contained in the Group One RFT (released April 2000) adds the provision that the evaluation will be based on the professional judgement of the evaluation teams and that the evaluation may be supported by formal numerical, weighting, scoring or ranking techniques.⁸²

4.100 The RFTs spell out in detail the evaluation criteria to be met in each of the four categories—technical, corporate, financial and industry development. The Committee's main concern with the criteria is that there is no clear indication of the relative weightings to be given to each criterion within the separate components and, after the overall score for each component is assigned, how the separate components are finally ranked against each other. In other words, there is no way of knowing the relative importance of each component or of the criteria within each component. This situation is further complicated by the Commonwealth's right to award a tender:

81 DOFA, *CPGs*, March 1998, p. 8.

82 RFT, Group 1, para. 60.2.7.

having regard to market considerations, including the impact of such an award on the number and scale of suppliers of IT&T services to the Commonwealth.⁸³

4.101 The Committee notes that the RFTs for IT outsourcing do not appear to accord with the spirit of the CPGs which plainly and directly recommend, as noted earlier, that the evaluation criteria ‘should clearly identify the relative importance of all relevant functions’.⁸⁴ The Committee also refers to recommendation 8 in the ANAO’s report on the implementation of the Initiative which recommends that:

relevant agencies enhance transparency and accountability of decision making in the tender process by incorporating into the evaluation planning process consideration of the means by which tenders will be ranked in terms of the best combination of value for money/cost savings and ID development criteria.⁸⁵

4.102 Ms Tina Long from the ANAO, in referring to this recommendation, suggested that in future where a combination of criteria is going to be used to determine the preferred tenderer ‘there should be some articulation of how that will actually come through’.⁸⁶

4.103 This view is supported by *Competitive Tendering and Contracting: A Guide for Managers*, which advises:

Bids should be evaluated against published selection criteria with weightings applied according to agency needs and levels of risk already identified. The selection process needs to be consistent and fair.⁸⁷

4.104 The 1997 Australian Public Service (APS) publication, *Before you Sign the Dotted Line*, further recognises the need for this degree of openness. It suggests that providing tenderers ‘up-front’ with a set of clearly articulated criteria and weightings to be used in the selection process, helps to moderate problems arising from expectation gaps between the purchaser and provider. Furthermore, it also ‘allows a fully informed market to make their best offers’.⁸⁸

4.105 The Committee accepts that the RFTs to date have properly articulated and published the criteria against which each tender will be measured. Its main concern, however, is with the lack of information available to tenderers on the weightings to be

83 RFT, Group 11, para. 82.6.

84 DOFA, CPGs, March 1998, p. 8.

85 ANAO, *Implementation of Whole-of-Government Information Technology Infrastructure Consolidation and Outsourcing Initiative*, Audit Report No. 9 2000–2001, p. 30, and Ms T. Long, Committee, *Hansard*, 5 December, 2000, p. 31. The Government disagreed with this recommendation, see chapter three, p. 30.

86 Ms T. Long, ANAO, Committee, *Hansard*, 5 December 2000, p. 31.

87 *Competitive Tendering and Contracting*, Guidance for Managers, March 1998, p. 27.

88 MAB/MIC Report no. 23, *Before You Sign the Dotted Line*, May 1977, p. 8.

used in comparing the tenders. The Committee endorses the ANAO recommendation of incorporating into the evaluation planning process consideration of the means by which tenderers will be ranked in terms of the best combination of value for money/cost savings and industry development criteria. The Committee, however, goes further.

Recommendation No. 3

The Committee recommends that tender documentation made available to bidders clearly identify, at the very least, the relative importance of the separate evaluation components—technical, corporate, financial and industry development. They should also indicate the evaluation criteria given top priority within each of these components.

Tender Evaluation Plan

4.106 A tender evaluation plan is an integral part of tender documentation. It offers specific guidance to those conducting the evaluation on the ratings to be used during the comparative assessment to help differentiate between tenderers. As noted above, it should not only clarify and define the criteria for ranking tenders, but also indicate the weightings each criterion carries in the overall assessment.⁸⁹

4.107 In this way, the plan gives consistency to the evaluation process and is a means of ensuring conformity to the treatment of each tender and phase of the process and of providing accountability. A clear, well documented evaluation plan will protect the interests of tenderers by ensuring that all will be assessed against the same criteria, that priorities will remain as given in the request documentation and that all bidders will be treated equitably. It also protects the Commonwealth by ensuring all parties—bidders and agencies—understand the basis of the decision to be made.

