

The Auditor-General
Audit Report No.37 2004–05
Business Support Process Audit

Management of Business Support Service Contracts

Australian National Audit Office

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of Australia 2005

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Canberra ACT
10 March 2005

Dear Mr President
Dear Mr Speaker

The Australian National Audit Office has undertaken a business support process audit across agencies in accordance with the authority contained in the *Auditor-General Act 1997*. I present the report of this audit and the accompanying brochure to the Parliament. The report is titled *Management of Business Support Service Contracts*.

Following its tabling in Parliament, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely



P. J. Barrett
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office. The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits and financial statement audits of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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Abbreviations/Glossary

ANAO	Australian National Audit Office
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
CEIs	Chief Executive's Instructions.
CPGs	Commonwealth Procurement Guidelines
FMA Act	<i>Financial Management and Accountability Act 1997</i>
GaPS	Gazette Publishing System
JCPAA	Joint Committee of Public Accounts and Audit
MAB/MIAC	Management Advisory Board/Management Improvement Advisory Committee
Ongoing management	Involves the management of the contract from the commencement to termination dates. This includes developing service level agreements, monitoring and managing the performance of the supplier and dealing with the ongoing, day-to-day issues that arise under the contract.
Performance measures	Measures that can be used as the basis for assessing the performance outcomes of a service provider. Comprehensive performance measures look at output, input, quality, timeliness and success of achievement of contract objectives. They can be both qualitative and quantitative.
Risk management	In a contracting context, it includes establishing the context of the contract and assessing, understanding and mitigating or managing those adverse events that may arise during contract service delivery or the contract management process. It also involves monitoring and reviewing the effectiveness of controls over time.
Sound and better practices	In a contracting context, these include business practices designed to strengthen the contract management framework and lead to improved contract outcomes.

Succession	<p>This phase of the contract management lifecycle looks at ensuring minimal impact on the business of the organisation at the conclusion of the contract (particularly in the event of early termination). Succession activities include conducting a review of the successes and failures that occurred over time in the contract arrangements, learning lessons and identifying necessary changes in future contracts, and conducting the necessary tasks to allow another service provider to take over, or to bring the service delivery back-in-house, if necessary.</p>
Transition	<p>This is the first phase of the contract management process and commences from the time the supplier is selected and runs through to a time agreed by the contracting parties. Transition activities include announcing the decision, establishing the contract relationship, identifying resources required by both parties, and undertaking a post-transition review. This phase may also be called the 'Implementation' phase.</p>

Summary and Recommendations

Summary

Introduction

1. The use of contractors to perform general business support services in Australian Government agencies is now an integral part of public administration as agencies focus on the delivery of core services. Business support services are administrative type services, such as finance and human resource functions, cleaning, accommodation, maintenance, courier and security services that support the core business of an agency.

Audit objectives

2. The objectives of this audit were to examine the management of business support service contracts in selected agencies to:

- assess the effectiveness of business support service contract management in the transition, ongoing management and monitoring and succession planning stages of the contract management lifecycle; and
- identify examples of better practice and opportunities for improvement for individual agencies and Australian Government agencies more broadly.

Audit scope and focus

Scope

3. The audit was undertaken in the following agencies:

- Australian Industrial Registry;
- ComSuper;
- Family Court of Australia; and
- IP Australia;

4. The audit involved: interviews with contract managers, staff in centralised contract support units and senior managers, as appropriate; an examination of policies, procedures and other contract management guidance; and the review of documents associated with the management of contracts.

Focus

5. The focus of the audit was based primarily on the better practice guidance outlined in *Contract Management—Better Practice Guide*.¹ The framework detailed in the *Contract Management—Better Practice Guide* has been used to structure the audit criteria.

Audit conclusion

6. The ANAO concluded that, generally, audited agencies' CEIs (Chief Executive Instructions) and procedures did not provide adequate guidance for all the stages of contract management. Contract management practices for business support service contracts tended to be informal and undocumented. In particular, there were a large number of contracts that had either expired, or were operating on a month-by-month basis.

7. In addition, the ANAO found that there was a significant lack of training for contract managers.

8. As a consequence, a risk exists that contract objectives may not be achieved efficiently or effectively by such agencies.

9. As such, the ANAO considers that there is scope for improvement in the conduct, management and documentation of contract management practices for business support services in the agencies audited. The ANAO further considers that all Commonwealth agencies would benefit from reviewing contract management practices, including contracts of both a core business and process support nature, against better practice contract management guidance.

Sound and better practice

10. The ANAO identified examples of sound and better practices in several agencies. These are listed in the table below:

¹ Australian National Audit Office, *Contract Management—Better Practice Guide*, February 2001.

Table 1**Examples of sound and better practice**

Contract Lifecycle Phase	Better Practice
General Contract Management Framework	Operation of a contract management committee, which provides centralised, high-level scrutiny of all contract proposals. The documentation provided to, and prepared by, the committee provides a clear record of the contracting decisions of the agency.
Risk Management	Comprehensive risk assessments for the market testing of a contract are performed and evolve with the project. Risk assessments are formally included as part of the implementation phase of a project.
Transition	<p>Request for tender documentation specifies the agency's requirements and expectations of the service provider, particularly during transition. The agency retained detailed transition communications (Property management contract).</p> <p>The contract is accompanied by a detailed transition plan. Once this phase was complete, the Contract Manager prepared a detailed end-stage report for consideration by the Project Management Board (Human resource management information systems contract).</p>
Ongoing Management	<p>A detailed and comprehensive service level agreement with workload indicators, minimum performance measures and reporting requirements was developed. Comprehensive records regarding the contract were maintained (Property management contract).</p> <p>A log was maintained for daily communication between the agency and the contractor which detailed any performance issues. The documentation associated with the performance monitoring process is thorough, allowing for prompt resolution of issues (Cleaning contract).</p>
Succession	As part of the contract, the contractor was required to develop a detailed 'Transition Out' plan for review by the agency (Property management contract).

Source: ANAO fieldwork

11. The ANAO considers that the audited agencies, and other Commonwealth organisations, may benefit from enhancing their contract management processes by adopting, for contracts of a similar nature, the above better practices if they have not already done so.

Recommendations

12. The ANAO has made seven recommendations based on the findings from the agencies reviewed. These recommendations are likely to have relevance to contract management practices in all Commonwealth organisations.

Responses provided by agencies

13. Each of the audited agencies, together with the Department of Finance and Administration² (Finance), responded positively to the opportunity to comment on the proposed audit report.

14. Each of the audited agencies indicated that they agree with the audit recommendations. Finance indicated it also supported the audit recommendations. Agencies' responses to the recommendations are shown following each recommendation within the report. General comments provided by these agencies and Finance, are contained in Appendix 1 of the report.

² The Department of Finance and Administration was provided the opportunity to comment on the draft report given its central policy responsibilities in relation to procurement.

Recommendations

The summary of recommendations below is based on the findings from the agencies reviewed but is likely to have relevance to contract management practices in all Commonwealth organisations.

Recommendation No.1
Para 3.12

The ANAO recommends that agencies enhance their contract management framework, including establishing contracting policy and procedures to provide guidance for all phases of contract management.

Recommendation No.2
Para 3.17

The ANAO recommends that agencies provide appropriate training for staff with contract management responsibilities, commensurate with the value, nature and risk profile of relevant contracts to be administered.

