

Audit Report No. 32, 2005-06, Management of the Tender Process for the Detention Services Contract

Background

- 12.1 The Department of Immigration and Multicultural Affairs (DIMA)¹ administers immigration detention under the Migration Act. In February 1998, the provision of detention services was formally contracted to Australian Correctional Services Pty Ltd (ACS) through a ten year general agreement that established a broad framework for the provision of services. At the time, it was envisaged that the contract would operate at a cost of \$14 million per year and serve approximately 700 detainees.
- 12.2 Under the umbrella of the general agreement, ACS entered into specific Detention Services Contracts for individual facilities, which were managed through a sub-contract to ACS's operational company Australasian Correctional Management (ACM).
- 12.3 There was a ten fold increase in the number of unauthorised arrivals seeking asylum in 1999 and 2000 compared with the early 1990s, resulting in over 3000 people in detention in early 2001.

¹ At the time of the audit, the Department was the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA). Following machinery of government changes announced on 27 January 2006, its name changed to the Department of Immigration and Multicultural Affairs (DIMA). It is referred to as DIMA throughout this chapter.

- 12.4 DIMA decided to re-tender the contract for detention services in April 2001 as it considered it could not be certain the contract with ACM represented 'best value for money'.
- 12.5 GSL Australia Pty Ltd (GSL) was announced as the successful tenderer in December 2002. Contract negotiations subsequently took place until 27 August 2003, when the contract was signed.

Audit objective and scope

- 12.6 This audit was the third in a series of audits into the management of immigration detention within DIMA. The objective of the audit was to assess DIMA's management of the tender, evaluation and contract negotiation processes for the Detention Centre Contract. It specifically included:
- the evaluation of the Request for Tender, including the announcement of the preferred tenderer;
 - negotiations with the successful and unsuccessful tenderers; and
 - management of the liability, indemnity and insurance provisions of the tender.

Other detention reviews

- 12.7 Since this audit commenced, the Palmer² and Comrie³ reports have been published, leading to substantial administrative reform in DIMA led by a new executive management team.
- 12.8 The Committee notes that the Joint Standing Committee on Migration also tabled a report into its review of Audit Report No. 1, 2005-6, *Management of the Detention Centre Contracts – Part B* on 5 December 2005.

Overall audit conclusion

- 12.9 The ANAO found that DIMA had initially established a sound evaluation process for the tender for detention services that took into account the value for money requirements of the Commonwealth Procurement Guidelines. The evaluation process provided a method to discriminate

2 *Inquiry into the Circumstances of the Immigration Detention of Cornelia Rau*, Report, July 2005.

3 Commonwealth Ombudsman, Report No. 03/2005, *Inquiry into the Circumstances of the Vivian Alvarez Matter*, September 2005.

between tenderers on the basis of the quality of detention services being proposed, as well as the price being offered.

- 12.10 However, DIMA failed to effectively follow the process it established and was unable to demonstrate that it took into account the value for money requirements of the Commonwealth Procurement Guidelines at key stages of the procurement.
- 12.11 The main shortcomings identified by the audit were:
- ambiguity in DIMA's management of the roles and responsibilities of key advisers and personnel;
 - deficient recordkeeping, impacting on DIMA's ability to demonstrate accountability and transparency in this procurement;
 - weaknesses in the conduct and documentation of contract negotiations; and
 - deficiencies in the assessment of tender bids against the value for money criteria.
- 12.12 The ANAO found that after the selection of GSL as the preferred tenderer, contract negotiations became protracted, largely because DIMA had not ensured GSL's tender was fully compliant with the insurance, liability and indemnity provisions of the Request for Tender before GSL was recommended as the preferred tenderer.
- 12.13 GSL also asked to amend its tendered prices. DIMA's specialist advisers identified that accepting pricing changes would alter the value for money rankings. They suggested that DIMA re-visit GSL's offer and assess whether the department should have entered into parallel negotiations with GSL and ACM, who were within less than one percent of each other in DIMA's value for money rating.
- 12.14 DIMA did not bring this process to a conclusion and the ANAO found that there was a lack of transparency in the decision making process. The ANAO considered that DIMA did not systematically monitor value for money throughout the entire procurement process.
- 12.15 Although it was intended that ACM's tender bid should be kept open until contract negotiations were concluded, this was allowed to lapse. At the time that the bid expired, \$32.6 million had been added to GSL's tendered price.