4.108 The ANAO Report on the implementation of the Initiative stated plainly that sound administrative practice for ensuring a fair tender process involves the establishment of, and compliance with, a comprehensive tender evaluation plan, which should be finalised before the tenders are opened.⁹⁰

4.109 The Department of Defence advises that a tender evaluation plan should be developed in conjunction with the request documentation so that:

89 See for example *Defence Procurement Manual*, version 2.1, July 1999, Section 5, Chapter 1, para 738. A number of procurement manuals suggest that tender evaluation plans should identify the grounds for all ranking judgements. See for example, *Defence Procurement Manual*, version 2.1, July 1999, Section 5, Chapter 1, para 739.

90 See also Mr P. Barrett, Auditor-General, ANAO, 5 December 2000, Committee, *Hansard*, p. 31.

the requirement can be adequately evaluated, the guidelines for evaluation are consistent with the evaluation criteria specified in the request documentation and the integrity of the evaluation process maintained.⁹¹

It directs that the tender evaluation plan must be completed and approved before the release of the RFT and cannot be changed after the release of the request documentation.⁹²

4.110 The failure by the agencies comprising Group 1 to prepare a tender evaluation plan in tandem with the request documentation for the group, let alone have it finalised by the time the tenders closed, presented a disturbing aspect of this tender process. The Committee finds it very difficult to explain the circumstances surrounding this incident and so relies on the *Hansard* of the Finance and Public Administration Legislation Committee estimates hearing on 24 May 2000 to provide an accurate account. At this hearing, a Committee member asked OASITO officers about progress on the tendering process for Group 1 that included Centrelink. On being informed that tenders had closed on 14 April, a Committee member asked if the documentation had been opened. The transcript reads:

Senator Lundy—It is not in an envelope, is it; it is in a box?

Mr Yarra—Yes.

Senator Lundy—Was that documentation opened?

Mr Yarra—No.

Senator Lundy—When were you going to open it?

Mr Yarra—We were going to open it as soon as we could.

Senator Lundy—When did you plan to open it?

Mr Yarra—As soon as the preconditions for opening the bids had been met.

Senator Lundy—Which was anticipated to be when?

Mr Yarra—We would love it to have been the day after receipt of bids. We were unable to do that.

Senator Lundy—Why?

Mr Yarra—Because we had not met the preconditions for opening tenders.

91 Department of Defence, *Defence Procurement Manual*, Version 2.1, July 1999, Section 5, Chapter 6, para 611.

92 A number of Procurement Guides recommend that the evaluation guide be ready well in advance of the evaluation process. See for example, Probitry Guidelines for Government Tendering Projects in Victoria, <http://www.vgpb.vic.gov.au/./polguid1b.htm> (18 July 2001)

Senator Lundy—Which are?

Mr Yarra—The main one is the finalisation of the evaluation guide. The RFT went out in December.

Senator Lundy—So you are finalising evaluations?

Mr Yarra—We were finalising the evaluation guide which is a hugely detailed document which sets down how the evaluation will be undertaken prior to bids being opened.

Senator Lundy—When was that completed?

Mr Yarra—That was completed last Friday.

Senator Lundy—What was the date on Friday?

Mr Yarra—It's all a blur.⁹³

4.111 The Committee believes that this delay in the Centrelink tendering process should simply not have occurred. Tenders could not be opened because the preconditions for the opening of tenders had not been met—the evaluation guide had not been finalised.⁹⁴ Mr Yarra explained further:

Try as we might, it was a complex document. Our focus was on releasing the RFT, up until December. So it was really all hands to the wheel to get the evaluation guide agreed with the agencies between the release of tenders and the receipt of tenders, and we tried very hard but we were unable to do that.⁹⁵

4.112 The evaluation eventually got underway in earnest on 26 June 2000.⁹⁶ Although the incident with Group 1 may have been a one-off, the Committee believes

93 Finance and Public Administration Legislation Committee, *Hansard*, 24 May 2000, pp. 543–4. OASITO's annual report for 1999/2000 offers the following explanation: 'The RFT was released to the four pre-qualified tenderers on 15 December 1999 with responses due on 13 April 2000. Following receipt of tenders, the tenderers were asked to update their bids to take account of updated tender requirements, and full evaluation commenced on 26 June 2000.' The expectation in the Annual Report was that a preferred tenderer would be announced by the end of the calendar year.

