

The Auditor-General
Audit Report No.54 2000–2001
Compliance Assessment Audit

Engagement of Consultants

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Canberra ACT
29 June 2001

Dear Madam President
Dear Mr Speaker

The Australian National Audit Office has undertaken an across-agency Compliance Assessment Audit with the authority contained in the *Auditor-General Act 1997*. I present this report, and the accompanying brochure to the Parliament. The report is titled *Engagement of Consultants*.

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

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Summary, Recommendations and Audit Findings

1. Summary and Recommendations

Background

1.1 The cost to the Commonwealth for the engagement of consultants is significant. The ANAO estimates that on the basis of information reported in agencies' 1999–2000 annual reports, Commonwealth agencies spent approximately \$375 million on consultants.

1.2 In 1997, the Department of Finance and Administration completed a review of Commonwealth purchasing arrangements to identify changes to those arrangements that would improve the overall efficiency and effectiveness of Commonwealth purchases.¹ As a result, the Commonwealth Procurement Guidelines were revised and reissued by the Minister for Finance and Administration under Regulation 7(1) of the Financial Management and Accountability Regulations (FMAR) in March 1998. These Guidelines clarify what is required and expected by the Government in procurement of property and services, including consultancies and professional services.

1.3 The Joint Committee of Public Accounts and Audit (JCPAA) conducted an inquiry into Australian Government Procurement in 1999. The Inquiry made a number of recommendations designed to improve the efficiency and effectiveness of agency procurement. The Inquiry also indicated that the ANAO should increase the number of audits on the purchasing function of agencies, giving special attention to the implementation of purchasing principles such as value for money.²

1.4 A definition of consultancies, as distinct from professional services, is not provided in the Commonwealth Procurement Guidelines. However, the *Requirements for Annual Reports*, issued by the Department of the Prime Minister and Cabinet, provides a definition of consultancy services for external reporting purposes.

¹ 'Commonwealth Procurement Notice', Competitive Tendering and Contracting Group, Publications, 16 December 1997.

² Report 369, *Australian Government Procurement*, JCPAA, 16 June 1999, p. 22.

1.5 The objective of this audit was to provide assurance to Parliament that, in respect to the agencies reviewed:

- appropriate selection methods were used to engage consultants;
- reporting requirements were satisfied;
- adequate documentation was maintained;
- adequate controls were in place to ensure outputs were achieved; and
- performance was properly monitored and evaluated.

1.6 The ANAO undertook this limited scope audit in four Commonwealth agencies and selected a representative sample of consultancies based on cost and method of selection. The agencies selected were as follows:

- Department of Education, Training and Youth Affairs (DETYA);
- Department of the Senate;
- National Capital Authority; and
- Department of Communications, Information Technology and the Arts (DCITA).

1.7 The audit criteria were based on the Commonwealth legislation and guidelines applicable to Commonwealth procurement activities. The audit objective was to provide assurance that those requirements were being satisfied. The audit also considered whether management controls and practices were appropriate in terms of the level of risk attributed to the procurement process.

Overall conclusions

1.8 The audit found that:

- in the selection process, agencies were not consistently complying with established guidelines. These included the Commonwealth Procurement Guidelines, Chief Executive Instructions and other internal procedures, concerning advertising opportunities on the Government Advertising Website, and procurement thresholds (established internally by agencies). Nor were they adequately documenting the reasons for not complying with those guidelines;
- in respect of the requirements to gazette consultancies entered into and report them in their annual reports, agencies' procedures were not operating effectively;
- the level of documentation maintained for some contracts was insufficient to support the engagement of consultants for accountability purposes; and

- generally, the monitoring and review of performance prior to payment for services provided was not adequate. Also, final reviews and evaluations of performance were not being undertaken.

1.9 The audit identified that agencies operate under two distinct, but related control frameworks. The first framework, consisting of the Commonwealth Procurement Guidelines issued by the Minister for Finance and Administration, the Mandatory Reporting Requirements issued by the Office for Government Online, and complementary internal instructions, guidelines and procedures, was designed to achieve the primary objective of obtaining value for money from procurement activities. The second framework, which consists of the *Requirements for Annual Reports* issued by the Department of Prime Minister and Cabinet, is concerned with the objective of openness and transparency of decision-making in procurement activities. Agencies have generally assessed that the engagement of consultants is a low risk activity and, as a result, have designed the control framework to reflect this assessment.

1.10 The audit found that organisational control structures were not always effective in minimising procurement risks. While controls have been established and reflect the level of risk assigned to the activity, compliance is not adequately monitored or tested. Further, agencies have not established self-assessment mechanisms to adequately assess the effectiveness of the controls in place and to achieve better practice. As a result, basic procurement steps, which were established to ensure value for money and open and transparent decision making, have not always been followed.

1.11 In addition, the audit identified that guidance provided to purchasing officials was not sufficiently clear to assist determination as to whether a specific task required a contracted employee or a consultant. Legal advice noted that inappropriately defining contract employees as consultants exposed agencies to a number of legal and financial risks, including liability for superannuation and workers' compensation.³ The ANAO identified the need for a clearer definition of consultancy services and further guidance to better enable agencies to decide whether a task required a *contract for services* (consultancy) or a *contract of service* (contractor).⁴

³ The leading High Court case is *Stevens v Brodribb Sawmilling Co Pty Ltd (1986) 160 CLR 16*. This case found that the greater the level of control exercised by the employer, the more likely it is that the person will be found by a Court to be an employee rather than an independent consultant.

⁴ Further information on this issue, including a Checklist, is included at Appendix 3.

Detailed findings

1.12 The following detailed audit findings were provided to the agencies reviewed. Findings in respect to each agency are outlined later in this report.

Selection methods

1.13 Generally, the agencies reviewed had developed internal guidance material that was consistent with the Commonwealth Procurement Guidelines. However, controls designed to ensure compliance with these guidelines were not adequate.

