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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA.

JOINT COMMITTEE OF PUBLIC ACCOUNTS.

FORTY-SECOND REPORT.

TREASURY REGULATION 52.

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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

JOINT COMMITTEE OF PUBLIC ACCOUNTS

FORTY-SECOND REPORT

TREASURY REGULATION 52

JOINT COMMITTEE OF PUBLIC ACCOUNTS

FOURTH COMMITTEE

F. A. Bland, C.M.G., Esquire, M.P. (Chairman).

A. V. Thompson, Esquire, M.P. (Vice-Chairman).

Senator A. M. Benn
Senator H. W. Wade
Senator I. E. Wedgwood

A. I. Allan, Esquire, M.P.
L. H. E. Bury, Esquire, M.P.
J. F. Cairns, Esquire, M.P.
R. Cleaver, Esquire, M.P.
J. F. Cope, Esquire, M.P.

The Senate appointed its Members of the Committee on 19th February, 1959 and the House of Representatives its Members on 24th February, 1959.

DUTIES OF THE COMMITTEE

Section 8 of the Public Accounts Committee Act 1951 reads as follows:-

8. The duties of the Committee are -

- (a) to examine the accounts of the receipts and expenditure of the Commonwealth and each statement and report transmitted to the Houses of the Parliament by the Auditor-General in pursuance of sub-section (1.) of section fifty-three of the Audit Act 1901-1955;
- (b) to report to both Houses of the Parliament, with such comment as it thinks fit, any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Parliament should be directed;
- (c) to report to both Houses of the Parliament any alteration which the Committee thinks desirable in the form of the public accounts or in the method of keeping them, or in the mode of receipt, control, issue or payment of public moneys; and
- (d) to inquire into any question in connexion with the public accounts which is referred to it by either House of the Parliament, and to report to that House upon that question,

and include such other duties as are assigned to the Committee by Joint Standing Orders approved by both Houses of the Parliament.

JOINT COMMITTEE OF PUBLIC ACCOUNTS

FORTY-SECOND REPORT

TREASURY REGULATION 52

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JOINT COMMITTEE OF PUBLIC ACCOUNTS

FORTY-SECOND REPORT

TREASURY REGULATION 52

CHAPTER I

INTRODUCTION

Treasury Regulation 52 is one of a number of provisions within Part III of the Treasury Regulations under the Audit Act 1901-1959 concerned with the control of expenditure on works, supplies and services. Its present form has remained unchanged since amended Treasury Regulations were promulgated in 1942*. Paragraph (1) of the Regulation reads:

" Subject to this regulation, tenders shall be publicly invited and contracts taken for all works, supplies and services which are to be executed, furnished or performed within the Commonwealth and the estimated cost of which exceeds Two hundred pounds." Tenders to be invited and contracts taken for certain works.

2. The Regulation, therefore, enunciates the basic principle that public tenders are to be invited for all Commonwealth works, supplies and services. But this principle is modified by the exemption accorded to works, supplies and services, the estimated cost of which is \$200 or less, and, in addition, by two forms of exception provided for in paragraph (2.) of the Regulation. These are:

- (i) Expenditure on works, supplies and services that is authorised by the Governor-General (which, by reason of section 17 of the Acts Interpretation Act 1901-1957, means "the Governor-General ... acting with the advice of the Executive Council"); and
- (ii) Certain works supplies and services in respect of which the Secretary, Department of the Treasury, or a person authorised by him, certifies that to invite tenders is impracticable or inexpedient. As quoted in Treasury Regulation 52 (2) these are:
 - "(a) works executed at and supplies issued from the Commonwealth or a State Government Printing Office, Commonwealth factories, Commonwealth workshops, Commonwealth stores or Commonwealth dockyards;
 - (b) silver, nickel and bronze bullion purchased for the manufacture of Australian coinage;
 - (c) purchases made or approved by the Commonwealth Stores Supply and Tender Board;

* Statutory Rule No.523 of 1942.