94 Mr D.Yarra, OASITO, Finance and Public Administration Legislation Committee, *Hansard*, 24 May 2000, p. 544.

95 *ibid.*

96 The tender process was, however, discontinued. In December 2000 the Humphry Review recommended that the outsourcing process for Centrelink cease until it is satisfied that the transition and implementation risks can be effectively managed. It was recommended that the Department of Family and Services (FaCS) proceed at its own discretion (recommendation 7). The Government agreed with this recommendation. On 21 January FaCS and Centrelink announced the discontinuation of the Group 1 tender process and that they are separately considering how best to implement outsourcing policy. Richard Humphry, *Review of the Whole of Government Information technology Outsourcing Initiative*, Commonwealth of Australia, December 2000, p. 7; Media statement, the Hon John Fahey, 'Review of the Implementation of the Whole of Government Information Technology Outsourcing Initiative

that the requirement for the tender evaluation plan to be finalised and approved before the request documents are issued should be a requirement for any Commonwealth tendering process.

Recommendation No. 4

The Committee recommends that, for any future tender process for IT outsourcing, the evaluation plan be finalised and approved before the RFT is issued.

Summary of the findings on the rigour of the tendering process

4.113 At this point the Committee reminds the Government of its response to the ANAO report, in which it argued that the report provided ‘only a limited view that does not reflect the overall quality and rigour of the tender processes.’

4.114 The Committee has uncovered in the course of its inquiry a number of incidents that question this assertion. The sheer weight of evidence indicates that the tendering process was not developed and managed in a way that ensured consistency in treatment of the parties; provided for public accountability; protected the interests of the tenderers and the Commonwealth; and inspired public confidence in the Commonwealth procurement processes. To the contrary, evidence before this Committee shows a tendering process that lacked rigour and transparency.

4.115 The Committee suggests that the Government, in light of the evidence produced in this chapter, have a closer look at their procurement practices and take a less dismissive approach to advice from the Auditor-General.

Expertise in the tendering process

4.116 Witnesses presenting evidence to the Committee put forward a view that IT outsourcing is not simply about installing computer terminals on desks. Mr Humphry noted that IT outsourcing is not about buying a bag of barley but rather involves a complex relationship that may last for years. Dr Mary Lacity and Dr Leslie Willcocks also argue that treating IT as an undifferentiated commodity is a factor which contributes to problems in outsourcing.⁹⁷

4.117 Without doubt, the Initiative was an enormous and complex exercise. The Committee expects that an undertaking of this nature and importance would require a high level of technical specialisation, expertise in government procurement processes, experience with contract law and detailed understanding of public sector financial and human resource management.

(Initiative)’, 01/01, 12 January 2001; Media statement, Centrelink and FaCs, ‘IT Outsourcing’, 31 January 2001.

97 Community and Public Sector Union (CPSU), submission no. 10.

Contractual expertise

4.118 The need for agencies to retain personnel with strong procurement and contract management skills emerged as a strong point in this report.

4.119 Serco argued that in outsourcing there are big differences between average outcomes and best practice outcomes. It maintained that:

Best practice will only be achieved across the bureaucracy by harnessing a continual improvement loop made possible by an organisation that manages outsourcing on repeated occasions.⁹⁸

4.120 A number of organisations commented on what they perceive as a shortage of contracting and associated skills in the APS. On one hand governments recognise the need to maintain and retain relevant expertise, but changing conditions and contracting practice are often found to be at odds with this objective.⁹⁹

4.121 The Management Advisory Board noted in its 1997 guidelines on contracting in the Public Service that:

Numerous sources, both international and domestic in origin, have suggested that many Australian public sector organisations and more specifically their staff, do not possess the requisite skills to most effectively perform or oversee competitive tendering and contracting.¹⁰⁰

4.122 The Commonwealth does not have a systematic approach to training and educating purchasing staff. The Institution of Engineers (IEAust) argues that the changes in 1998 to the Commonwealth Purchasing Guidelines has resulted in a downgrading of mandatory procurement training and guidance for contracting officers.¹⁰¹ Mr Athol Yates, Senior Policy Analyst, IEAust, believes that this situation

98 Serco Group Pty. Ltd, submission no. 26.

99 The Institution of Engineers (Australia) (IEAust), submission no. 25. IEAust, based on the findings of one of its surveys, suggests that the Government may need to be more aware of the need to be an informed buyer. It warns that the implications of being an uninformed buyer are: 'Firstly, it means that the government's aim of awarding contracts on overall value for money cannot be consistently achieved. Secondly, it means that government money is being wasted due to the inability of government to define exactly what it wants and to select a tenderer who can achieve it. Thirdly, it means that since a number of contracts are awarded on the basis of lowest up front cost, contractors are being forced to compromise on quality and innovation to reduce costs in order to win business.'