Consistency of procurement thresholds

1.14 Commonwealth agencies generally have developed thresholds, as part of their internal guidance material, that determine selection techniques for varying levels of expenditure. Threshold limits and their use varied significantly across the agencies reviewed. The audit found that agencies were not consistently complying with established procurement thresholds and/or documenting the reasons for not complying with guidelines.

External reporting

1.15 The audit found that agencies' information systems, designed to enable external reporting requirements to be met, including the gazettal of contract information and the reporting of the use of consultants in agencies' annual reports, were not operating effectively in the agencies reviewed. Where agencies effectively used Management Information Systems (MIS) to track and record procurement activities, they were in a much better position to comply with external reporting requirements.⁵

Documentation to support decisions

1.16 In a number of instances, the audit found that the level of documentation maintained to support the engagement of consultants was insufficient to support the decisions made during the procurement process. As a result, it was not clear on what basis the decision to select a particular consultant had been made, and whether the consultant selected was the most suitable for the requirements and represented value for money.

⁵ The Auditor-General Audit Report No.38, 2001, *The Use of Confidentiality Provisions in Commonwealth Contracts*, also considered issues relating to external reporting of government contracts, both through the Gazette Publishing System (GaPS) and Annual Reports.

Potential conflicts of interest

1.17 The audit found agencies tended to rely on the consultant to identify potential conflicts of interest rather than seeking to identify potential conflicts of interest at the proposal stage. Selection processes should examine previous and current work performed by consultants to ensure that potential conflicts of interest have been identified and considered prior to any selection decision being taken.

Paying consultants

1.18 Controls designed to ensure that outputs were achieved and performance was monitored and evaluated, prior to payment for services provided, were not adequate in the majority of agencies reviewed. The potential for paying for poor performance, including contracted outcomes, is a risk that should be mitigated by appropriate monitoring and review.

Incentives in contracts

1.19 The audit found that including incentives in consultancy contracts to encourage and reward good performance was not employed by the agencies reviewed. Including incentives in consultancy contracts to encourage performance (time, cost and quality) is a better practice approach that could be considered when drafting consultancy contracts.⁶

Continuous improvement

1.20 The audit found little evidence that the participating agencies reviewed the management of each engagement to analyse the strengths and weaknesses of their systems and approaches in order to identify opportunities for improvement.

⁶ Examples of performance incentives and their application can be found in the ANAO Better Practice Guide, *Contract Management*, February 2001.

Recommendations

The recommendations set out below are based on the findings made in the agencies reviewed but should have relevance to all Commonwealth agencies and have been framed accordingly.

- Recommendation No. 1**
Para. 2.20
- The ANAO *recommends* that agencies:
- establish appropriate procurement thresholds commensurate with the value and complexity of the task to be performed; and
 - where scope is available in agencies' guidelines to deviate from these thresholds, this action should be supported by documentation approved by the appropriate delegate.
- Recommendation No. 2**
Para. 2.25
- The ANAO *recommends* that agencies review the management controls supporting the reporting framework regarding the engagement of consultants to achieve greater effectiveness and assurance for all stakeholders.
- Recommendation No. 3**
Para. 2.28
- The ANAO *recommends* that agencies review procurement processes to ensure that appropriate documentation has been prepared and submitted to the decision maker (delegate) and that this documentation is held on the associated procurement file for reference and accountability purposes.
- Recommendation No. 4**
Para. 2.32
- The ANAO *recommends* that agencies undertake ongoing monitoring of performance and formally review consultants' performance prior to payments being made under the contract.

Recommendation No. 5
Para. 2.33 The ANAO *recommends* that agencies formally document final evaluations or reviews of performance of consultants so that the successes and any failures can be used to identify areas for future improvement as well as for sound records management purposes.

Recommendation No. 6
Para. 2.39 The ANAO *recommends* that a clearer definition of **contracts for services** (consultancies) and **contracts of service** (contractors) be developed.

This will assist in the mitigation of the risks associated with incorrectly defining tasks as consultancies. The dissemination of this information could best be achieved through the *Requirements for Annual Reports* issued by the Department of the Prime Minister and Cabinet.

Agencies' response

1.21 Overall, the agencies reviewed responded positively to the report, generally agreeing with the recommendations made. A number of agencies indicated that the report would assist in further improving the process for engaging consultants in their agencies. In response to Recommendation No. 6, the Department of the Prime Minister and Cabinet agreed to address this issue in the next review of the *Requirements for Annual Reports*. Detailed agency responses have been included in the following chapters of this report.

2. Introduction

Background

2.1 Following the enactment of the *Financial Management and Accountability Act 1997*, the Department of Finance and Administration conducted a review of Commonwealth purchasing arrangements to identify changes that would improve the overall efficiency and effectiveness of the Commonwealth purchasing function.

2.2 As a result of the review, the Commonwealth Procurement Guidelines were revised and reissued by the Minister for Finance and Administration under Regulation 7(1) of the Financial Management and Accountability Regulation (FMAR) in March 1998.

2.3 More recently, the Joint Committee of Public Accounts and Audit (JCPAA) conducted an inquiry into Australian Government purchasing to examine the efficiency and effectiveness by which Commonwealth entities manage their purchasing function. The Inquiry noted that there was a need for agreed and universally applied definitions. The Committee's investigation revealed that amongst agencies there was '*inconsistency in the use of definitions, and, in some cases, uncertainty and confusion.*'⁷

2.4 The Commonwealth Procurement Guidelines: Core Principles and Policies, set out what is required and expected in procurement of property and services, including *consultancies and professional services of all types*.