Recommendation No.3
Para 4.34

The ANAO recommends that:

- agencies conduct, and appropriately document for all contracts, risk assessments prior to contracts being signed, commensurate with the value, nature and risk profile of the contract; and
- once the individual risks for each contract have been identified, agencies, in consultation with the service provider, as needed, develop appropriate risk treatments, which mitigate and/or manage the risks identified.

**Recommendation
No.4
Para 4.39–4.40**

The ANAO recommends that agencies include in their CEIs specific requirements that contract managers, as part of the contract transition phase:

- develop, and agree with the contractor, a transition plan including specifying the procedures to be used in the operation of the contract;
- identify resources required by the contractor and agency for each stage of the contract; and
- complete a post implementation review at the conclusion of the transition period.

The detail of each of these elements will be dependent on the nature and complexity of individual contracts and the individual risks identified for each contract.

**Recommendation
No.5
Para 4.47**

The ANAO recommends that service level agreements, performance indicators, measures for resolving issues relating to poor performance or disputes, and the identification of reports or feedback to be provided under the contract, should be established and agreed between the parties at the contract development stage, or within an agreed timeframe following the signing of the contract.

**Recommendation
No.6
Para 4.52**

The ANAO recommends that agencies actively monitor contractor performance throughout the life of each contract. Appropriate evidence of such monitoring should be maintained within the agency's control systems.

**Recommendation
No.7
Para 4.57**

The ANAO recommends that agencies develop succession plans which are implemented prior to the termination or expiration of a contract, recognising the long lead-time often involved in establishing new contractual arrangements.

Audit Findings and Conclusions

1. Background

Introduction

1.1 The use of contractors to perform general business support services in Australian Government agencies is now an integral part of public administration as agencies focus on the delivery of core services. Business support services are administrative type services, such as finance and human resource functions, cleaning, accommodation, maintenance, courier and security services that support the core business of an agency.

Previous reviews

1.2 In 1998, the ANAO released *Selecting Suppliers Managing the Risk*, a Better Practice Guide which considered risk management in relation to procurement activities. In 1999, the ANAO completed an audit³ which examined aspects of business support process contract management in eight organisations, particularly in relation to day-to-day administration of the contract, performance management and contract succession. A *Contract Management Better Practice Guide* was issued in 2001 which focused on ensuring reliable delivery of goods or services by external suppliers and encompassed:

- risk management;
- transition;
- ongoing management of the contract; and
- evaluation of the overall performance of the contract to enable effective succession planning at the conclusion of the contract.

1.3 The ANAO has also undertaken several performance audits of agencies' management of contracts. In addition, Parliamentary and other committees have undertaken inquiries into public sector contract management. A listing of these reports is provided at Appendix 6.

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

Audit objectives, scope and audit criteria

Scope

1.4 The objectives of this audit were to examine the management of business support service contracts in selected agencies to:

- assess the effectiveness of business support service contract management in the transition, ongoing management and monitoring and succession planning stages of the contract management lifecycle; and
- identify examples of better practice and opportunities for improvement for individual agencies and Australian Government agencies more broadly.

1.5 The audit examined the management of contracts for business support services in four Commonwealth organisations operating under the *Financial Management and Accountability Act 1997* (FMA Act). That is, contracts for provision of internal services that supported the organisations' delivery of outputs. The contracted business support services examined included:

- property management;
- cleaning services;
- security and guarding services;
- travel management;
- printing;
- human resource and payroll information services;
- records management and retrieval services; and
- supply of stationery.

1.6 This audit is a follow up to the ANAO's previous *Management of Contracted Business Support Processes* audit that included consideration of contract management issues.

1.7 The audit did not include consideration of procurement decisions themselves.

Audit evaluation criteria

1.8 The audit was based primarily on the better practice guidance outlined in *Contract Management—Better Practice Guide*⁴ (the Better Practice Guide). The framework detailed in the Better Practice Guide has been used to structure the audit criteria, as shown below in Table 2.

Table 2

Audit criteria

Contract Lifecycle Phase	Audit Criteria
General	The ANAO would expect agencies to have in place policies and procedures that support the ongoing management of contracts entered into by the agency. Such policies and procedures would cover issues at the individual contract level.
Contract management	<p>Risk management</p> <p>The ANAO would expect, as a minimum, that all parties understand the contract, including:</p> <ul style="list-style-type: none"> • the outputs that the contracted services support; • the critical success factors for the delivery of the outputs; and • the internal input necessary for the delivery of the outputs <p>The ANAO would expect the agency and contractor have:</p> <ul style="list-style-type: none"> • identified all non-trivial business risks; • analysed those risks; and • designed treatments that reduce the risks to an acceptable level. <p>The ANAO would also expect the agency and contractor to have implemented appropriate risk treatments and have in place processes to support the monitoring and review of the effectiveness of those controls/treatments.</p>

⁴ Australian National Audit Office, *Contract Management—Better Practice Guide*, February 2001.

Contract Lifecycle Phase	Audit Criteria
Contract management cont.	<p>Transition</p> <p>The ANAO would expect the following, as a minimum, to have occurred as a part of the transition phase for any contract entered into by an agency:</p> <ul style="list-style-type: none"> the agency, in consultation with the contractor, has developed and agreed a transition plan including procedural guidance; both parties have agreed the resources required for each stage of the contract; and the agency has completed a post-implementation review. <p>Ongoing contract management</p> <p>The ANAO would expect agencies to have agreed, in consultation with the service provider, as a minimum, for any contract entered into, the:</p> <ul style="list-style-type: none"> service levels to be delivered; performance measures and reports; mechanisms for resolving issues relating to poor performance; and type and level of documentation needed for the ongoing management of the contract. <p>Contract succession</p> <p>The ANAO would expect agencies to have developed a succession plan for each contract.</p>

Source: ANAO.

Selected agencies

1.9 The audit was undertaken in the following agencies:

- Australian Industrial Registry;
- ComSuper;
- Family Court of Australia; and
- IP Australia.

Audit approach

1.10 The audit approach involved: interviews with contract managers, staff in centralised contract support units and senior managers, as appropriate; an examination of policies, procedures and other contract management guidance; and the review of documents associated with the management of individual contracts.

1.11 The audit was undertaken during the period June 2004 to March 2005 in accordance with ANAO Auditing Standards, at an approximate cost of \$203 400.

Audit report structure

1.12 Chapter 2 of this report provides an overview of the regulatory and accountability environment surrounding public sector contract management, and also provides an outline of the measures that agencies can implement to improve their contract management processes. Chapters 3 and 4 outline the findings against relevant audit criteria and provide recommendations to assist agencies generally in improving their contract management processes.

1.13 The ANAO provided each of the selected agencies with a detailed report of the audit findings relating to their agency as part of the audit process.

2. Contract Management Accountability

This chapter provides an overview of the environment in which public sector contract management operates. This chapter also outlines improvements that can be made by agencies in implementing a sound contract management framework, to enable them to meet their accountability and transparency obligations in the spending of public money.

Introduction

2.1 Commonwealth organisations are subject to a range of legislative and accountability requirements in relation to procurement and, therefore, by definition, contract management (see paragraph 2.9).

2.2 Fulfilling these obligations requires agencies to establish a sound contract management framework, together with supporting processes and practices designed to meet these requirements.