100 MAB/MIAC Report No. 23, *Before you Sign the Dotted Line*, May 1997, p. 36.

101 IEAust, submission no. 25. See also Joint Committee of Public Accounts and Audit, *Contract Management in the Public Service*, October 2000, p 89. And for example, Commonwealth Procurement Circular, CPC 98/3 which announced that the status of the following procurement requirements: that all persons undertaking procurement functions meet appropriate Commonwealth Procurement Competency Standards; and that each agency appoint a senior executive officer, or officers, to be responsible and accountable for Accredited Purchasing Units, be no longer mandatory. OASITO, now known as OASACS informed the Committee that it is not aware that the CPGs have resulted in any downgrading of procurement training and guidance for contracting officers.' Answer to question on notice, 19 June 2001.

may have reduced the incentive for people to get contracting procurement qualifications.¹⁰²

4.123 Some agencies (for example the Department of Foreign Affairs and Trade, DHAC, the Department of Family and Community Services and the Department of Veterans' Affairs) are moving back to centralised purchasing units (CPUs) to provide a centre of skills and expertise which department staff can draw on for advice. This is in accordance with the ANAO's conclusion that such centralised units lead to continuous improvement in contract management skills.¹⁰³

4.124 The ANAO has also recommended that agencies 'develop contract management expertise through structured training and skill acquisition programs' in order to address the informality and unstructured nature of current approaches to training in contract management.¹⁰⁴

4.125 Representatives from Shaw Pitmann were the main advisers to the IT outsourcing process. They also gave support to the agencies across a range of issues dealing with the scope of the Initiative. Despite OASITO's support, some agencies brought in additional contract people to help in the process. For example Medibank Private employed Minter Ellison to work on the legal matters.¹⁰⁵

4.126 The Committee endorses the view that personnel are needed who have the management skills necessary to ensure the success of the tendering process and contract arrangements. It accepts that agencies may have to recruit personnel with procurement and contract drafting skills to manage the vendor relationship and to train staff for the new roles and challenges that will arise as a consequence of the arrangement. Nonetheless, the Committee is concerned that agencies do not have an adequate basic pool of qualified, experienced experts in procurement within their organisation.

Recommendation No. 5

The Committee recommends that the Government re-introduce mandatory competency standards for all officers undertaking procurement functions.

102 IEAust, submission no. 25.

103 ANAO, *Management of Contracted Business Support Processes*, Audit Report No. 12, 1999-2000, p. 20.

104 *ibid.*, p. 28.

105 Ms D. Jay, General Manager, Corporate Services, Medibank Private, Committee, *Hansard*, 9 March 2001, p. 139.

Recommendation No. 6

Consistent with the Department of Finance and Administration's policy responsibility for Commonwealth contracting and procurement, the Committee recommends that the competency standards and training should be developed by that department. This is to be done in consultation with the Public Service and Merit Protection Commission to ensure consistency with the Australian Public Service Values.

Further to the Government's response to Mr Humphry's recommendation 3, the Committee recommends that the Public Service Commissioner report in the annual State of the Service report on the implementation of the Initiative together with the competency framework.

Technical expertise

4.127 Mr Humphry in his report mentioned the dominance of legal and contracting issues associated with the signing of contracts. There are, however, also the technical aspects of the arrangements under the contract to be considered. IT outsourcing is a complex technical undertaking requiring expertise and know-how and it is sound business sense for agencies to ensure that they have the internal expertise or have access to consultants to represent their technical best interests.¹⁰⁶

4.128 In other words, an agency must have the ability to assess the competency of its contractors and the quality of the service delivered.