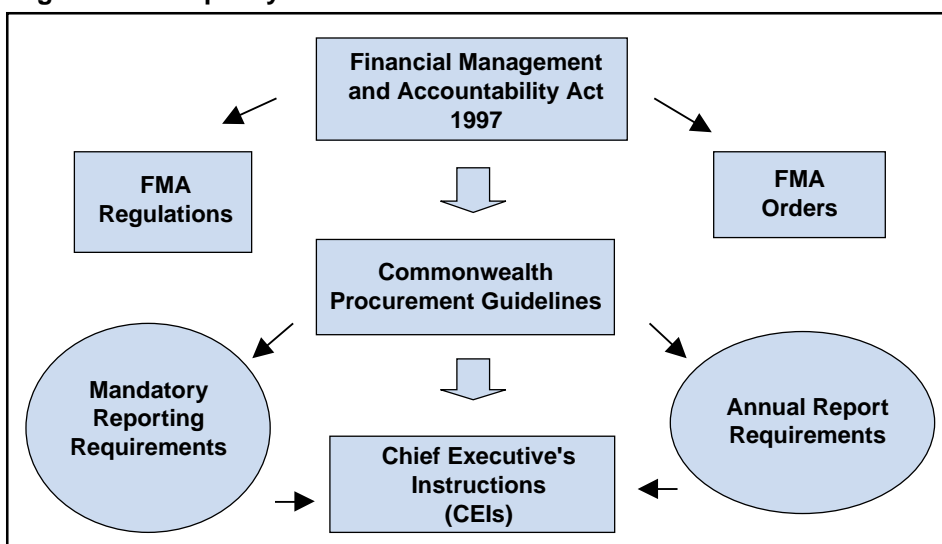
2.5 The Guidelines require agencies to consider the following principles when procuring goods or services:

- value for money;
- open and effective competition;
- ethics and fair dealing;
- accountability and reporting;
- national competitiveness and industry development; and
- support for other Commonwealth policies.

Legislation and policy framework

2.6 The following diagram represents the basic procurement policy framework for Commonwealth agencies.

⁷ op. cit., p. 9, Report 369, June 1999, p. 27.

Figure 1**Legislation and policy framework*****The risks***

2.7 Agencies are exposed to a number of risks when consultants are engaged. These risks include:

- using inappropriate selection methods that do not promote open and effective competition and, as a result, reducing the scope for achieving value for money;
- inaccurate reporting or failure to report procurement activities which risks non compliance with external reporting requirements;
- not keeping adequate documentation. If contractual disputes arise regarding the quality or scope of work and payments etc, agencies risk being held liable if adequate evidence is not available to support and justify decisions;
- not adequately monitoring and evaluating performance and recording the outcomes for future procurement decisions. This increases the risk of not achieving high quality and timely outputs and may impact adversely on future tender evaluations; and
- incorrectly defining the work to be performed. If a consultant is engaged to complete a task that requires regular direction from the agency, an employer/employee relationship may be created. As such, the agency may be held liable for leave provisions, professional indemnity, workers compensation and other benefits associated with full time employment.

Audit scope

2.8 The audit examined procurement of consultancy services to assess compliance with relevant legislation and Commonwealth Procurement Guidelines.

2.9 The examination of compliance with procurement processes involved a review of:

- agencies' procurement policies and procedures;
- documentation relating to consultancies including the method of selection and contract details;
- evidence of performance assessments undertaken;
- internal audit reports;
- Gazettal requirements; and
- Annual Report requirements.

2.10 In developing and conducting the audit, the ANAO had regard to the ANAO Better Practice Guide, *Controlling Performance and Outcomes*.⁸ Particular consideration was given to the five components of the control structure, namely:

- risk management;
- control environment;
- specific control measures;
- monitoring and review processes; and
- effectiveness of management information systems and communication processes.

Audit objectives

2.11 The objective of the audit was to provide assurance to Parliament that:

- appropriate selection methods were used to engage consultants;
- reporting requirements were satisfied;
- adequate documentation was maintained;
- adequate controls were in place to ensure outputs were achieved; and
- performance was properly monitored and evaluated.

⁸ 'Controlling Performance and Outcomes: Better Practice Guide to Effective Control' ANAO, 1997.

Audit criteria

2.12 Audit criteria were established for each audit objective based on the policy framework for procurement in the APS. These are outlined below.

Figure 2

Audit criteria

Audit Objective	Criteria
Are appropriate selection methods used to engage consultants?	Officers must adhere to agency CEIs with regard to observing selection thresholds. In turn, CEIs must be consistent with the Commonwealth Procurement Guidelines' principles of value for money, open and effective competition, and ethics and fair dealing.
Have reporting requirements been satisfied?	All open public business opportunities must be reported on the Government Advertising Website. ⁹ All contracts with a value of \$2000 or more must be gazetted within six weeks of signing the agreement. ¹⁰ Annual reports and/or agency Websites are required to contain the following information: name of the consultant, description of nature and purpose of consultancy, contract price, selection process used, and a justification for the decision to employ consultancy services. ¹¹
Has adequate documentation been maintained?	For the purposes of Section 48 of the FMA Act, a Chief Executive must ensure that the accounts and records of the agency properly record and explain the agency's transactions. ¹² In accordance with the Commonwealth Procurement Guidelines, Chief Executives are specifically accountable for ensuring that adequate systems for the recording of decisions and the reasons for making them are maintained. ¹³
Are adequate controls in place to ensure outputs are achieved and performance is properly monitored and evaluated?	Outputs should be measured against stated objectives and buyers should monitor supply arrangements and reconsider them if they cease to offer expected benefits. ¹⁴ Agencies should develop systematic methods and techniques to evaluate the procurement and management processes of the consultant and of their own activities. ¹⁵

⁹ *Mandatory Reporting Requirements Handbook (Version 2.0)*, Office of Government Online (www.ogo.gov.au/projects/eprocurement/gaps.htm as at 22 June 2001).

¹⁰ Ibid.

¹¹ *Requirements for Annual Reports*, Department of Prime Minister and Cabinet, May 2000 (www.dpmc.gov.au as at 22 June 2001).

¹² FMA Orders, Part 2, 2.3.

¹³ CTC Toolkit, *Role of CEIs in Procurement*, Competitive Tendering & Contracting Branch, 20 November 2000.

¹⁴ *Commonwealth Procurement Guidelines*, Competitive Tendering & Contracting Group, 27 March 2000.