Parliamentary and Government focus on contract management

2.3 There has been increased Parliamentary focus on the effectiveness of public sector contract management over the last several years. The Joint Committee of Public Accounts and Audit (JCPAA) examined contract management in the Australian Public Service in 2000⁵ and noted that:

The search for excellence in contract management is one of the most pressing challenges for the Australian Public Service. With the move to greater outsourcing of programs and services, public sector agencies must equip themselves with a range of skills, knowledge and experience to ensure that contract management is efficient and effective.

...in view of the public monies allocated to purchasing goods and services, and the complexities of managing government contracts, it is essential that this aspect of public administration be given sufficient and ongoing scrutiny.

2.4 Key findings and recommendations from that JCPAA inquiry related to enhanced accountability, transparency, performance measurement and monitoring in contract management frameworks.

⁵ Joint Committee of Public Accounts and Audit, *Contract Management in the Australian Public Service*, Report No.379, October 2000, p. 2.

2.5 In addition to the JCPAA inquiry in 2000, there have been other reports and publications by the ANAO⁶, the Industry Commission⁷ and the Management Advisory Committee/Management Improvement Advisory Committee⁸ (MAB/MIAC) which have addressed contract management issues.

2.6 These reports and inquiries were initiated against a backdrop of increasing contracting out of government services. For some time now, contracting arrangements in the Australian Public Sector have evolved to a point where contract management is now accepted as a skill required of the majority, if not all, public sector managers.

2.7 Previous audits and inquiries into public sector contract management have identified that there were significant opportunities for agencies to improve their contract management frameworks.

2.8 While this audit focussed on contracts relating to business support functions and services, the audit has again highlighted that contract management frameworks and processes in the agencies audited require improvement to ensure that desired contract outcomes are achieved.

Regulatory requirements for contract management

2.9 The *Commonwealth Procurement Guidelines* (CPGs) issued by the Minister for Finance and Administration establish the core procurement policy framework and articulate the Government's expectations for all departments and agencies subject to the FMA Act and their officials, when performing duties in relation to procurement.^{9,10} According to the CPGs, *Procurement* is defined as

...the whole process of acquiring property or services. It begins when an agency has identified a need and decided on its procurement requirement. Procurement continues through the processes of risk assessment, seeking and evaluating alternative solutions, contract award, delivery of and payment for the property or services and, where relevant, the ongoing management of a

⁶ Refer Appendix 6 of this report for previous ANAO audit coverage.

⁷ Industry Commission, *Competitive Tendering and Contracting by Public Sector Agencies*, Report No.48, 1996.

⁸ MAB/MIAC, *Before you sign the dotted line, Ensuring contracts can be managed*, Commonwealth of Australia, May 1997.

⁹ Department of Finance and Administration, *Commonwealth Procurement Guidelines*, Financial Management Guidance No.1, January 2005, p. 8.

¹⁰ The July 2004 version of the CPGs was current during audit fieldwork, however this version has since been revised. The revised version is dated January 2005. Note that there are no significant changes for contract management purposes in the revised version. (The main changes relate to the introduction of mandatory procedures for procurement decisions).

contract and consideration of options related to the contract. Procurement also extends to the ultimate disposal of property at the end of its useful life.¹¹

2.10 Regulation 8(1) of *Financial Management and Accountability Regulations 1997* (FMA Regulations) requires officials to have regard to the CPGs when performing duties related to procurement. Bodies subject to the *Commonwealth Authorities and Companies Act 1997* (CAC Act) are generally not subject to the CPGs. However, certain CAC Act bodies have been directed by the Minister for Finance and Administration to comply with the CPGs.

2.11 As such, the guidance outlined in the CPGs is applicable to all FMA agencies, and those CAC bodies that choose, or are directed, to comply. It includes reference not only to the purchasing aspect of procurement, but also to the contract management process.

2.12 Section 44 of the FMA Act requires Chief Executives to promote the efficient, effective and ethical use of the Commonwealth resources for which they are responsible. The CPGs outline key elements in the procurement process, by which agencies can meet these obligations. Managing risk and maintaining documentation at all stages in the procurement process are noted as two ways in which an agencies' section 44 responsibilities can be met. The ANAO Better Practice Guide also cites risk management and documentation practices as critical to good contract management.

2.13 Having regard to the ANAO Better Practice Guide, the CPGs and other available guidance when developing their contract management framework, agencies will be well placed in meeting their regulatory and accountability obligations in this area of administration.

Features of sound contract management

2.14 Given the opportunities for improvement noted during this and prior audits and inquiries, the ANAO considers it appropriate that all agencies consider the need to incorporate enhancements into their contract management frameworks. Such enhancements would provide assurance to agency management, the Parliament and other stakeholders that contracts, and the resultant expenditure of public money, are being effectively managed.

2.15 The ANAO has identified a number of factors that can contribute to good contract management. While each agency should develop their contract management framework to meet their particular circumstances, the ANAO considers that the following elements are applicable to any contract management framework.

¹¹ Department of Finance and Administration, op. cit., p. 10.

Senior management ownership

2.16 A contract management framework will benefit from visible senior management commitment and support. As a minimum, support would normally be reflected in the designation of a senior manager(s) with relevant contract management experience and knowledge to be responsible for overseeing an agency's contract management responsibilities.

2.17 Regular reporting by designated officers on contract management issues to senior management, and/or the Audit Committee where appropriate, in an agreed format will also help ensure contracts receive sufficient senior management attention.

Risk management

2.18 Incorporating risk assessment into all stages of the contract management framework and, if necessary, applying mitigating treatments for each risk in each contract assists in ensuring contracting objectives are achieved. It may also prevent adverse outcomes.

2.19 Additional information on the benefits of including risk management in contract management processes is discussed at Chapter 4. Appendix 2 to this report details risk considerations for each of stage of the contract management process.

Policies and procedures

2.20 An integral part of any contract management framework is the need to develop and maintain comprehensive policies and procedures that provide up-to-date guidance on the contract management process, including controls operating within that process.

2.21 Matters that should be considered as part of the development of a contract management framework, and in turn be covered in an agencies' policies and procedures include:

- **Record-keeping**—The CPGs highlight the importance of record-keeping in procurement and, in turn, contract management activities:

...Documentation is critical to accountability and transparency. It provides a record of procurement activities and how they have been conducted, and facilitates scrutiny of these activities.

Agencies must maintain appropriate documentation for each procurement. The appropriate mix and level of documentation

depends on the nature and risk profile of the procurement being undertaken.¹²

The CPGs provide examples of documentation that would be appropriate for each stage of the procurement lifecycle. This table is reproduced at Appendix 5 of this report.

The ANAO considers it would generally be appropriate that, where suppliers provide services, particularly those of a recurring or significant nature, a formal signed contract should be in place. Failure to formalise the terms and conditions for the provision of goods and services is likely to increase the risk that the required outcome is not achieved. Once a contract is in place, appropriate documentation of the key actions and decisions taken to manage the contract will also reduce the risk that contract outcomes are not delivered.