- 12.16 The ANAO found that the steering committee did not follow the approved evaluation method at important stages of the process, leading to errors and omissions in the evaluation and contract negotiation processes. Errors made at the evaluation stage compromised negotiation of the contract.
- 12.17 The ANAO concluded that the procurement practices employed by DIMA to acquire detention services fell well short of the standard expected by the Commonwealth Procurement Guidelines.

ANAO recommendations

The ANAO made five recommendations, which were all agreed by DIMA.

Table 12.1 ANAO recommendations, Audit Report No. 32, 2005-06

1.	<p>The ANAO recommends that DIMA ensure that consultancy agreements developed for the provision of probity auditing and/or advising services in future tenders stipulate:</p> <ul style="list-style-type: none"> • that a comprehensive probity plan is finalised before the commencement of the tender process and monitored to ensure that any changes in probity requirements are managed; and • that the scope of any probity auditor's services includes provision of a sign-off to the decision maker that specifies the level of assurance provided by the audit engagement. <p><i>DIMA response: Agreed</i></p>
2.	<p>The ANAO recommends that for future procurements, the roles and responsibilities of key personnel should be clearly defined with particular attention given to the separation of people and functions to ensure that conflicts (actual or perceived) do not develop.</p> <p><i>DIMA response: Agreed</i></p>
3.	<p>The ANAO recommends that, as part of DIMA's review of recordkeeping systems, procedures for the documentation of tender processes be developed, to facilitate accountability and transparency in outsourcing and to ensure compliance with the Commonwealth Procurement Guidelines.</p> <p><i>DIMA response: Agreed</i></p>
4.	<p>The ANAO recommends that, in future tenders, DIMA ensures that a brief confirming full compliance with the Commonwealth Procurement Guidelines is provided to the delegate in support of any recommendation to enter into a contract.</p> <p><i>DIMA response: Agreed</i></p>
5.	<p>The ANAO recommends that in future tenders, DIMA develop procedures for the conduct and documentation of the processes followed in negotiating contracts. Such procedures should be directed towards assisting those advising the delegate to manage and monitor the tender over the whole procurement cycle, particularly in regard to the transparent assessment of tenders against value for money evaluation criteria.</p> <p><i>DIMA response: Agreed</i></p>

The Committee's review

- 12.18 The Committee held a public hearing on 2 June 2006 with witnesses from the Department of Immigration and Multicultural Affairs and Australian National Audit Office.

- 12.19 At the public hearing, the main issues addressed by the Committee included: governance, inadequate separation of roles and responsibilities, contract negotiation, record keeping, and the provision of advice to the Minister. The Committee also discussed changes to the department's administrative practice that have been made in anticipation of the re-tender of the detention services contract.

Governance arrangements

- 12.20 The Commonwealth Procurement Guidelines state that value for money is the core principle underpinning Australian Government procurement. In addition, probity is a key consideration throughout the entire procurement process.
- 12.21 For the purposes of this procurement project, this was reinforced by the 1998 General Agreement between DIMA and ACS, which states that the Commonwealth will use the service provider that provides the best value for money for the Commonwealth.⁴
- 12.22 The ANAO found that the plans developed by DIMA to guide the procurement, including a risk analysis and risk action plan, a tender evaluation plan, a probity plan and a communications strategy, were all individually sound. The plans reflected the requirements of the FMA Act and the specific legal and other specialist advice that had been obtained by DIMA. DIMA also utilised financial, legal and probity advisers to progress the project.
- 12.23 The ANAO report highlights a range of issues that arose in the execution of these plans. DIMA has acknowledged these issues and recognised that errors in administration occurred.⁵ The Committee was pleased to note that DIMA fully accepted and was implementing the ANAO's recommendations in the re-tender of the detention services contract, and that it had sought advice from the ANAO to assist it with governance arrangements for the tender.