4.129 Mr Yates recognised technical expertise as a crucial factor in the success of the tendering process for projects such as IT outsourcing. He asserts that technical expertise is essential for an agency to establish and describe the desired functional levels, performance levels and constraints of the agency's IT requirements. Technical experts understand the full range of probable technical solutions and can advise on the risk, cost and functional/performance trade-off of all options.¹⁰⁷

4.130 He drew attention to the reduction in the number of IT officers in the Public Service that indicated to him that the lack of subject matter expertise may be a worry.¹⁰⁸ He argued emphatically that this lack of subject matter expertise had been a

106 See for example, Mr. J. Boshier, IEAust, Committee, *Hansard*, 17 May 2001, p. 420.

107 IEAust, submission no. 25.

108 Mr. A. Yates, IEAust, Committee, *Hansard*, 17 May 2001, p. 418. The IEAust is especially troubled by what it believes is a loss of engineering expertise in the public sector. According to the Institution, over the last decade there has been a 20 to 30 per cent reduction in the number of engineers in the Commonwealth, state and local government public sectors.¹⁰⁸ It submitted, 'access to technical expertise is becoming more of a critical issue for governments due to devolution of authority for contracting, decentralisation of control, mega-contracts and increasing technical complexity. These changes are resulting in increased decision making power of individual agencies and individual contract staff, increased size of contracts, and hence significantly increased financial costs for making uninformed decisions.' IEAust, submission no. 25.

contributing factor in a number of recent disasters and was highlighted in the analysis of three recent examples: the Royal Canberra Hospital implosion, the HMAS Westralia ship fire and ESSO's Longford explosion.¹⁰⁹

4.131 IEAust argues that from a professional engineering and public sector contracting perspective, there were a number of common factors that contributed to the disasters. These included government contracting staff lacking the necessary technical and contractual expertise to manage engineering contracts, and government staff not adequately assessing contracts' and sub-contractors' engineering competencies.¹¹⁰ Inadequate technical and contractual expertise was also cited in association with the Collins class submarines.¹¹¹

4.132 Dr Willcocks pointed to another problem that can arise because of inadequate knowledge about technical issues. He maintained that the overestimation in cost savings was due in part to not having the right degree of IT outsourcing experience to be able to look at the sums at the beginning and predict accurately developments five years down the line.¹¹² According to Dr Willcocks, people experienced in the IT outsourcing business understand where the hidden costs are.¹¹³

4.133 IEAust highlighted the advantages to be gained from engaging experts to assist the customer to become an informed buyer. It maintains that being uninformed puts at risk the ability to:

- select and justify the option which offers best value for money;
- select and justify an innovative solution;
- reduce contractor risks by providing relevant technical details in tender documents; and
- prevent unscrupulous contractors taking advantage of the buyer's lack of knowledge.¹¹⁴

109 IEAust, submission no. 25.

110 IEAust, as an example, explained that in analysing the 1997 Royal Canberra Hospital implosion which killed a spectator, the ACT Coroner found that officers appointed by the ACT government-owned project director, Totalcare Industries, to manage the contractor, were asked 'to undertake a function well beyond their experience, qualifications and skills'. Contracting failures was one of the major contributing factors to a number of government contracts including the Collins-class submarine and the ACT Bruce Stadium redevelopment projects. IEAust, submission no. 25.

111 *ibid.* In its submission IEAust also discussed a survey it undertook of professional IT contracting staff to determine the frequency and cause of inadequate contracting practices in government. The survey found that the 'main reason why government organisations may be uninformed purchasers of information technology goods and services is a lack of subject matter expertise'.

112 Dr L. Willcocks, Committee, *Hansard*, 17 May 2001, p. 508.

113 *ibid.*

114 IEAust, submission no. 25.

4.134 Although OASITO provided advice through their consultants on the technology side of outsourcing IT, some agencies engaged their own experts. The Health Insurance Commission informed the Committee that its board of commissioners engaged consultants to provide them with independent technical advice, as distinct from the advice they were getting from management and OASITO.¹¹⁵

4.135 Clearly during the evaluation stage IT expertise is necessary to determine whether the proposals meet the users' requirements, and to assess the validity of technical information. Technical experts are best placed to understand the risks, quantify the likelihood and consequences of the risks, and evaluate the proposed mitigation strategies.¹¹⁶

4.136 The Committee recognises that following the Humphry Review agencies will assume a greater responsibility for obtaining their own advice. They will need to call on a high level of technical expertise for help to prepare tender documents, for clarification and guidance during the process especially for the effective evaluation of the IT component of the tenders. A central repository of knowledge and expertise on IT in touch with the latest technology and with leaders in the various fields could provide an invaluable resource for agencies. In addition, agencies must ensure they retain in-house a pool of qualified, experienced experts in procurement and contract management.

115 Mr D. Num, HIC, *Hansard*, 9 March 2001, p. 166.

116 IEAust, submission no. 25. The HIC informed the Committee that its board of commissioners engaged consultants to provide them with independent technical advice, as distinct from the advice they were getting from management and OASITO. Mr D. Num, HIC, Committee, *Hansard*, 9 March 2001, p. 166.