- **Standard contracts**—The ANAO considers that the use of standard template contracts or standard contract clauses can improve consistency and efficiency in the contract management process, as well as mitigate certain contracting risks. For example, standard contracts, when used with care, can assist contract management officials in meeting their procurement obligations, particularly where there is an ongoing need for the use of a particular type of contract and similar processes can be followed for each engagement. The use of standard clauses would help ensure clauses covering such matters as occupational health and safety, insurance, conflict of interest, record-keeping, security, dispute resolution, and ANAO access are included in all contracts.
- **Sources of guidance**—Larger agencies often have their own internal contracting unit, usually with internal legal support and a team of contract officers available to monitor contracts and provide advice. The ANAO acknowledges that smaller agencies often do not have such resources available internally. Smaller agencies may find that they need to utilise resources of central agencies such as Finance, their portfolio agency and external legal support to a greater degree when seeking guidance in contracting matters. In addition, the ANAO Better Practice Guide should be used as a source of guidance.

Internal audit coverage

2.22 The periodic review of contract management practices should be considered for inclusion on the internal audit work plan as part of the ongoing

¹² Department of Finance and Administration, op. cit., p. 27.

commitment to agency accountability, efficiency and sound risk management, and to encourage continual process improvement.

Relevant skills and experience

2.23 Having contract managers with the required skills and experience is also important for effective contract management. This will generally involve agencies ensuring that all officers responsible for contract management have a good understanding of their responsibilities, relevant legislative and policy frameworks and the sources of information and guidance available to them.

2.24 When staff are allocated contract management responsibilities, training would generally include the identification of the risks of contracting; policies and procedures for contracting; transition issues; performance monitoring; performance measurement; performance reporting; succession planning; and documentation requirements.

2.25 The risks of not undertaking such training are that contract objectives may not be achieved and statutory obligations may not be met.

2.26 In addition, there is a risk that untrained contract managers responsible for managing smaller contracts may progress to managing more complex contracts without sufficient skills and experience. If this were to occur without contract management skills being assessed and enhanced, more significant contracts, with potentially larger reputation and financial implications, may be put at risk.

Contract unit

2.27 The ANAO considers that the establishment of a central contracting guidance unit can be an effective way of disseminating advice to contract managers, monitoring contracts across the organisation and encouraging better practices, such as the use of standard contract templates and providing appropriate training to staff with contract management responsibilities.

2.28 Such units can be particularly effective in agencies that have substantial and complex contractual obligations and that have devolved contract management responsibilities to line areas.

Linking of contract information into finance processes

2.29 Agencies are required to maintain contract registers for gazettal and Senate Order¹³ reporting purposes. In addition, agencies are required to report commitments at year-end in their financial statements. The ANAO considers that pro-active monitoring and the linking of contract information with agencies' finance processes can assist in the identification and reporting of contract liabilities and commitments, and assist in managing the budget implications of contract extensions and renewals.

¹³ The Senate Order for Departmental and Agency Contracts of 20 June 2001 requires Ministers to table letters, twice annually, advising that each of the agencies which they administer has placed a list of contracts on the Internet. The list of contracts is to include all contracts entered into by the agency which have not been fully performed, or which have been entered into during the previous twelve months, and which provide for consideration to the value of \$100,000 or more. In addition, the list of contracts is required to indicate, amongst other things, whether any of the contracts listed contain confidentiality provisions.

3. Findings—Agencies’ Contracting Framework

This chapter details the audit findings on the contract management framework within the audited agencies.

Introduction

3.1 Agencies need to develop their own control structure and governance framework. In the contract management context, this includes establishing a control environment that clearly sets out contract management responsibilities and promotes sound management principles, including continuous improvement processes. Comprehensive and up-to-date policies and procedures are fundamental to achieving such an environment. This audit comments on agencies’ control environment to the extent that opportunities for improvement to minimise the risk of failures in the contract management process occurring in the future were noted.

Contract management framework in agencies

3.2 The audit reviewed agencies’ contract management structures, policies and procedures, to identify the extent to which they assisted the agency in performing their contract management responsibilities in accordance with the practices outlined in the ANAO Better Practice Guide. The general control structure and governance framework provides an important linkage between strategic objectives and those functions and tasks undertaken to achieve agency objectives in relation to contract management.

Table 3

Audit criterion: general

Audit criterion: general	The ANAO would expect agencies to have in place policies and procedures that support the ongoing management of contracts entered into by the agency. Such policies and procedures would cover issues at the individual contract level.
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Source: ANAO

Audit findings

Contract inadequacies

3.3 Of the 20 contracts reviewed by the ANAO, it was found that over half of those:

- were not supported by a current, formal, signed contract document; or
- had expired and were no longer current, yet the supplier continued to provide services; or
- had been continuing on a month-by-month basis for a number of years without formal review; or
- were supplier-created and lacked important provisions, including the absence of any termination or review date.

3.4 The ANAO considers that the absence of strong contract management frameworks, as discussed below, has contributed to these findings.

Management structures

3.5 In two of the four agencies audited, the management of individual contracts was devolved to line areas with a centralised contract management group having decision-making authority and providing guidance on tendering and contract management.

Chief Executive Instructions and procedures

3.6 Of the four agencies audited, the ANAO noted that there was one agency that did not have any CEIs or other guidance that specifically addressed the management of contracts. This agency did, however, have a centralised contracts management unit that had instituted informal mechanisms for the ongoing management of contracts and was available to provide advice to agency staff on request.

3.7 Of the three agencies which had developed contract management guidance, one agency had included an outline of the roles of the centralised contracts management group and the contract managers, and the steps in the contract management process, including registering contracts for external reporting purposes. While the other two agencies had policies and procedures that supported certain stages of the procurement process, such as the tender process and contract negotiation phases, there was limited emphasis on ongoing contract management issues in these documents.

3.8 Of the four agencies audited, the ANAO found that two agencies utilised standard form contracts while the remaining two did not. Overall, the ANAO found that the procedural guidance provided to contract managers was not sufficient to encourage better contract management practices within the agencies audited.

Contract management training

3.9 In all four agencies there was an absence of appropriate contract management training. None of the agencies audited provided contract managers in line areas with training in the areas of contract implementation, performance monitoring and reporting and succession planning. The absence of instructive guidance, training and centralised monitoring of contract terms and commitments has resulted in some aspects of contract management not being understood and effectively performed by individual contract managers in line areas.

Conclusion

3.10 The ANAO concluded that although some of the agencies audited had elements of informal contract management processes in place, in some cases there was insufficient high-level support and centralised guidance. There was also inadequate procedural guidance and training on contract management, contributing to the finding that in many instances a current contract was not in place.

3.11 The ANAO considers that contract management arrangements within the agencies audited could be enhanced. Identification of an appropriate contract management framework, with:

- senior management ownership;
- development of policies and procedures; and
- the provision of training for contract managers

would contribute to improving agencies' contract management frameworks.

Recommendation No.1

3.12 The ANAO recommends that agencies enhance their contract management framework, including establishing contracting policy and procedures to provide guidance for all phases of contract management.

Agencies' responses

3.13 The audited agencies agreed with the recommendation. Specific comments were provided by the following agencies.

Australian Industrial Registry

3.14 Agreed. The Australian Industrial Registry notes this recommendation and will take action to implement it (while noting that the scale of the policies and procedures should be commensurate with the nature, value and risk profile of the relevant contracts).

ComSuper

3.15 Agreed. Following the agency specific review, ComSuper has created a section dedicated to contract management titled Contract and Procurement Team (CaPT). This section is responsible for the development of policy and procedures, and to provide guidance to contract managers in phases of contract management.