4 ANAO Audit Report No. 32, 2005-06, p. 52.

5 Mr Bob Correll, Department of Immigration and Multicultural Affairs, *Transcript of Evidence*, 2 June 2006, p. 3.

Roles and responsibilities

- 12.24 The ANAO found a lack of clarity around the roles and responsibilities of the various committees involved in the tender process and individual members of these committees.⁶
- 12.25 In particular, the ANAO found a lack of clarity regarding the role of the probity adviser in the tender process, which was compounded when the probity adviser was engaged to deliver additional services relating to the tender evaluation. The probity adviser also had primary responsibility for the development of much of DIMA's tender documentation, including the risk plans and tender evaluation plans.⁷ These additional responsibilities compromised the independence of this adviser.
- 12.26 The Committee was concerned by the failure of the department to clearly define roles and responsibilities during this procurement process and to ensure the separation and independence of advisers. At the hearing, it questioned DIMA as to what processes the department has put in place to ensure that this separation occurs in future. DIMA advised that the framework for the next purchasing process for the detention services contract has been clearly defined. Further, as part of the organisational changes following the Palmer and Comrie reports, the department was establishing a purchasing assurance committee with an independent external chair that would have a key role in overseeing all purchasing processes within the department.⁸

Probity auditor

- 12.27 The ANAO found that the probity audit reports provided a low level of assurance over the probity process as the probity auditor was unable to independently determine the nature, timing and extent of audit procedures. The probity auditor also had limited access to documents and decision makers.
- 12.28 In addition, although the probity auditor was expected to provide 'real-time' probity audit review of the evaluation and negotiation process, the contract engaging the auditor was not signed until 28 October 2002. The Expression of Interest for the detention services contract had been issued in December 2001.

6 ANAO Audit Report No. 32, 2005-06, p. 61.

7 ANAO Audit Report No. 32, 2005-06, p. 63.

8 Mr Bob Correll, Department of Immigration and Multicultural Affairs, *Transcript of Evidence*, 2 June 2006, p. 5.

- 12.29 The roles and responsibilities of the probity adviser and probity auditor were not clearly articulated. The probity plan was not revised following the appointment of the probity auditor and that the probity auditor and probity adviser did not discuss their individual responsibilities with each other. The ANAO's first recommendation is directed towards remedying this situation in the future.⁹
- 12.30 The Committee questioned DIMA about the circumstances surrounding the engagement and the subsequent role of the probity auditor, and particularly why a probity auditor was only engaged halfway through the evaluation process. DIMA's response was that it was only through the course of the process that the decision was made to engage a probity auditor in addition to a probity adviser.¹⁰ DIMA's steering committee for the project did not initially consider that a probity auditor was required.¹¹
- 12.31 The department indicated at the hearing that in the project plan for the next tendering process there would be full recognition of the distinct roles of each type of adviser. The department stated it would also monitor any conflict of interest that may develop through that process.¹² The Committee concurs with the ANAO that it is important that the key personnel involved in procurement projects be selected with a view to avoiding potential or actual conflicts of interest. The role of each adviser also needs to be clearly defined and their independence assured.

Evaluation of the tender bids

- 12.32 DIMA assessed three tenderers on the basis of technical and financial evaluations, which were then combined to establish value for money. DIMA developed a benchmark scenario against which the tenders were assessed, which reflected DIMA's best estimate of detainee population levels in the future.
- 12.33 The draft value for money analysis showed that GSL offered the best value for money, ahead of ACM, which was clearly ahead in the technical evaluation. The difference between the first two tenderers was calculated and reported to the delegate as 4.42 percent. The ANAO later determined

⁹ ANAO Audit Report No. 32, 2005-06, p. 67.

¹⁰ Mr Bob Correll, Department of Immigration and Multicultural Affairs, *Transcript of Evidence*, 2 June 2006, p. 6.

¹¹ Mr Stephen Lack, Australian National Audit Office, *Transcript of Evidence*, 2 June 2006, p. 6.

¹² Mr Simon Schiwy, Department of Immigration and Multicultural Affairs, *Transcript of Evidence*, 2 June 2006, p. 12.

that the difference was actually 0.56 percent. This error remained undetected throughout the procurement process.