¹⁵ *Managing Risk in Procurement*, Australian Government Publishing Service 1996, p. 52.

Audit methodology

2.13 Fieldwork was conducted in four agencies selected on the basis of their size, function and the number and cost of consultants used in the 1999–2000 financial year.

2.14 The agencies selected for fieldwork were as follows:

- Department of Education, Training and Youth Affairs (DETYA);
- Department of the Senate;
- National Capital Authority; and
- Department of Communications, Information Technology and the Arts (DCITA).

2.15 The audit was conducted in accordance with the ANAO Auditing Standards. Fieldwork was undertaken between November 2000 and January 2001. The total cost of the audit was \$64 000.

Audit findings

2.16 The detailed results of the audit against each of the audit objectives are shown below.

Are appropriate selection methods used to engage consultants?

Criterion	Officers must adhere to Organisation CEIs with regard to observing selection thresholds. In turn, CEIs must be consistent with the Commonwealth Procurement Guidelines' principles of value for money, open and effective competition, and ethics and fair dealing.
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Strengths

2.17 The audit found that agencies' CEIs were consistent with the principles of the Commonwealth Procurement Guidelines that relate to selecting the most appropriate suppliers to achieve value for money through open and effective competition. The audit also found that each of the agencies reviewed understood their responsibilities in terms of having regard to the Commonwealth Procurement Guidelines.

2.18 All agencies reviewed had developed procurement threshold guidelines which formed either part of, or were referred to, in agencies' CEIs.

Areas of improvement identified

2.19 The audit noted that three of the four agencies reviewed required that procurement threshold guidelines must be adhered to. However, many of the contracts reviewed did not comply with agency specific procurement thresholds in terms of the number of quotes to be obtained

for the value of the purchase. Under the CEIs, agencies are able to use selection methods, other than those prescribed in procurement threshold guidelines, provided that reasons for non-compliance are justified in writing. However, the audit noted that this practice was not consistently complied with across the agencies covered.

Recommendation No.1

2.20 The ANAO *recommends* that agencies:

- establish procurement thresholds, commensurate with the value and complexity of the task to be performed; and
- where scope is available in agencies' guidelines to deviate from these thresholds, this action should be supported by documentation approved by the appropriate delegate.

Have reporting requirements been satisfied?

Criteria	<p>All open public business opportunities must be reported on the Government Advertising Website.¹⁶</p> <p>All contracts with a value of \$2000 or more must be Gazetted within six weeks of signing the agreement.¹⁷</p> <p>Annual reports and/or agency Websites are required to contain the following information: name of the consultant, description of nature and purpose of consultancy, contract price, selection process used, and a justification for the decision to employ consultancy services.¹⁸</p>
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Strengths

2.21 The audit found that, generally, the agencies provided adequate internal guidance documents to satisfy Gazettal and Annual Report requirements.

Areas of improvement identified

2.22 The audit found that three of the four agencies reviewed were not complying with the requirements of the Government Advertising Website in relation to advertising open business opportunities.

2.23 The audit also found that most contracts reviewed were not Gazetted in accordance with the Mandatory Reporting Requirements.¹⁹

¹⁶ op. cit., p. 19, *Mandatory Reporting Requirements Handbook*.

¹⁷ Ibid.

¹⁸ op. cit., p. 19, *Requirements for Annual Reports*.

¹⁹ op. cit., p. 19, *Mandatory Reporting Requirements Handbook*.

2.24 In addition, the audit identified room for improvement in all four of the agencies reviewed with regard to reporting consultancy information in their Annual Reports.

Recommendation No.2

2.25 The ANAO *recommends* that agencies review management controls supporting the reporting framework regarding the engagement of consultants to achieve greater effectiveness and assurance for all stakeholders.

Has adequate documentation been maintained?

Criteria	For the purposes of Section 48 of the FMA Act, a Chief Executive must ensure that the accounts and records of the agencies properly record and explain the agency's transactions. ²⁰ In accordance with the Commonwealth Procurement Guidelines, Chief Executives are specifically accountable for ensuring that adequate systems for the recording of decisions and the reasons for making them are maintained. ²¹
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Strengths

2.26 The audit found that all agencies reviewed had developed adequate internal procurement guidance outlining the importance of maintaining appropriate documentation of decisions taken.

Areas of improvement identified

2.27 The audit found that adherence to internal procurement policies and procedures associated with the documentation of decisions taken required improvement in each of the agencies reviewed. The ANAO also found a number of instances where the level of documentation maintained by agencies was not sufficient to support decisions made during the procurement process. As a result, it was not always clear on what basis the decision to select a particular consultant had been made and whether the consultant selected was the most suitable for the requirements and represented value for money.

Recommendation No.3

2.28 The ANAO *recommends* that agencies review procurement processes to ensure that appropriate documentation has been prepared and submitted to the decision maker (delegate) and that this documentation is held on the associated procurement file for reference and accountability purposes.

²⁰ FMA Orders, Part 2, 2.3.

²¹ op. cit., p. 19, CTC Toolkit, *Role of CEIs in Procurement*.

Are adequate controls in place to ensure outputs are achieved and performance is properly monitored and evaluated?

Criteria	<p>Outputs should be measured against stated objectives and buyers should monitor supply arrangements and reconsider them if they cease to offer expected benefits.²²</p> <p>Agencies should develop systematic methods and techniques to evaluate the procurement and management processes of the consultant and of their own activities.²³</p>
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Strengths

2.29 The audit found that all of the agencies reviewed had established adequate performance milestones within contract documentation.

Areas of improvement identified

2.30 In most instances, the audit found no documentation to indicate that any of the agencies covered had conducted formal periodic reviews of the performance of consultants. Milestone payments were often made without formal documented assessments of performance against stated criteria in the contract.

2.31 The audit also found that, while all of the agencies reviewed had developed policies and procedures for a final evaluation of a consultants performance, controls in place to ensure compliance with these policies and procedures were not operating effectively.

Recommendation No.4

2.32 The ANAO *recommends* that agencies undertake ongoing monitoring of performance and formally review consultants' performance prior to payments being made under the contract.