IP Australia

3.16 Agreed. IP Australia has recently established a contract management framework expanding the procurement and contract management procedures and policies to provide additional guidance on the establishment and ongoing management of contracts, in line with the ANAO's *Contract Management Better Practice Guide*. The Framework includes:

- updating and creating additional information to:
 - assist contract managers in identifying and fulfilling their responsibilities;
 - to put quality assurance checks in place to monitor contract performance; and
 - building contract management compliance checks into IP Australia's routine internal audit processes.
- establishing and centralising a contract management role within the procurement area of IP Australia, which has been renamed the Procurement and Contract Management Unit (PCM). The centralisation includes provision of advice, monitoring and responsibility for contracting issues for better practice contracting outcomes.
- providing required training to relevant staff.

Recommendation No.2

3.17 The ANAO recommends that agencies provide appropriate training for staff with contract management responsibilities, commensurate with the value, nature and risk profile of relevant contracts to be administered.

Agencies' responses

3.18 The audited agencies agreed with the recommendation. Specific comments were provided by the following agencies.

Australian Industrial Registry

3.19 Agreed. The Australian Industrial Registry notes this recommendation and will take action to implement it.

ComSuper

3.20 Agreed. As mentioned in the response to Recommendation One, the newly formed Contract and Procurement Team (CaPT) will provide appropriate training to contract managers in phases of contract management.

IP Australia

3.21 Agreed. As part of the newly established Framework IP Australia will be providing:

- in-house workshops/discussions to train and assist staff in their compliance and responsibilities under the new Framework;
- ongoing advice and assistance to contract managers in all phases of contract management, to ensure they possess the requisite skills and delegations to perform all the functions required to effectively manage contracts; and
- external contract management training for relevant staff.

4. Findings—Management of Contracts

This chapter details the audit findings on the management of contracts within the audited agencies.

Elements of contract management

4.1 There are four main elements of contract management:

- risk management;
- transition;
- ongoing management; and
- contract succession.

4.2 The audit criteria and the audit findings relating to each element are outlined within this chapter. A summary of results of the contracts reviewed is provided at Appendix 4.

Risk management

Introduction

4.3 Well-managed contracts can deliver significant benefits to an organisation. The difference between a contract delivering benefits and one that does not can often be attributed to the way that the risks associated with the delivery of those services are identified and subsequently managed. While organisations apply the principles of risk management to core business processes, often they do not apply those same principles to contract management. While the provider may have more control over the risks associated with contract delivery, there is much the contract manager can do to plan for, and mitigate the impact of those risks.

4.4 It is not unusual for an organisation to enter into contractual arrangements in order to transfer risks. This may be in recognition of insufficient resources or expertise to deal with anticipated workloads, or simply to outsource delivery of a process not considered to be part of the organisation's 'core' business. Whatever the reason, contracts may transfer and mitigate one risk factor, but may create another risk factor in contract management.¹⁴

¹⁴ Australian National Audit Office, op.cit., p. 18.

4.5 In the context of contract management, the contract manager should consider a combination of preventative and detective controls to minimise the risk of failures in contract service delivery. The level and complexity of these controls will be directly proportional to the assessment of the importance of the contracted services (and the risk assessment undertaken) in achieving the business objectives and outputs of the organisation.¹⁵

4.6 Contract managers should consider controls that will minimise the risks associated with:

- business outputs, eg. specified or planned levels of output activity that cannot be achieved;
- resources, eg. the organisation suffers financial hardship as a consequence of the contract, substandard delivery or poor contract management;
- government accountability requirements and organisational reputation, eg. the contract itself, contract delivery or management of the contract leads to public embarrassment;
- business interruption, eg. failure in contract delivery causes an interruption to one or several key business activities;
- client and stakeholder interests, eg. clients and stakeholders suffer due to substandard contract performance or poor contract management (this may include the service provider itself); and
- business exposure, eg. the contract, contract delivery, or contract management process lead to a legal or administrative exposure (which may, in turn, lead to a financial exposure to the organisation).¹⁶

4.7 Appendix 2 details the application of risk management to contract management.

¹⁵ *ibid.*

¹⁶ *ibid.*

Table 4

Audit criteria: Risk management

Audit criteria: Risk management	<p>The ANAO would expect, as a minimum, that all parties understand the contract, including:</p> <ul style="list-style-type: none">• the outputs that the contracted services support;• the critical success factors for the delivery of the outputs; and• the internal input necessary for the delivery of the outputs. <p>The ANAO would expect the agency and contractor have:</p> <ul style="list-style-type: none">• identified all non-trivial business risks;• analysed those risks; and• designed treatments that reduce the risks to an acceptable level. <p>The ANAO would expect the agency and contractor to have implemented appropriate risk treatments and have in place processes to support the monitoring and review of the effectiveness of those controls/treatments.</p>
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Source: ANAO

Audit findings

4.8 Of the 20 contracts reviewed, the audit found that only two contracts had documented risk assessments. In all four agencies, overall risk assessment practices were considered to be inadequate for contracts of business support services. There was limited evidence of risk management plans having been developed at either the commencement stage or during the life of the contracts subject to review. However, the ANAO noted that two agencies had centralised certain aspects of their contract management function. This was considered by the ANAO to particularly assist the assessment of relevant controls and risks.

4.9 The ANAO considers that risks specific to contracts should be addressed, while acknowledging that the risks associated with some contracts are likely to be minor. Risk assessments should identify risks arising under the contract together with the action to be taken and who is responsible for managing those actions. The risk assessments should be documented, and updated as required, throughout the life of the contract.

4.10 The level and detail of the documentation, and indeed the extent of the risk assessment itself, will depend on the nature and significance of the contract. For example, it would be appropriate for a minor contract to have a brief file note documenting the risks and associated treatments, whereas a significant contract would require more substantial documentation of the risk assessment and resultant mitigation strategies.

Transition

4.11 The first phase of contract management, the transition period, commences from the time the supplier is selected and concludes at a time agreed by the contracting parties. The duration of this phase depends on the nature and complexity of the contract.

4.12 The transition phase (noting that the importance and relevance of each step will depend upon the value, nature and risk profile of each contract) should involve:

- announcing the decision;
- establishing the contract relationship, if not already developed;
- developing a transition strategy. The strategy could include: keeping the focus on the changes required; facilitating appropriate resource allocations; undertaking contingency planning; facilitating open discussion on the service requirements; ensuring full understanding of the needs and expectations of each party; setting the rules for the contract; and outlining all tasks to be completed with clear responsibilities for completing them;
- preparing a resource plan. The plan could include: identifying responsibility for the transition; identifying the resources required to manage the transition phase and to assist with mobilisation; familiarisation and supervision; establishing mechanisms for dealing with issues, complaints and disputes from both the purchaser and provider; establishing contract management staff required for the term of the contract; and setting a realistic timeframe; and
- undertaking a post transition review. The review should be prepared by the contract manager and agreed with the provider, identifying issues still outstanding or incomplete, and any major problems which require resolution. The review could facilitate the adoption of better practices across the organisation in all contracts by highlighting the successes, failures and lessons learned in the transition phase.