- 12.34 In developing the financial evaluation report, DIMA's probity adviser and financial adviser both identified that GSL was significantly cheaper than the other two tenderers in remote locations and recommended that all tenderers be invited to clarify their pricing for remote locations. The Committee notes that there is no documentation to indicate whether all tenderers were invited to clarify their pricing for remote locations at this time.¹³
- 12.35 The steering committee also decided not to request a 'best and final offer' from GSL and ACM to separate these tenderers, although this was provided for in the Tender Evaluation Plan.
- 12.36 On 13 November 2002, GSL wrote to DIMA stating it had discovered a significant error in its tender spreadsheets and submitting a request to amend its pricing for remote locations. The steering committee agreed to this request, which the ANAO found added \$11.57 million to the price of GSL's tender. The ANAO notes that it is not possible to determine whether the steering committee considered the effect on value for money arising from this decision.¹⁴
- 12.37 The delegate agreed to the steering committee's recommendation that GSL be selected as the preferred tenderer. Given the closeness of the two final tenderers, the delegate also decided that ACM should be invited to keep its tender offer open until contract negotiations were finalised.¹⁵
- 12.38 The Committee is concerned that the ANAO found a number of errors and omissions from the report to the delegate. This included deficiencies in a number of key areas:
- the delegate was not advised that the RFT provided discretion to enter negotiations with more than one tenderer, including the option to request a 'best and final offer';
 - the delegate was not advised that the requirement under the Commonwealth Procurement Guidelines to assess Industry Development Criteria had not been met;

13 Mr Greg Watson, Australian National Audit Office, *Transcript of Evidence*, 2 June 2006, p. 8.

14 ANAO Audit Report No. 32, 2005-06, p. 79.

15 ANAO Audit Report No. 32, 2005-06, p. 80.

- while the delegate was advised that the assessment of the technical worth scores was based on a number of factors, including discussions with nominated referees, he was not advised that:
 - ⇒ ACM did not nominate DIMA as a referee;
 - ⇒ the probity adviser had recommended that the chair of the steering committee should not provide a reference for ACM because of potential conflict of interest;
 - ⇒ the steering committee decided to nominate DIMA as a referee and the chair of the steering committee provided the reference; and
 - the value for money index calculation, as noted earlier, was incorrectly reported as 4.42 percent not 0.56 percent.
- 12.39 Other omissions from the final report meant that not all relevant information about the tender evaluation was placed before the delegate at the time he was asked to make a final decision.
- 12.40 The Committee considers that the ANAO's findings demonstrate a significant failure on the part of the steering committee to fulfil its responsibilities to the delegate. It is also concerning that the steering committee decided not to accept the advice of its specialist advisers on more than one occasion.

Contract negotiation

- 12.41 Contract negotiations commenced with GSL in January 2003 and by February 2003 GSL had requested a number of changes to the draft contract, upon which DIMA sought advice from its legal, financial and probity advisers. The Committee noted during the hearing that GSL sought to adjust its bid with increases to workers compensation insurance, overhead fixed costs, and reamortisation of start-up costs. Financial analysis demonstrated that the overall impact of accepting these changes would be an increase of \$19.634 million to GSL's bid. The Committee questioned whether other tenderers were given the opportunity to adjust their bid according to changed factors, such as the closure of the Woomera and Christmas Island centres. DIMA indicated in response that these changes took place during the final contract negotiations with GSL, so other tenderers were not given an opportunity to adjust their bids.
- 12.42 The probity adviser assessed that the effect of these changes was an overall decrease in value for money for GSL in the order of 6 to 8 percent, which had the effect of putting ACM ahead by a narrow margin. The other key issues identified by the ANAO were:

- the closure of the Woomera and Christmas Island centres impacted upon the benchmark scenario DIMA had used for the tender evaluation. The ANAO found no evidence that DIMA considered GSL's request against the probity and legal implications of a change to the evaluation criteria and original RFT requirements;
- the impact of accepting GSL's pricing change for remote locations, which increased its bid by \$15.5 million over four years, was that comparisons could no longer be made with ACM's bid as the modified criteria were not applied to their tendered prices. The ANAO found no evidence that the value for money index calculation was revisited, nor that the change to the scenario used for evaluation and its impact upon tenderers was addressed in advice to the delegate; and
- GSL requested a change in its start-up costs as it had amortised its costs over a period of seven years on the assumption that it would hold the contract for the initial four years plus the three year extension period. Again, the ANAO found that there was no evidence that the steering committee requested or was provided with an updated value for money index calculation.¹⁶ DIMA's advisers also expressed concern about accepting this change as they considered DIMA was being asked to compensate for unreasonable assumptions on GSL's part.

