

# Seeking excellence in

# contract management

The search for excellence in contract management is arguably one of the most pressing challenges for the Australian Public Service (APS).

With the move to greater outsourcing of programs, public sector agencies must equip themselves with a range of skills, knowledge and experience to ensure that contract management is efficient and effective.

The Joint Committee of Public Accounts and Audit (JCPAA) is investigating the adequacy of contract management across the APS. The emphasis will be on the resources, skills and knowledge that agencies bring to bear in providing good contract management. A key objective of the inquiry is to identify better practice approaches that can be applied across government agencies.

The JCPAA, chaired by Bob Charles MP, has been at the forefront of the scrutiny process with regard to APS contract management in a series of reports tabled during the past two years. These reports identified shortcomings in the management and administration of contracts in government departments. Both the Jindalee Operational Radar Network (JORN) and the Collins Class Submarine reports made specific recommendations regarding improvements to contract management processes in Defence. For example, the JORN report made some recommendations regarding contract management skills and the protection of Commonwealth intellectual property rights.

The report on the Collins Class Submarines called for the legislative enhancement of the powers of the Auditor-General to enable access to contractor premises in order to investigate the management and performance of contracts to which the Commonwealth is a party. It also called for better project management and more efficient cost control systems.

The Committee's report on procurement surveyed a wide variety of agencies responsible for the bulk of Commonwealth procurement contracts with private sector suppliers. The report found that the devolution of the purchasing function had led to an uneven application of the appropriate Department of Finance and Administration (DoFA) Guidelines with regard to purchasing. Specific areas of concern included:

- errors and omissions in contracts and designs;
- reluctance of Commonwealth agencies to monitor, audit and seek redress in the event that contractors fail to comply with the requirements of a contract;
- deficiencies in the skills and expertise of purchasing officers to manage contracts; and
- inadequate reference to contract management in *Commonwealth Procurement Guidelines*.



*Seeking to improve contract management – Committee Chairman Bob Charles inspecting a Collins Class Submarine.*

As part of the current inquiry into contract management, the JCPAA has received over 40 submissions. The Australian National Audit Office (ANAO), in its submission, has provided an overview of its findings from recent performance audits. In particular, the ANAO reports that it still does not have guaranteed access to the records and premises of private sector service providers. In addition, the ANAO suggests that excessive use of 'commercial-in-confidence' status may be eroding public accountability. The ANAO argues that the case for commercial confidentiality should be made by the party objecting to disclosure. This would constitute a reversal of the current onus of proof.

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# Meeting the challenges of corporate governance

Effective corporate governance is an essential part of the modern corporate entity. Public and private sector corporate organisations will ultimately be judged by how well they direct, control and are held to account for delivering their corporate objectives.

Corporate failures during the 1980s and early 1990s, in particular, brought to the attention of the public the need for efficient, effective and responsible corporate governance.

The focus on corporate governance is not just driven by the corporate failures of the past but also by the corporate challenges of the future. Corporations, both public and private, face challenges relating to globalisation, technological change and sustainable development.

Commonwealth government business enterprises (GBEs) provide a range of services to the Australian community including communications, transport, employment and health services. In 1998-99, GBEs generated revenues of nearly \$25 billion, provided dividends of \$4.5 billion, and controlled assets of some \$40 billion. Given that GBEs are publicly controlled entities, the Parliament has a continuing interest in their governance, performance and accountability.

In 1997, the Commonwealth Government introduced new governance arrangements for its GBEs. These arrangements help form the framework for the accountability of GBEs and set out key responsibilities for both boards and Ministers. The broad

objective of the recent inquiry into corporate governance by the Joint Committee of Public Accounts and Audit, chaired by Mr Bob Charles, MP, was to assess the appropriateness and effectiveness of these arrangements.

On 16 February 2000, the Joint Committee tabled its report in Parliament. A key recommendation in the report is that all portfolio Ministers should be removed from their current GBE shareholder responsibilities, but remain as the responsible Minister under GBEs' enabling legislation. The Joint Committee also has recommended that the Minister for Finance and Administration should:

- review the applicability of administrative law to current and future GBEs on a case by case basis;
- amend the 1997 Governance Arrangements to include a section that all Ministerial directions to GBE boards should be in writing and tabled in both Houses of Parliament within 15 sitting days;
- amend the 1997 Governance Arrangements to include a requirement that GBE boards ensure that there are appropriate and effective induction, education and training programs offered to new and existing board directors;
- amend the 1997 Governance Arrangements to include a section requiring confidential board and director performance appraisal; and
- develop draft guidelines for the scrutiny by Parliamentary Committees of commercially confidential issues relating to GBEs.

For more information, contact the Inquiry Secretary, Mr Stephen Boyd on telephone (02) 6277 2336.

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The key themes raised by industry groups focus on the inadequacy of design specifications through to disagreements regarding fair allocation of risk. Master Builders Australia claims that "poor design specifications lead to cost overruns, quality issues and disputes". The Canberra Business Council claims that it "is aware of instances where the Commonwealth is perceived to have attempted to transfer excessive risk to the private sector which can cause the preferred tenderer to walk away from contract negotiations or place a premium on the bid."

The Institution of Engineers Australia claims that deficiencies in contract management can be linked to recent planning disasters. The Institute stated:

The fundamental importance of having technical expertise was highlighted in the analysis of three recent disasters: the Royal Canberra Hospital implosion, HMAS Westralia ship fire and ESSO Longford explosion. Inadequate technical and contractual expertise was also cited in

association with Collins class submarines. From a professional engineering and public sector contracting perspective, there were a number of common factors which 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 contractors' and sub-contractors' engineering competencies.

The JCPAA will examine these and other matters in a series of public hearings that commenced on 22 February 2000 and are proceeding through March.

Further information about the inquiry can be obtained from the committee's web site at: <http://www.aph.gov.au/house/committee/jpaa/index.htm> or from the Inquiry Secretary, Stephen Boyd at email [stephen.boyd.reps@aph.gov.au](mailto:stephen.boyd.reps@aph.gov.au) or (02) 6277 2336.