4.13 Underpinning these steps is the need to have a good understanding of the provider's position and the terms and conditions of the contract. In some circumstances, the contract relationship, the transition strategy and the resource plan can be established as part of the tender negotiations.¹⁷

4.14 Appendix 3 details issues to consider during the transition phase of contract management.

¹⁷ *ibid.*, p. 24.

Table 5

Audit criteria: Contract management—transition

Audit criteria: Contract management— transition	<p>The ANAO would expect the following, as a minimum, to have occurred as a part of the transition phase for any contract entered into by an agency:</p> <ul style="list-style-type: none">• the agency, in consultation with the contractor, has developed and agreed a transition plan including procedural guidance;• both parties have agreed the resources required for each stage of the contract; and• the agency has completed a post-implementation review.
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Source: ANAO

Audit findings

4.15 The ANAO found that of the 20 contracts reviewed, seven contracts had provision for some form of transition planning incorporated into the contract.

4.16 The ANAO acknowledges that a transition process in relation to some contracts may not need to be extensive. Nevertheless, at a minimum, the ANAO would expect a limited transition plan, with appropriate staff being notified of contractor appointments and, where necessary, a familiarisation process put in place to achieve a common understanding of the specific requirements of each contract.

Resource plans and post implementation reviews

4.17 The ANAO found that:

- the majority of the contracts reviewed had no provision for resource planning; and
- a post implementation review had not been conducted for the majority of contracts.

4.18 Overall, in all four agencies there was little evidence of transition or resource planning for the contracts reviewed. While also acknowledging that in view of the nature and complexity of many of the contracts, extensive transition arrangements would not be required, the ANAO would still expect to see that transition issues had been recognised, considered and addressed.

Ongoing management of the contract

4.19 The ongoing management phase covers the life of the contract. It is this phase that largely determines the success of the contract.

4.20 The contract manager's responsibility during the life of the contract is to ensure, to the extent practicable, that the deliverables specified in the contract are provided. This will involve the management of the risks that were identified as part of the risk assessment process, referred to earlier. That is, the controls and other treatments for these risks have to continue to be appropriate and be operating effectively.

Table 6

Audit criteria: Contract management—ongoing contract management

Audit criteria: Contract management— ongoing contract management	<p>The ANAO would expect an agency to have agreed, in consultation with the service provider, as a minimum, for any contract entered into, the:</p> <ul style="list-style-type: none"> • service levels to be delivered; • performance measures and reports; • mechanisms for resolving issues relating to poor performance; and • type and the level of documentation needed for the ongoing management of the contract.
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Source: ANAO

Audit findings

4.21 Generally, there were no formal procedures, mechanisms or requirements in the agencies audited that ensured that service level agreements, performance measures or monitoring arrangements were agreed and included in contracts.

4.22 As such, contract management, performance monitoring, or documentation of dealings between the contract manager and the provider tended to be, in the majority of contracts, mostly informal, if occurring at all.

4.23 The ANAO was advised that in most instances, shortfalls in service delivery would be raised with suppliers, as necessary.

4.24 In relation to the ongoing management of contracts, the ANAO found:

- half the contracts reviewed had a service level agreement or equivalent provision included in the contract;
- very few of the contracts reviewed had formal mechanisms for monitoring performance during the life of the contract;

- the majority of contracts reviewed included a mechanism for resolving issues relating to poor performance, such as a dispute resolution clause, within the contract. The ANAO expects that a dispute resolution clause would be included in all contracts; and
- in half of the contracts reviewed, communications between the agency and the service provider were adequately documented. The ANAO expects that documentation would be available for all contracts to evidence the ongoing management and monitoring of contractor performance.

Contract succession

Introduction

4.25 This phase of the contract management lifecycle is designed to achieve a smooth succession phase at the end of the contract period so that there is minimal impact on the business of the organisation. The number of issues, and the effort required to manage them, will depend on the nature and complexity of the contracted service.

4.26 The contract succession phase, which should commence before the contract is completed, also involves a review of the successes and failures that occurred over time in the contract arrangements. It is particularly beneficial to establish whether any issues that arose, resulted from difficulties with the initial tender specifications or the signed contract itself (including the form of relationship the contract and the pricing regime put in place).

4.27 The succession phase, therefore, includes learning lessons and establishing a clearer understanding of what makes contract management successful. These lessons can form the basis of the planning, tender requirements and negotiations for the next contract.

4.28 To enable a smooth, efficient and effective transition at the end of the contract involving: the extension of the existing contract with any revised service levels; or selection of a new provider; or returning the services to in-house provision, the organisation should have an agreed succession plan.

4.29 Developing a succession plan will help organisations focus on such issues as the timing of a review of the arrangements and how the activity is to be reviewed. The review should look at the activities being performed and whether they are achieving the desired outcomes. A review should also examine cost-effectiveness and efficiency issues.¹⁸

¹⁸ Australian National Audit Office, op. cit., p. 68.

Table 7**Audit criteria: Contract management—contract succession**

Audit criteria: Contract management— contract succession	The ANAO would expect agencies to have developed a succession plan for each contract.
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Source: ANAO

Audit findings

4.30 Only one contract included succession planning in the form of a ‘transition out’ plan. This contract required the contractor to prepare a plan covering all aspects of transitioning out, retaining documentation and continuity of service.

4.31 Overall, in each of the four agencies, there was little evidence of succession plans being developed for the handover/transfer from one contractor to another or planning for the cessation of a contract, (particularly addressing issues that could arise in early termination). The absence of succession planning increases the risk that services are not provided with continuity, and necessary information is not retained and transferred as appropriate.

Conclusion

4.32 Overall, the ANAO concluded that, although agencies’ CEIs or procedures did not clearly outline the agencies’ contract management framework, a number of the contracts reviewed did have transition plans, performance measures and succession plans. However, the majority of agencies did not adequately document the monitoring of performance of the contractor and tended to have informal and undocumented contract management practices.

4.33 The absence of good contract management practices increases the risk that contract objectives are not achieved and accountability requirements are not satisfied. As such, the ANAO considers that there is scope for improvement in the conduct and documentation of contract management practices in each of the four agencies audited.

Recommendation No.3

4.34 The ANAO recommends that:

- agencies conduct, and appropriately document for all contracts, risk assessments prior to contracts being signed, commensurate with the value, nature and risk profile of the contract; and
- once the individual risks for each contract have been identified, agencies, in consultation with the service provider, as needed, develop appropriate risk treatments, which mitigate and/or manage the risks identified.

Agencies' responses

4.35 The audited agencies agreed with the recommendation. Specific comments were provided by the following agencies.

Australian Industrial Registry

4.36 Agreed. The Australian Industrial Registry notes this recommendation and will take action to implement it (while noting that the scale of the risk assessments should be commensurate with the nature, value and risk profile of the relevant contracts).

ComSuper

4.37 Agreed. The requirements for appropriate risk assessments are to be specified in new procedures under development. The risk assessment for individual contracts will canvass risk mitigation strategies either agreed with the supplier or developed independently.

IP Australia

4.38 Agreed. IP Australia agrees that these elements will be fit for purpose according to the nature of the contract and that a risk management approach is in order. Therefore, IP Australia has updated its procedures and policies to include risk assessment under the contract management framework with information dedicated to identifying and managing the risk, and actions to be taken if the risk eventuates. The documented risk assessment is to be at a level commensurate with the nature and materiality of the risk.