12.43 The probity adviser concluded that DIMA should enter parallel negotiations with both tenderers.¹⁷ The ANAO concurred with this view and stated that DIMA had a responsibility 'to closely monitor and manage the margin between the final two tenderers'.¹⁸ At the hearing, the ANAO reiterated that it would have been prudent for the department to keep its options open by entering into parallel negotiations.¹⁹ The steering committee decided against this option, however, at a meeting on 26 November 2002.

12.44 The Committee is disturbed by the ANAO's findings that the steering committee decided at its meeting on 18 February 2003 that 'the definition of value for money is no longer the sole guide as to whether negotiations have been successfully concluded'.²⁰ This was a significant departure from not only the Commonwealth Procurement Guidelines, but also the 1998 General Agreement that was still in force.

16 ANAO Audit Report No. 32, 2005-06, p. 102.

17 ANAO Audit Report No. 32, 2005-06, pp. 92-93.

18 ANAO Audit Report No. 32, 2005-06, p. 93.

19 Mr Stephen Lack, Australian National Audit Office, *Transcript of Evidence*, 2 June 2006, p. 7.

20 ANAO Audit Report No. 32, 2005-06, p. 93.

- 12.45 The Commonwealth Procurement Guidelines stipulate that value for money is the essential test against which agencies must justify any procurement outcome.²¹ The steering committee introduced an additional and subjective element into the evaluation methodology, when it stated that DIMA should also be ensuring a sound relationship with the Services Provider.²²
- 12.46 In light of the ANAO's findings, the Committee considers it essential that the department ensures its assessment processes for the forthcoming retender of the detention services contract are fully compliant with the Commonwealth Procurement Guidelines. The Committee concurs with the ANAO's recommendation that a brief be provided to the delegate for future contracts confirming full compliance.
- 12.47 Officials also need to be cognisant of the provisions of the 1998 General Agreement while that agreement remains in force.

Overall reconciliation of changes in relative value for money

- 12.48 The Committee notes that contract negotiations were protracted and many of the adjustments made to GSL's tendered prices were not finalised until very late in the negotiation phase.²³ At the time these changes were accepted, DIMA's own analysis showed that the relative position of the tenderers in DIMA's value for money index had changed.
- 12.49 Overall, the ANAO found that there was a lack of transparency in the decision making process in the acceptance of increased prices in the preferred tenderer's bid, particularly in the later stages of the tender. The ANAO found that the steering committee did not bring to a conclusion the 'step-by-step' process it set for itself at the meeting of 18 February 2003 and did not reconcile legal and financial advice that differed from probity advice into an overall DIMA position. Accordingly, there was no systematic basis for reviewing the value for money index system as envisaged by the steering committee.²⁴
- 12.50 ANAO analysis shows that the cumulative effective of the pricing changes accepted between 26 November 2002 and 2 May 2003 (when ACM's tender bid expired) added \$32.6 million to the price of GSL's bid.

21 ANAO Audit Report No. 32, 2005-06, p. 94.

22 ANAO Audit Report No. 32, 2005-06, p. 93.

23 ANAO Audit Report No. 32, 2005-06, p. 103.

24 ANAO Audit Report No. 32, 2005-06, p. 105.

Elimination of ACM from the tender process

- 12.51 The ANAO found that DIMA allowed ACM's tender offer to lapse on 2 May 2003, although there was no formal decision taken by the steering committee. This was contrary to the specific instructions of the delegate to keep the tender offer open until contract negotiations were finalised and altered the Commonwealth's negotiating position.
- 12.52 At the hearing, the Committee expressed its concern about the circumstances that led to ACM's bid being allowed to expire, and particularly that there was no evidence to suggest that a letter from ACM outlining conditions for the extension of its tender was responded to by the department. This omission is further compounded by the failure to bring ACM's letter to the attention of the delegate. The ANAO found no evidence that the delegate was informed that ACM's tender offer had expired, nor any documentation as to the rationale for elimination of ACM.