Recommendation No.5

2.33 The ANAO *recommends* that agencies formally document final evaluations of performance of consultants so that the successes and any failures can be used to identify areas for future improvement as well as for sound records management purposes.

²² op. cit., p. 19, *Commonwealth Procurement Guidelines*.

²³ op. cit., p. 19, *Managing Risk in Procurement*.

Are consultancies accurately defined?

2.34 Commonwealth agencies use consultants to complement their skills base in order to ensure that outcomes are achieved. Agencies can reduce the risks associated with engaging consultants by clearly identifying the nature of the task to be performed before a decision is made as to whether it requires a consultant or a contractor.

2.35 The audit found that, in some instances, the terminology used to define the use of consultants and contractors was ambiguous and in some cases, may result in future legal issues.

2.36 The audit identified a need for a clearer definition and a set of guidelines to better enable agencies to ascertain whether a task requires a *contract for services* (consultancy) or a *contract of service* (contractor).

2.37 A **consultancy services contract** (*contract for services*) is an agreement between an agency and an independent consultant for the provision of defined services, usually for a defined period of time. It will describe the nature of the task (and any deliverable) but not the precise way the consultant must go about the task. The consultant is usually paid on completion of milestones or in a lump sum. Consultancy contracts may be between an agency and an individual, a partnership or a company/corporation. A consultancy services contract is based on a *principal/consultant relationship*. Consultants are not employees of the agency and are not paid wages or other employee entitlements.

2.38 A **contract of employment** (*contract of service*) should be used to engage a contractor where the agency needs to maintain an element of control over how the work is to be performed. If the employer directs the contractor throughout the term of the agreement, an *employer/employee relationship* is created. This is the key (but not the only) criteria that common law will consider when distinguishing a consultancy service from contract employment.

Recommendation No.6

2.39 The ANAO *recommends* that a clearer definition of **contracts for services** (consultancies) and **contracts of service** (contractors) be developed.

2.40 This will assist in the mitigation of the risks associated with incorrectly defining tasks as consultancies. The dissemination of this information could best be achieved through the *Requirements for Annual Reports* issued by the Department of the Prime Minister and Cabinet.

2.41 The Department of the Prime Minister and Cabinet agreed to address this issue in the next review of the *Requirements for Annual Reports*.

2.42 Audit findings in respect of each of the agencies reviewed and their responses are detailed in the following sections of this report.

3. Department of Education, Training and Youth Affairs

Introduction

3.1 Responsibility for procurement in the department has been devolved to program areas. To assist in managing the procurement process, the department has established the Procurement Management Information System (PROMIS). The system was designed with two main purposes:

- to guide staff through and obtain best possible compliance with the correct Commonwealth and departmental procurement processes; and
- to collect and report data on all contracts for service, including consultancies, engaged by the department for management purposes.²⁴

3.2 To ensure controls are in place to manage the procurement process, PROMIS:

- provides access to pro-forma documents such as standard contracts, contract variations, requests for tender and quotations;
- inserts a procurement number into standard documents to establish a management trail; and
- records details of all contract variations; such as monetary and end date variations, for each contract.²⁵

3.3 The 1999–2000 Annual Report indicated that, during the financial year, the department used 190 consultancy services. Expenditure on these services in that year was \$14.5 million.²⁶

Overall conclusion

3.4 Audit findings indicate that some improvement in departmental procedures relating to the monitoring and evaluation of consultants performance, satisfying reporting requirements and maintaining adequate documentation for management and accountability purposes, is required. The results of the audit are summarised in the following figure.

²⁴ DETYA Annual Report, 1999/2000, p. 82.

²⁵ Ibid, p. 82.

²⁶ Ibid, p. 139.

Figure 3

Management controls summary

<i>Audit Objective</i>	<i>Controls exist?</i>	<i>Enhancement required? (0 = none, 3 = significant)</i>
Are appropriate selection methods used to engage consultants?	✓	1
Have reporting requirements been satisfied?	✓	1
Has adequate documentation been maintained?	✓	1
Are adequate controls in place to ensure outputs are achieved and performance is properly monitored and evaluated?	✓	2

Audit findings

Are appropriate selection methods used to engage consultants?

Strengths

3.5 DETYA has developed a comprehensive evaluation and selection methodology which provides officers with a pro forma document to record each tenderer's response against the evaluation criteria. The methodology requires a summary of all tenderers to be compiled, including overall rankings against selection criteria.

3.6 The audit found that DETYA's CEIs were consistent with the requirements of the Commonwealth Procurement Guidelines.

Opportunities for improvement

3.7 The audit found that a potential conflict of interest existed with regard to two of the consultancies let in the review period. The same firm was awarded a contract to evaluate a program which the firm contributed to under another contract, effectively reviewing aspects of their own work. However, the audit noted that explicit consideration of the potential conflict had not been documented on the procurement file.

Have reporting requirements been satisfied?

Strengths

3.8 DETYA's annual report contained the information required for consultancies to satisfy the *Requirements for Annual Reports*, including related costs and detailed descriptions as to the nature of the task and the justifications for engaging the consultants.

3.9 The audit found that controls surrounding the use of the Government Advertising Website were working effectively.

Opportunities for improvement

3.10 The audit found that most of the contracts reviewed had not been appropriately gazetted in relation to meeting required time frames.

Has adequate documentation been maintained?

Strengths

3.11 PROMIS operates as a workflow system that requires each step of the procurement process to be completed and signed off by the responsible officer. The system records information relating to each stage of procurement, including the decisions made and justifications for them. Signed contracts had been placed on the files reviewed.

Opportunities for improvement

3.12 The audit found that procedures designed to ensure that adequate documentation of selection decisions was maintained, were not always adhered to.

Are adequate controls in place to ensure outputs are achieved and performance is properly monitored and evaluated?