Recommendation No.4

4.39 The ANAO recommends that agencies include in their CEIs specific requirements that contract managers, as part of the contract transition phase:

- develop, and agree with the contractor, a transition plan including specifying the procedures to be used in the operation of the contract;
- identify resources required by the contractor and agency for each stage of the contract; and
- complete a post implementation review at the conclusion of the transition period.

4.40 The detail of each of these elements will be dependent on the nature and complexity of individual contracts and individual risks identified for each contract.

Agencies' responses

4.41 The audited agencies agreed with the recommendation. Specific comments were provided by the following agencies.

Australian Industrial Registry

4.42 Agreed. The Australian Industrial Registry notes this recommendation and will take action to implement it.

Comsuper

4.43 Agreed. The above requirements will be included in new procedures under development.

IP Australia

4.44 Agreed. IP Australia has updated its policies and procedures and is providing information and training to contract managers to assist them in incorporating transition and resource planning as part of the contract preparation. IP Australia has also developed a contract management review template for post implementation reviews, to be completed if the nature, materiality and complexity of the contracts so warrant.

4.45 For simpler contracts, these elements may comprise suitable emails between the contract parties, so that relevant procedures, resourcing and a post implementation report are communicated and understood. For more complex projects, these elements are likely to comprise more formal documentation to be signed off by both parties.

4.46 IP Australia also understands that the procedural guidelines and resource plan may be evolutionary, as both parties may agree to change these elements as the contract progresses.

Recommendation No.5

4.47 The ANAO recommends that service level agreements, performance indicators, measures for resolving issues relating to poor performance or disputes, and the identification of reports or feedback to be provided under the contract, should be established and agreed between the parties at the contract development stage, or within an agreed timeframe following the signing of the contract.

Agencies' responses

4.48 The audited agencies agreed with the recommendation. Specific comments were provided by the following agencies.

Australian Industrial Registry

4.49 Agreed. The Australian Industrial Registry notes this recommendation and will take action to implement it (while noting that the scale of the service level agreements and performance indicators should be commensurate with the nature, value and risk profile of the relevant contracts).

ComSuper

4.50 Agreed. Performance mechanisms will be included in contract or contract related documents, where necessary and appropriate.

IP Australia

4.51 Agreed. IP Australia has developed the contract management framework to give clarification and supporting procedural definition, to these performance setting and monitoring issues. This framework is an extension of the previous procurement/contract negotiation framework to include greater definition of contractual requirements. The policy on contract essentials includes such items as specifying the relevant service level agreements, milestones, and deliverables with the respective time frames and pricing schedules. Performance monitoring has been included as a requirement under contract manager responsibilities, with assistance and training to be provided to relevant staff.

Recommendation No.6

4.52 The ANAO recommends that agencies actively monitor contractor performance throughout the life of each contract. Appropriate evidence of such monitoring should be maintained within the agency's control systems.

Agencies' responses

4.53 The audited agencies agreed with the recommendation. Specific comments were provided by the following agencies.

Australian Industrial Registry

4.54 Agreed. The Australian Industrial Registry notes this recommendation and will take action to implement it (while noting that the scale of the monitoring should be commensurate with the nature, value and risk profile of the relevant contracts).

ComSuper

4.55 Agreed. Procedures are under development to ensure improved monitoring and documentation of contract performance by suppliers. Appropriate training and support will be given to contract managers to assist in the rigour of this process.

IP Australia

4.56 Agreed. The IP Australia contract management framework will utilise the contract register to monitor key contract management check lists and reviews, which include performance monitoring, transition planning, risk management, resource management and succession planning. The reviews and check lists will:

- be promulgated to all contract management areas within IP Australia;
- be used by contract managers to ensure that all contract management facets are being covered effectively; and
- be reported back to the Financial Management Group on a regular basis to ensure compliance.

Assistance and training will be provided to relevant staff to develop their ability to satisfy these requirements.

Recommendation No.7

4.57 The ANAO recommends that agencies develop succession plans which are implemented prior to the termination or expiration of a contract, recognising the long lead-time often involved in establishing new contractual arrangements.

Agencies' responses

4.58 The audited agencies agreed with the recommendation. Specific comments were provided by the following agencies.

Australian Industrial Registry

4.59 Agreed. The Australian Industrial Registry notes this recommendation and will take action to implement it (while noting that the scale of the succession planning should be commensurate with the nature, value and risk profile of the relevant contracts).

ComSuper

4.60 Agreed. Additional guidance to contract managers on the need to consider succession issues will be provided by the newly formed Contract and Procurement Team (CaPT).

IP Australia

4.61 Agreed. IP Australia concedes that to date the issue of succession planning has not always been dealt with in a satisfactory manner. This places the effective delivery of contracted services at risk and has also given rise to other concerns, such as whether the FMA regulatory requirements have been met during contract extensions. Although purchase orders were approved and raised for the extensions, no written documentation of the agreement between the parties was found. To rectify this IP Australia has since put out tenders and entered contracts for these services. We have also introduced policy and procedures to highlight this issue as a contractual requirement and will provide the requisite training to contract managers on this issue. The extent of the succession planning will be dependent on the nature and complexity of the service provided.

4.62 For simpler contracts, these elements may comprise suitable emails between the contract parties, so that relevant procedures, timeframes and responsibilities, are communicated and understood. For the more complex provision of services, these elements are likely to comprise more formal documentation to be signed off by both parties.

Canberra ACT
10 March 2005



P. J. Barrett
Auditor-General

Appendices

Appendix 1: Comments from Agencies

This Appendix provides any general comments received from each of the audited agencies and Finance.

Australian Industrial Registry

The findings of the contracted business support services contract audit are noted and it is advised that the Australian Industrial Registry proposes to consider and action each of the recommendations made.

ComSuper

ComSuper concurs with the recommendations of the audit report. ComSuper has taken action based on agency specific recommendations to improve its internal procedures, this is reflected in our responses to recommendations in the report.

Family Court of Australia

The Family Court of Australia (the Court) recently centralised its contracting and procurement responsibilities to its National Support Office. This allows the Court to effectively monitor and coordinate its contract activity nationally.

The Court is currently revising its Chief Executive Instructions (CEI's) and procurement policies. The Court agrees with the findings and recommendations from the *Management of Business Support Service Contracts* audit, conducted by the Australian National Audit Office, and these will be reflected in the revised CEI's and associated policies.

IP Australia

IP Australia has robust policies and procedures surrounding its procurement and contract negotiation processes. However, the audit highlighted that the ongoing contract management required further strengthening to effectively manage risk, FMA requirements, and better practice processes and policies. In response, IP Australia has developed a contract management framework and will now commence with its implementation to improve contract management in general. In particular, the following areas have been highlighted as issues under the new framework:

- greater clarification and definition of issues in our policies and procedures;
- staff training and awareness;
- centralisation of advice, monitoring and responsibility for contracting issues;

- transition planning;
- risk management; and
- succession planning.

Department of Finance and Administration

The Department of Finance and Administration (Finance) supports the recommendations that have been made in the report. It is of particular importance to good financial management that agencies develop and maintain comprehensive policies and procedures, including on contract management.

Finance notes that the report identifies issues in contract management practice in audited agencies. Chief Executive's Instructions (CEIs) are key operational instruments that mandate agency practice. Accordingly, it is important that CEIs contain appropriate contract management policies and procedures.