Completion payment

- 12.53 The ANAO noted that the General Agreement made no provision for completion payments, except where the contract was terminated for convenience. It also found that DIMA was unable to provide evidence of the criteria it used to determine that it would pay ACM \$5.7 million in contract completion payments. The payments were made under the 'out of scope' provisions of the contract with ACM, which the ANAO considered a 'doubtful' basis for these payments.²⁵
- 12.54 In addition, DIMA was unable to provide the ANAO with substantive evidence that any action was taken to consider and/or evaluate the potential impact that this payment would have upon achieving a value for money outcome for the Commonwealth.²⁶
- 12.55 The Committee asked DIMA at the hearing about the circumstances surrounding this payment and what arrangements are in place for transition to the new contract. The Committee considers that this is an issue that should be clearly addressed in future contracts, rather than relying upon out of scope provisions so that the costs to the Commonwealth are clear. The Committee notes that the contract included a transition process to be followed and provision for a fee to be paid at the successful completion of the transition. Further, the value of this fee was specified in the contract.

25 ANAO Audit Report No. 32, 2005-06, p. 31.

26 ANAO Audit Report No. 32, 2005-06, p. 108.

Record keeping

- 12.56 The ANAO identified a number of issues relating to recordkeeping for this project, including:
- no version control for any of the project documents;
 - multiple versions of meeting records;
 - important discussions were held where both the agenda and outcomes from the meeting only record 'oral presentation' or discussion;
 - requests made of the department's advisers were not documented;
 - meeting agendas and meeting records for the steering committee were extremely brief and practically non-existent for the tender support team; and
 - there are no records of meetings held between 15 May and 21 August 2003. A range of important issues were managed through this period including settlement of the insurance, liability and indemnity regime and a change in the health services sub-contractor.
- 12.57 The Committee finds it very concerning that there is a recurring comment throughout the audit report about the lack of documentation to support key decisions. It is also disturbed by the ANAO's statement that it experienced difficulty locating sufficient evidence to form an opinion about aspects of the procurement during various stages of the audit.
- 12.58 The Committee notes the commitment given by the current Secretary of the department to improve record keeping systems, foreshadowing expenditure of \$10 million over five years to fund necessary improvements.²⁷ The Committee also notes that the National Archives of Australia has undertaken a comprehensive records management review and the department is implementing a major records management improvement program.²⁸ The Committee is pleased to see that the project summary tabled by DIMA at the hearing identifies responsibilities for ensuring proper documentation of all decisions in the forthcoming tender.²⁹

27 Audit Report No. 32, 2005-06, p. 72.

28 Mr Bob Correll, Department of Immigration and Multicultural Affairs, *Transcript of Evidence*, 2 June 2006, p. 11.

29 Department of Immigration and Multicultural Affairs, *Detention Services Tender Project: Project Summary*, 18 May 2006, p. 5.

Management of liability, indemnity and insurance

- 12.59 The ANAO identified a number of issues surrounding DIMA's management of the insurance, liability and indemnity issues associated with this tender. This included failure to:
- undertake a risk analysis of the insurance, liability and indemnity regime established as part of the Request for Tender;
 - consider the need for the Finance Minister to approve the offered indemnities; and
 - assess the costs and benefits of the individual tender responses.
- 12.60 DIMA was also unable to demonstrate to the ANAO how the tender responses were evaluated against the requirements of the Request for Tender. The ANAO concluded that there was limited understanding within the steering committee about the indemnities being offered, the mechanism for determining liability for detainee damage, and the strengths and weaknesses of the tender bids and proposals provided.³⁰
- 12.61 DIMA also failed to ensure that GSL had finalised its insurance arrangements before announcement of the preferred tenderer. At the hearing, the Committee established that one of the reasons for the protracted delay in contract negotiations arose from the need to establish who would bear the risk for detainee damage.³¹ Liability caps on detainee damage had not been settled prior to selection of GSL as the preferred tenderer. DIMA also failed to agree the overall insurance, liability and indemnity position with Comcover until after the preferred tenderer had been announced.
- 12.62 The ANAO considered that DIMA had an obligation to initiate a process of consultation with relevant agencies and between Ministers, as appropriate, and to adequately and accurately identify Commonwealth insurance risks and exposures before the selection of a preferred tenderer.
- 12.63 The ANAO also found that GSL's tender response was non compliant with the terms of the RFT in its terms for medical malpractice. Although GSL indicated its willingness to negotiate on this point, there is no evidence that this was pursued. The failure of the steering committee to manage this resulted in protracted difficulties for DIMA and other government agencies as contract negotiations went forward.³²
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30 ANAO Audit Report No. 32, 2005-06, p. 116.