Strengths

3.13 DETYA has developed suitable procedures to measure performance and to manage poor performance.

Opportunities for improvement

3.14 The audit found some evidence of ongoing performance reviews, however, formal evaluations, prior to milestone payments being made, were not documented for all the consultancies reviewed.

3.15 In addition, the audit found some indications of final evaluations of performance being completed. However, such reviews were not linked to the final payment and were not considered when assessing potential tenderers for other projects.

Recommendations

3.16 It was recommended to the department that:

- decisions regarding the selection of consultants should be approved by the delegate and documented on the appropriate procurement file;
- controls supporting the reporting framework regarding the engagement of consultants should be reviewed; and
- performance of consultants should be formally reviewed prior to contract payments being made.

A number of other minor procedural matters were referred to DETYA and satisfactory remedial action was advised by the department.

Response to recommendations

3.17 DETYA was supportive of the report and agreed to all of the recommendations made. In some cases, DETYA as able to provide evidence that work had been underway to improve contract processes prior to the review and, in other cases, work was underway to address the issues identified since the audit review.

4. Department of the Senate

Introduction

4.1 Procurement within the Department of the Senate uses a combination of centralised and decentralised responsibilities. Centralised areas of responsibility are:

- furniture and fittings;
- common office requisites;
- computer hardware, software and related material;
- training courses; and
- Occupational Health and Safety costs.²⁷

4.2 Other procurement, including the engagement of consultants, may be approved by the area requiring the service.

4.3 The 1999–2000 Annual Report indicated that, for the financial year, the department let a total of 31 consultancies at a cost of \$388 000.

Overall conclusion

4.4 The audit found that, while adequate policies and procedures supporting the engagement of consultants were in place and available, they were not consistently used. Compliance with the controls relating to the method of selection, reporting requirements, documentation, and performance monitoring requires improvement if the controls are to become effective in minimising the risks associated with procuring and managing consultants. The results of the audit are summarised in the following figure.

Figure 4

Management controls summary

<i>Audit Objective</i>	<i>Controls exist?</i>	<i>Enhancement required? (0 = none, 3 = significant)</i>
Are appropriate selection methods used to engage consultants?	✓	1
Have reporting requirements been satisfied?	✓	2
Has adequate documentation been maintained?	✓	1
Are adequate controls in place to ensure outputs are achieved and performance is properly monitored and evaluated?	✓	2

²⁷ Department of the Senate, Clerk's Instructions, 3.2.12. The Clerk's Instructions are the agency's equivalent of CEI's.

Audit findings

Are appropriate selection methods used to engage consultants?

Strengths

4.5 The audit found that the files reviewed complied with the Department of the Senate's Clerk's Instructions in terms of methods of selection of consultants.

Opportunities for improvement

4.6 The audit found that reasons for choosing selection methods were not documented on procurement files and, as a result, the department's decisions not to consider alternative suppliers were also not documented.

Have reporting requirements been satisfied?

Opportunities for improvement

4.7 The audit found that the Clerk's Instructions required updating to include reference to the requirement to advertise open public business opportunities on the Government Advertising Website. The Mandatory Reporting Requirements Handbook requires that, '*All open public business opportunities **must** be reported on the Government Advertising Website*'²⁸ (www.ads.gov.au) regardless of value.

4.8 In addition, the audit found that some of the contracts reviewed (all of which were over \$2000 in value) had not been gazetted. Commonwealth Procurement Guidelines state that all contracts with a value of \$2000 or more must be gazetted within six weeks of signing the agreement and that written justification must be provided in cases where the Chief Executive decides that the details of a contract are exempt from gazettal. No evidence of such justifications were found on the reviewed contract files.

4.9 The audit also found some discrepancies between information provided in the Department of the Senate's Annual Report 1999–2000 and information maintained on departmental files. This may have implications for sound records management.

²⁸ op. cit., p. 19, *Mandatory Reporting Requirements Handbook*.

Has adequate documentation been maintained?

Opportunities for improvement

4.10 The Clerk's Instructions provided comprehensive guidance relating to documentation to be maintained for procurement decisions. However, the audit found that the documentation of the selection processes undertaken did not consistently comply with the guidance provided. As a result, it was not always clear on what basis the decision to select a particular consultant had been made and whether the consultant selected was the most suitable for the requirements and represented value for money.

Are adequate controls in place to ensure outputs are achieved and performance is properly monitored and evaluated?

Opportunities for improvement

4.11 The audit found no evidence to indicate that formal performance reviews had been completed during the course of the contracts reviewed. Performance reviews are an important control to ensure that the objectives and outputs of the contract are being achieved. The absence of these reviews increases the risk of not achieving quality required in terms of the desired outcome.

4.12 In addition, the audit found no evidence of written evaluation reports having been completed at the end of the contract period and prior to final payment. The completion of a final performance evaluation at the conclusion of the contract has two purposes; to provide support for the final payment, and to provide information to assist in future procurement decisions.

Recommendations

4.13 It was recommended to the department that:

- procurement decisions should be approved by the delegate and documented on the appropriate procurement file;
- guidelines that assist officers to determine consultancy services from other forms of service procurement should be reviewed;
- controls supporting the reporting framework regarding the engagement of consultants should be reviewed; and
- performance of consultants should be formally reviewed prior to contract payments being made.

A number of other minor procedural matters were referred to the Department of the Senate and satisfactory remedial action was advised by the department.

Response to recommendations

4.14 The Department of the Senate supported the findings of the report and agreed with all of the recommendations made. In response to the report, the department indicated that expenditure on consultants for the department was quite small compared to that for the other agencies reviewed as part of the audit.

5. National Capital Authority

Introduction

5.1 The National Capital Authority has devolved the procurement and management of consultants to delegates. Guidelines including checklists and pro forma documents have been developed centrally and are made available to staff through the *Financial Management and Administration Manual (FMAM)*.