Appendix 2: Application of Risk Management to Contract Management

Risk management step	Transition-In phase	Ongoing management	Contract succession
Establish context	<ul style="list-style-type: none"> ● announce decision to stakeholders and brief unsuccessful tenderers ● prepare for new service delivery arrangements with successful tenderer 	<ul style="list-style-type: none"> ● ensure that performance meets specified standards of delivery, eg key result areas and outcomes ● seek opportunities to improve outcomes 	<ul style="list-style-type: none"> ● undertake review of the contract and service delivery to identify possible areas for improvement
Assess risks	<ul style="list-style-type: none"> ● does the tenderer understand the contract requirements? ● will the implementation be delayed? ● what relationship will evolve? ● have sufficient resources been allocated? ● is the fee structure appropriate? 	<ul style="list-style-type: none"> ● cultural change, eg where service was previously provided in-house or by another provider ● contract management skills ● delivery failure (time, cost, quality and quantity) ● management information not adequate 	<ul style="list-style-type: none"> ● timeliness of review ● new organisation priorities and objectives not considered ● has the market been adequately tested? ● has the opportunity to improve the relationship or pricing structure been considered? ● have the issues arising from potential early termination been recognised?
Implement treatments	<ul style="list-style-type: none"> ● implementation strategy, including purpose of contract ● transition-in plan ● establishing workable relationship ● use appropriate legal advice 	<ul style="list-style-type: none"> ● document management strategy ● delivery plan ● set targets ● monitor, manage and report ● benchmark performances 	<ul style="list-style-type: none"> ● succession strategy ● ongoing reviews of the market ● independent performance review panel ● use of industry network groups

Risk management step	Transition-In phase	Ongoing management	Contract succession
Monitor and review	<ul style="list-style-type: none"> ensure success of the transition-in phase 	<ul style="list-style-type: none"> both parties should test the adequacy of performance measures during the life of the contract 	<ul style="list-style-type: none"> evaluate performance review previous succession exercises and apply 'lessons learned' to achieve better practice

Source: Australian National Audit Office, *Contract Management—Better Practice Guide*, February 2001, p.22.

Appendix 3: Transition Issues to Consider

Issue	Consider Points
Industrial relations (IR)	It is important to identify whether the contract is likely to be IR sensitive and to identify what aspects of the contract are likely to be most sensitive to these issues.
Familiarisation period	For large and complex services a familiarisation period (eg. six weeks) would allow the transfer of known data/documentation and knowledge and allow the provider time to recruit and train personnel, while the existing provider still provides the service. Commencement of services could be conditional upon satisfactory completion of the familiarisation period. For less complex contracts only a few days may be necessary.
Key personnel	The purchaser could provide assistance to the provider in the form of key personnel for a period of, say, three months. For corporate business support activities, such as cleaning, this may not be required.
Resourcing	The purchaser and provider need to resource the contract at this stage. The level of resourcing will depend upon the relationship chosen. Traditional relationships often have an expectation that the provider's personnel, systems and methodologies will be in place on day one of the contract term. This can be a costly assumption and is often not considered during the tender stage. The relationship type will also affect the level of purchaser resourcing. Non-traditional relationships often require far more resources to set up, to implement during the transition period and to establish the appropriate relationships. The resource level after the initial phase should fall to a level below that of traditional arrangements as the relationship develops.
Transfer plan	Include transfer (or sale) of resources such as staff, equipment, systems and information. Consider the logistics associated with transferring staff (eg. conditions) the physical relocation of assets, arranging on-site facilities and security of site and purchaser data (through systems access).
Records control	Consider not only the format and quality but also a realistic timeframe for implementation and alignment of systems.
Alignment of business systems	Consider how to facilitate invoicing/payment processes, provider recruitment processes, and purchaser involvement in recruitment processes.

Issue	Consider Points
Meetings (start-up & ongoing)	<p>A start-up workshop could include:</p> <ul style="list-style-type: none"> • explanation to both purchaser and provider personnel of their rights and obligations under the contract. In complex cases a lawyer could be used to confirm the provider understands the conditions; • resolving cultural differences; • purchaser/provider alignment; and • payment regime based on milestones.
Occupational Health and Safety and security	Establish clear guidelines on OH&S and security with the provider.
Identification of training needs	<p>The competencies required of managers will depend on how critical the service is to the business and the nature of the relationship. The contract manager in traditional arrangements is often skilled only in the area of the service delivery required. This has come about due to the need to show the provider exactly what is required and how to deliver the service by giving direction on technical issues.</p>

Source: Australian National Audit Office, *Contract Management—Better Practice Guide*, February 2001, p.29.

Appendix 4: Summary of Contracts Reviewed

Number of Contracts									
	Risk Plan	Transition Plan	Resource Plan	Post-Transition Review	Service Level Agreement	Performance Measures	Dispute Clauses	Adequate Documentation	Succession Plan
Included as part of contract management	2	7	4	5	10	4	14	10	1
Total Reviewed	20	20	20	20	20	19*	20	20	19*

Source: ANAO fieldwork

* Monitoring and succession planning for one of the contracts could not be reviewed as the contract was just completing its transition phase at the time of the audit.

Appendix 5: Documentation Requirements

	Stage	Example of Documentation Requirements
[Purchasing procedures]	Identify Need	<ul style="list-style-type: none"> • annual procurement plan • budget papers • business case • risk assessment • legal advice • procurement method decision • evaluation plan, including selection criteria • procurement budget • time limits and timetable • advertisements, tender notices and other invitations to quote, tender or express an interest or participate through a multi-use list • prepare a probity plan • evaluation plan • request documentation (including draft contract) • due diligence process • tenders received and acknowledgements • value for money assessment • evaluation report and recommended decision • probity report • decisions (including relevant approvals/or authorisations, e.g. FMA Regulations 9 and 10 where appropriate) and their basis • contract negotiations and contract • provide advice to unsuccessful tenderers
	Determine Suitable Process	
[Contract Management procedures]	Conduct Procurement Process	<ul style="list-style-type: none"> • contract management plan • performance indicators • milestones • performance reports • correspondence between the parties • requests for variation of the contract • decisions regarding variation of the contract • decisions regarding variation, records of the receipt of orders • evaluations of property and/or services • payment information
	Manage Contract/ Relationship	

	Stage	Example of Documentation Requirements
	Manage Termination/Transition/ Disposal	<ul style="list-style-type: none"> • declaration of surplus asset • valuation • record of special disposal requirements • disposal strategy • engagement of sales agent and instructions • risk assessment • evaluation plan • advertisements or other invitations to do business • responses from prospective buyers • evaluation report • probity report • decisions and their basis • contract documents • payment information, including records of deposits

Source: Department of Finance and Administration, *Commonwealth Procurement Guidelines*, January 2005, p. 28.

Appendix 6: Contract Management References and Related Audits

The following is a listing of ANAO audit reports tabled in the last three years which include issues relating to contract management.

2004–2005

- Australian National Audit Office, Report No.10 of 2004–2005, *The Senate Order for Departmental and Agency Contracts* (Calendar Year 2003 Compliance)

2003–2004

- Australian National Audit Office, Report No.4 of 2003–2004, *Management of the Extension Option Review—Plasma Fractionation Agreement*
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