31 Mr Greg Watson, Australian National Audit Office, *Transcript of Evidence*, 2 June 2006, p. 14.

32 ANAO Audit Report No. 32, 2005-06, p. 116.

12.64 The Committee is disturbed by the ANAO's conclusion that in negotiating and then settling the insurance, liability and indemnity regime, DIMA placed the Commonwealth in a disadvantageous position due to a lack of proper consideration and, when necessary, reconsideration of the costs and benefits of the liability and indemnity arrangements. DIMA could not provide evidence of a risk assessment or analysis that showed the relative costs of the indemnities and impact on the insurances being purchased. The ANAO considers that the steering committee provided inadequate advice to the delegate and to Government as it failed to fully appreciate and understand all relevant issues.

Advice to Minister

12.65 At the hearing, the Committee expressed its concern about the advice provided to the Minister, which did not include all relevant information. The ANAO found significant shortcomings with DIMA's understanding of the strengths and weaknesses of the tender proposals. It concluded that the department's advice to the then Minister was inadequate for the following reasons:

- DIMA failed to identify its insurance risks and exposures early;
- there was an accumulation of errors in the analysis, assessment and evaluation of tenderer responses to the insurance, liability and indemnity requirements of the request for tender; and
- there was no evidence to support DIMA's assertion to the Minister that the proposed indemnities represented the best financial outcome for the Government.³³

12.66 The Committee is very surprised, given the seniority of members of the steering committee within the department, that the ANAO found:

a lack of appreciation by DIMA's steering committee of the evidence required to underpin adequate advice to the Government on whether or not to grant the indemnities, or whether or not the option to negotiate with ACM was still open at this time.³⁴

12.67 The Committee considers that this represents another significant failure on the part of the steering committee to fulfil its obligations.

33 ANAO Audit Report No. 32, 2005-06, p. 120.

34 ANAO Audit Report No. 32, 2005-06, p. 119.

Committee comment

- 12.68 The Committee is concerned that the tender process for the detention services contract was not conducted in accordance with procedures established at the start of the process and approved by the delegate. The steering committee did not fulfil its responsibility to ensure that the selected tenderer represented the best value for money in accordance with the Commonwealth Procurement Guidelines and the 1998 General Agreement. It also failed to adequately protect the Commonwealth's interests.
- 12.69 At the hearing, the Committee questioned DIMA about what action it has taken to address all the issues within the audit report. DIMA advised that in relation to each of the recommendations, the department has a clear plan in place for follow up action.
- 12.70 The department has undertaken a complete review of the existing detention services contract and decided to proceed with a new tender. A framework for the purchasing and transitional arrangements has been established in addition to the specialist procurement assurance committee.³⁵ The department also indicated that at the time the tender process is completed or contract negotiations are under way or the contract is to be signed, there is a requirement for assurances to be provided to the secretary of the department that value for money is being monitored and that the department is meeting the requirements of the Commonwealth Procurement Guidelines.³⁶
- 12.71 This audit predates considerable administrative change within DIMA and the Committee notes the department's commitment to fully address the range of issues raised in this audit within the next tender process. For this reason, the Committee has not made any specific recommendations. Given the size of this contract and the considerable amount of procurement undertaken by this agency, the Committee believes, however, that the department needs to greatly improve its procurement practices and

35 Mr Bob Correll, Department of Immigration and Multicultural Affairs, *Transcript of Evidence*, 2 June 2006, p. 11.

36 Mr Simon Schiwy, Department of Immigration and Multicultural Affairs, *Transcript of Evidence*, 2 June 2006, p. 12.

demonstrate sound internal management. The Committee intends to monitor the department's progress.