- (d) purchases made or approved by the Contract Board of the Department of Supply and Development;
- (e) works, supplies and services for the Works and Services Branch of the Department of the Interior;
- (f) works, supplies and services for the Commonwealth Railways Commissioner;
- (g) works, supplies and services in connexion with War Service Homes;
- (h) pictures purchased for the Australian War Memorial;
- (i) works, supplies and services for the Marine Branch of the Department of Commerce in connexion with the overhaul of and repairs to vessels, boats and launches;
- (j) works, supplies and services which by their nature can be rendered by a State Government Department only; and
- (k) works, supplies and services relating to the defence of the Commonwealth."

x x x x x

3. Shortly before the appointment of the Fourth Joint Committee of Public Accounts the Secretary to the Committee received the following communication, dated 13th February, 1959 from the Secretary to the Treasury, Sir Roland Wilson, C.B.E.:

" Treasury Regulation 47 is being amended, by Government decision, to replace the amount of £3 by the amount of £25, and to provide for oral quotations for purchases not exceeding £50 in amount.

Exhibit No.
42/2

Proposals have also been considered for an increase in the amount of £200 prescribed in Regulation 52. It has been decided that no change will be made in this Regulation until there has been an opportunity for the Joint Committee of Public Accounts to consider the proposals and advise the Treasurer thereon. In this connection you will, of course, recall the correspondence between the then Treasurer and the Chairman of the Committee in relation to amendments to the Audit Act 1901-1957.

Accordingly, it is suggested for the consideration of the Committee that an examination might be made by it in the near future of Treasury Regulation 52. The Treasurer is most anxious to have the Committee's views quickly, and if this matter could be given reasonable priority of attention, I am sure he would be grateful."

4. At our first meeting on 10th March Your Committee considered the Treasury communication and other information which was available to us and decided that we should undertake an inquiry into Treasury Regulation 52. But in the light of that information Your Committee also decided that our inquiry should embrace all the features of Regulation 52 and its inter relationships with other provisions such as Treasury Regulation 48 and 49.

5. Your Committee then approached the Treasury, the Public Service Board, the Audit Office and other departments that were considered to have a major interest in the observance of the conditions prescribed in the Regulations. At a later stage the Prime Minister's Department and the Department of Health were approached with particular reference to the provision within the Regulation which permits the resort to the approval of the Governor-General as an alternative to the public invitation of tenders.

6. Broadly, the information sought from the various departments was designed to establish:

- (i) The nature of the procedures followed within each of the departments in procuring works, supplies and services;
- (ii) the current delegations of and in excess of £200 held under Treasury Regulation 48 (2), 49 (1) and 52;
- (iii) the value and number in particular categories of orders in excess of £200 (the amount at present specified in Treasury Regulation 52) placed over a period of 3 months;
- (iv) the views of each department on the present form of Treasury Regulation 52 and current contract and tender procedure; and
- (v) the proposals of those departments for any change in the Regulation together with reasons to support their views.

7. Having received this information Your Committee conducted public hearings on Friday, 17th, Monday, 20th and Tuesday morning, 21st April, on Friday, 8th May, the afternoon of Wednesday, 3rd and the morning of Thursday, 4th June and heard evidence from the various departments concerned. The following persons appeared before Your Committee:-

Department of the Treasury

Sir Roland Wilson, C.B.E., Secretary.
Mr. C.L.S. Hewitt, First Assistant Secretary (Budget and Accounting).

Public Service Board

Mr. G. G. Sutcliffe, C.B.E., Acting Chairman.
Mr. W. T. Gleeson, Senior Inspector.

Department of Supply

Mr. G. K. Davies, Assistant Secretary (Supply) and Director of Contracts.

Postmaster-General's Department

Mr. E. W. Easton, Assistant Director-General, Finance and General Services.
Mr. T. H. Skelton, Director, Stores and Contracts.

Department of Civil Aviation

Mr. B. Lewis, Chief Finance Officer
Mr. G. R. Woodward, Controller of Supply and Transport.

Department of Works

Mr. E. A. Davidson, Chief Finance Officer
Mr. G. D. B. Maunser, Director of Works, Australian Capital Territory Branch.

Repatriation Department

Mr. C. A. Nettle, Assistant Commissioner (Institutions)
Mr. R. G. Kelly, Chief Accountant.

Department of the Navy

Mr. J. L. Flynn, Director of Naval and Air Stores
Mr. C. M. Colgan, Assistant Director of Accounts.

Department of the Army

Mr. W. H. Long, Assistant Secretary (Finance).

Department of Air

Mr. R. I. Cameron, Assistant Secretary (Finance)
Mr. F. D. Reid, Chief Administrative Assistant, Branch of the Air Member for Supply and Equipment.