5.2 At the time of the audit, the Authority was in the process of developing a centralised contract management function.

5.3 The Authority's 1999–2000 Annual Report indicated that, for the financial year, the department let a total of 40 consultants that exceeded \$10 000 each, at a cost of \$1.7 million.²⁹

Overall conclusion

5.4 The audit found that, while adequate policies and procedures supporting the engagement of consultants were available, they were not being consistently used. Compliance with the controls relating to the reporting requirements, documentation and performance monitoring require considerable improvement if they are to become fully effective in minimising the risks associated with procuring and engaging consultants. The results of the audit are summarised in the following figure.

Figure 5

Management controls summary

<i>Audit Objective</i>	<i>Controls exist?</i>	<i>Enhancement required? (0 = none, 3 = significant)</i>
Are appropriate selection methods used to engage consultants?	✓	1
Have reporting requirements been satisfied?	✓	2
Has adequate documentation been maintained?	✓	2
Are adequate controls in place to ensure outputs are achieved and performance is properly monitored and evaluated?	✓	3

²⁹ The *Requirements for Annual Reports* requires that total expenditure on consultants be reported. The National Capital Authority only reported those consultancies that exceeded \$10 000.

Audit findings

Are appropriate selection methods used to engage consultants?

Opportunities for improvement

5.5 The audit found that some of the service providers engaged as consultants did not constitute consultants as described in the Authority's FMAM.³⁰

Have reporting requirements been satisfied?

Opportunities for improvement

5.6 The audit found that the Authority's FMAM did not comply with Commonwealth requirements with regard to the advertising of business opportunities on the Government Advertising Website.³¹

5.7 The audit also found that the majority of the consultancy contracts had not been gazetted. Commonwealth Procurement Guidelines state that all contracts with a value of \$2000 or more must be gazetted within 6 weeks of signing the agreement and that written justification must be provided in cases where the Chief Executive decides that the details of a contract are exempt from gazettal. No evidence of such justifications were apparent on the contract files reviewed.

Has adequate documentation been maintained?

Opportunities for improvement

5.8 The Authority's FMAM prescribes the minimum level of documentation that must be maintained for each consultancy. However, the audit found that decisions taken had not been adequately documented. As a result, it was not always clear on what basis the decision to select a particular consultant had been made and whether the consultant selected was the most suitable for the requirements and represented value for money.

³⁰ FMAM, pp 36–37.

³¹ Requirements relating to the Government Advertising Website are available in the *Mandatory Reporting Requirements Handbook*, issued by the Office for Government Online, also refer to figure 2, Audit Criteria, in this report.

Are adequate controls in place to ensure outputs are achieved and performance is properly monitored and evaluated?

Strengths

5.9 The Authority was in the process of establishing a centralised contract management function. This development should better enable the organisation to manage and control the procurement process for engaging consultants. It will also facilitate better practices regarding the monitoring and evaluation of the performance of consultants.

Opportunities for improvement

5.10 The audit found no evidence to indicate that performance reviews had been undertaken during the course of the contracts reviewed. Performance reviews are an important control to help ensure that the objectives and outputs of the contract are achieved. The absence of these reviews increases the risk of not achieving quality required in terms of the desired outcome.

5.11 In addition, the audit found no evidence of written evaluation reports having been completed at the end of the contract period and prior to final payment. The completion of a final performance evaluation at the conclusion of the contract has two purposes; to provide support for the final payment, and to provide information to assist in future procurement decisions. It is also an important element of accounting for performance.

Recommendations

5.12 It was recommended to the Authority that:

- guidelines that assist officers to determine consultancy services from other forms of service procurement should be reviewed;
- controls supporting the reporting framework regarding the engagement of consultants should be reviewed;
- documentation relating to the engagement of consultants should be maintained on a procurement file for each consultant; and
- performance of consultants should be formally reviewed prior to contract payments being made.

A number of other minor procedural matters were referred to the NCA and satisfactory remedial action was advised by the Authority.

Response to recommendations

5.13 The Authority agreed with the recommendations made in the report.

6. Department of Communications, Information Technology and the Arts (DCITA)

Introduction

6.1 The Department of Communications, Information Technology and the Arts' divisional managers are responsible for identifying the need for a consultant and for initiating the procurement process. The Department has established a centralised Contracts Unit within the Corporate and Coordination Division that provides advice and guidance to divisional managers throughout the procurement process. The Unit has developed a number of procedures and supporting documents to assist divisional managers in meeting the CEIs. The Contracts Unit has also developed a training program that deals specifically with engaging consultants.

6.2 DCITA's 1999–2000 Annual Report indicated that, for the financial year, 288 consultancy services at a cost of \$14 million were let.³²

Overall conclusion

6.3 The audit found that, while adequate policies and procedures supporting the engagement of consultants were available, they were not being consistently used. Compliance with the controls relating to the method of selection, reporting requirements and performance monitoring require some improvement if they are to become effective in minimising the risks associated with procuring and engaging consultants. The results of the audit are summarised in the following figure.

³² DCITA Annual Report, 1999/2000 p. 139.

Figure 6**Management controls summary**

Audit Objective	Controls exist?	Enhancement required? (0 = none, 3 = significant)
Are appropriate selection methods used to engage consultants?	✓	1
Have reporting requirements been satisfied?	✓	2
Has adequate documentation been maintained?	✓	1
Are adequate controls in place to ensure outputs are achieved and performance is properly monitored and evaluated?	✓	3

Audit findings***Are appropriate selection methods used to engage consultants?*****Strengths**

6.4 DCITA has established a Contracts Unit which liaises closely with other service groups within the Organisation, as well as providing advice and guidance throughout the procurement process. The Unit has developed a range of standard documents to assist divisional managers including a detailed procurement checklist; *Checklist for the Hire of Consultants*.

6.5 The Unit has also developed a comprehensive training course for divisional staff that supports the use of the procurement checklist. The training conducted by this Unit has provided DCITA with a solid foundation from which to control the management of the procurement function, particularly in terms of engaging consultants.