Prime Minister's Department

Mr. M. C. Timbs, First Assistant Secretary.
Mr. J. McCusker, Secretary, Federal Executive Council.

Department of Health

Mr. D. G. Donlop, Assistant Director, Establishment and Finance
Mr. R. O. Carter, Finance Manager, Commonwealth Serum Laboratories.

CHAPTER IITHE ORIGIN AND HISTORICAL DEVELOPMENT OF
TREASURY REGULATION 52

8. Since Treasury Regulations under the Commonwealth Audit Act 1901 were first promulgated in 1902, the principle of publicly inviting tenders and taking contracts for works and supplies has been consistently followed, notwithstanding the Regulations have been amended on many occasions. The Treasury submitted to Your Committee a most informative statement setting out the various changes made to Regulation 52 (or its counterparts) between 1902 and 1942 and, where they were available, the reasons for those changes. A chronological record of the changes appears at Appendix No.1.

Exhibit
No.42/3

9. But the Treasury also informed us that the origin of the principle of publicly inviting tenders was much earlier than 1902. The principle was, for instance, embodied in Regulations and Instructions approved and issued in 1852 by the Lords Commissioners of the United Kingdom Treasury "for conducting the duties of the Commissariat Department". Those Instructions provided, inter alia, under the general heading of Stores and Provisions - Advertisements, Tenders and Contracts:-

Code of
Regulations
& Instructions
for
conducting
the duties
of the Comm-
issariat
Department.
Printed by
Eyre & Spott-
iswoode for
Her Majesty's
Stationery
Office 1852.

"346. All Supplies and Services which may be required on the public account are to be provided, if possible, by public Tender...."

Other provisions dealt with advertising tenders and with the procedures to be followed when opening tenders, in addition to presenting that the principle of accepting the lowest tender should be adopted.

10. No specific exception was made to the Regulation although departure was permitted "under extraordinary circumstances" providing a report was made forthwith to the "Treasury Board". However, under the general heading of "Purchases", Regulation 371 provided a further modification of the general principle:

Ibid p.139.

"371. Whenever it may be necessary for a Commissariat Officer to make purchases, or provide for the execution of Services, otherwise than by public competition, he will use his utmost endeavours to do so upon the most advantageous terms; and he will establish the price to be paid by taking a Tender in writing from the Party, upon the face of which he will annex his reasons for recommending its acceptance, and submit the same to the Officer Commanding for approval."

Ibid page
144.

This Regulation could perhaps be regarded as a forerunner, from the Colonial days, of the provision introduced generally in the Treasury Regulations in 1940 permitting authorised persons to certify that the inviting of tenders was impracticable or inexpedient.

11. On 2nd October 1857 assent was given to the first Audit Act of the State of Victoria and on 15th December, 1857 "general regulations respecting public accounts" were gazetted. Regulations 43-45 provided as follows:-

21 Victoria
No.24.

Gazette No.
146 of 15th
December
1857.

"43. As far as practicable tenders are to be invited, and contracts duly entered into by the officer upon whom the duty may properly devolve, for the supply during the financial year of all articles in constant requirement for the public service, such as rations of provisions and forage, fuel, light and water, medical comforts, stationery and stores.

44. In like manner tenders are to be invited and a contract taken for the construction or repair of any public work or building, the probable expenditure for which is estimated to exceed one hundred pounds; and also for the supply of stores, etc., involving an expenditure exceeding £100, except in cases where the existence of a contract for the supply of such articles as required during the financial year, may render such a course unnecessary or inadvisable.

45. Abstracts, duly numbered in arithmetical progression, of all contracts entered into by or on behalf of the Government of Victoria, are to be published for general information in the Government Gazette, and duly numbered for convenient reference, and printed copies of such abstracts, as published, must be duly and regularly transmitted by the Government Printer to the Treasurer and to the Commissioners of Audit."

It will be noted that these Regulations introduced a general exemption set at £100. New Regulations promulgated under the Audit Act 22 Victoria No. 88, retained provisions in substantially the same form (as Regulations 44-46).

Ordered by the
Legislative
Assembly to
be printed
20th October,
1859.

12. Following the passing of a new Audit Act in 1890, new "general regulations respecting the public accounts" came into operation as from 1st January, 1891. Regulations 26 and 26A read as follows:

Act 54 Victoria
No. 1066,
assented to
10th July,
1890.