6.6 The audit found that DCITA's CEIs were consistent with the Commonwealth Procurement Guidelines.

Opportunities for improvement

6.7 The audit noted that DCITA had issued guidance on procurement thresholds to be applied and, where departure from this guidance was to occur, justification was to be documented. The audit found that, where the method of selection for some of the consultancies reviewed did not apply the procurement threshold guidance, the justification for not applying this threshold had not been adequately documented on procurement files.

Have reporting requirements been satisfied?

Strengths

6.8 DCITA's Website contains useful information regarding the engagement of consultants. The list of consultants provides budgeted and actual costs and explanations as to the nature of the task and the justification for engaging consultants.

Opportunities for improvement

6.9 The audit found that a number of contracts had not been advertised on the Government Advertising Website.

6.10 The audit also found that the majority of consultancy contracts reviewed had not been gazetted. DCITA advised that improved procedures had been put in place.

6.11 In addition, DCITA's Annual Report and Website did not contain information relating to the details of the selection method used for consultancies as required by the *Requirements for Annual Reports*.³³

Has adequate documentation been maintained?

Strengths

6.12 The audit found that all files reviewed contained copies of signed contracts.

Opportunities for improvement

6.13 The audit found that a small number of files reviewed did not contain adequate documentation to justify decisions made during the selection process. As a result, it was not always clear on what basis the decision to select a particular consultant had been made and whether the consultant selected was the most suitable for the requirements and represented value for money.

Are adequate controls in place to ensure outputs are achieved and performance is properly monitored and evaluated?

Strengths

6.14 DCITA has recently developed a database of consultancies which will enable the department to formally record satisfaction/dissatisfaction with consultancies over time.

³³ op. cit., p. 19, *Requirements for Annual Reports*.

Opportunities for improvement

6.15 The audit found no evidence of written evaluation reports having been completed prior to progressive payments, based on completion of stages identified in the contract, being made under the contract. Performance reviews are an important control to ensure that the objectives and outputs of the contract are achieved. The absence of these reviews increases the risk of not achieving the quality required in terms of the desired outcome.

6.16 In addition, the audit found no evidence of written evaluation reports having been completed at the end of the contract period and prior to final payment. The completion of a final performance evaluation at the conclusion of the contract has two purposes; to provide support for the final payment, and to provide information to assist in future procurement decisions.

Recommendations

6.17 It was recommended to the department that:

- adequate documentation of decisions not to apply procurement threshold guidelines should be held on the appropriate procurement file;
- guidelines that assist officers to determine consultancy services from other forms of service procurement should be reviewed;
- compliance with procedures supporting the reporting framework (Gazette, Government Advertising Website) regarding the engagement of consultants should be improved; and
- performance of consultants should be formally reviewed prior to progressive contract payments being made.

A number of other minor procedural matters were referred to DCITA and satisfactory remedial action was advised.

Response to recommendations

6.18 In response, DCITA advised that it was currently undertaking a review of its procurement procedures and will take these recommendations into account in developing revised procedures.

A handwritten signature in black ink, appearing to read 'P. J. Barrett', is positioned above the printed name.

Canberra ACT
29 June 2001

P. J. Barrett
Auditor-General

Appendices

Appendix 1

Compliance Assessment Audits (CAAs)

Compliance Assessment Audits (CAAs) are undertaken under the general performance audit provisions of the *Auditor-General Act 1997*.

CAAs examine internal control structures that are not specifically covered by financial statement or other performance audits.

CAAs seek to form an opinion relating to:

- the extent to which the design and operation of controls have been effective in reducing identified risks; and/or
- scope for improvement in the control framework and or business processes.

The primary focus of CAAs is on compliance with some elements of performance improvement.

CAAs offer agencies and other public sector bodies, and the Parliament assurance that legislation and policy and procedural guidelines (internal and external) are being complied with.

Appendix 2

Consultant vs Contractor Checklist

The following table provides a number of key indicators to determine the nature of the relationship, ie principle/consultant, or employer/employee.

Figure 7

Consultancy checklist

Consultant or Contractor?	
Consultancy Services Contract (<i>contract for services</i>)	Contract of Employment (<i>contract of service</i>)
Control and Direction	
<input type="checkbox"/> Agency requires Consultant to perform a task, but has very limited control over how it is performed.	<input type="checkbox"/> Agency has the right under the contract to exercise a high level of control over what the contract employee does and how they do it.
<input type="checkbox"/> The Consultant decides when the work is performed.	<input type="checkbox"/> Agency dictates place and hours of work.
<input type="checkbox"/> Consultant may sub-contract the work to be performed.	<input type="checkbox"/> The contract employee is to perform work personally.
<input type="checkbox"/> No restriction on providing services to others.	<input type="checkbox"/> The contract employee must obtain permission to work for others.
Integration/Organisation Test	
<input type="checkbox"/> Work performed is an accessory to the agency's business.	<input type="checkbox"/> Work is an integral part of the agency's business.
Provision of Equipment	
<input type="checkbox"/> The Consultant provides own equipment.	<input type="checkbox"/> Agency provides all equipment/stock.
<input type="checkbox"/> Works from own premises.	<input type="checkbox"/> Works from agency premises.
Remuneration	
<input type="checkbox"/> Payment is generally on completion of a task or by milestone payments.	<input type="checkbox"/> Remuneration is based on time worked, usually an hourly rate.

Appendix 3

Drafting Consultancy Agreements ^{*}

In order to mitigate some of the risks associated with engaging consultants, a written agreement for a consultant could:

- specify the terms of the relationship, and expressly provide that the relationship is one of principal/consultant and not employer/employee;
- provide for the performance of a certain or specified task/s;
- provide that the consultant bears liability for negligent advice or faulty work;
- provide that the agency will not make payments for holidays, sick leave, annual leave etc;
- provide that the consultant will be responsible for the provision of their own equipment, including transportation;
- avoid fixing specific hours or time of work. As far as possible these arrangements should be left to the consultant; and
- avoid reference to what may be considered as 'control factors', including the manner in which the work is to be performed or the hours the consultant will work.

^{*} This guidance has been provided based on the legal opinion sought from solicitors Mallesons Stephen Jaques.

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