"26. All contracts entered into on behalf of the Government and all Orders in Council authorising the construction of any public works without contract, or any purchases the amount of which exceeds One hundred pounds without Tenders being previously publicly invited, shall be published in abstract in the Government Gazette as early as practicable.

Victorian
Government
Gazette, 2nd
January, 1891,
page 12.

26A. Tenders shall be publicly invited and contracts taken for all works, and for the supply of all goods, tools, materials, machinery, etc., the estimated cost of which shall exceed One hundred pounds, unless the expenditure be specially authorised by the Governor in Council subject to the following exemptions:-

The Railway Departments as regards the whole of this Regulation, with the exception of works of construction.

The Water Supply Department as regards expenditure on works; and

The Water Supply Branch of the Public Works Department, also as regards expenditure on works.

The Public Health Department as regards infectious and contagious diseases, and other matters of urgency under the Health Act."

Regulation 26A thus established clearly three categories of exception:-

- (i) works and supplies estimated to cost £100 or less;
- (ii) expenditure especially authorised by the Governor in Council; and
- (iii) particular types of expenditure incurred by particular departments.

New Regulations gazetted in 1897 retained a similar provision, as Regulation 29.

Victoria
Government
Gazette No. 45
of 14th April,
1897.

13. The first Treasury Regulations under the Commonwealth Audit Act 1901 were gazetted on 31st January, 1902, and took effect from 1st January, 1902. Regulation 52 followed substantially the lines of Regulation 26A of the 1891 Victorian measure and read as follows:-

" Tenders shall be publicly invited and contracts taken for all works and supplies, other than works and supplies for the Department of Home Affairs, the estimated cost of which exceeds One Hundred pounds, unless the expenditure be authorised by the Governor-General in Council."

Exhibit No.
42/3.

It is noteworthy that the exemption granted the Department of Home Affairs was not limited in any way.

14. Between 1902 and 1922 a number of minor amendments were made to the Regulation, more particularly for the exemption of additional departments or types of transactions from the Regulation. However, the 1922 amendment, to what by now was Treasury Regulation 67, provided for the exemption of works, supplies and services for the Postmaster-General's Department, the cost of which was less than £200. The Postmaster-General's Department, had drawn attention to difficulties associated with obtaining tenders for the supply of poles and had suggested that the monetary restriction be increased to £200 in order to facilitate the purchase of poles in country districts. This, it seems, was the origin of the amount of £200, which was prescribed in the Regulation in 1923, for general application.

Exhibit No.
42/3

15. The next variation of significance occurred in 1932 when provision was made to exempt "purchases made by or under the authority of the Contract Board of the Department of Defence:-

- (i) where the urgency for the purchase is such that, in the opinion of the Secretary of the Department of Defence, time would not permit of the calling for tenders or of obtaining the approval of the Governor-General in Council.
- (ii) where supplies are obtainable only from one source; or
- (iii) where there are more than one, and not more than four suppliers able to furnish the supplies required. In such cases, each of the suppliers shall be invited to tender under uniform conditions."

16. Finally in 1940 the Regulation (then Regulation 67) was re-drafted into substantially the same form as it now appears. The major alteration in principle was the exclusion of the previously unconditional exemptions and their replacement by the current requirement that a certificate be given that the invitation of tenders was impracticable or inexpedient. In its sub-

mission to Your Committee on the history of Treasury Regulation 52 the Treasury commented as follows on the alterations then made:

"1940. It is apparent from the contemporary papers that Statutory Rules 1940 No.46 were conceived to clarify the general application of the principle of public invitation to tender which was intended from 1902. In recommending the amendment, it was recorded that:

Exhibit No.
42/3, pages
2-4.

'it is doubtful whether it was ever intended to exempt these bodies from the principle that tenders should be called where possible, and in actual working, notwithstanding the exemption, these bodies usually call tenders in almost every instance.'

The purpose of the 1940 amendment was said to be to lay down clearly the principle that in all cases either tenders shall be publicly invited or the Governor-General's approval shall be obtained - whilst still preserving the same relief that was available under the old Regulation. The amendment required that, in future, a certificate should be provided for each exception from the principle of the public invitation of tender.

The 1940 amendment can be seen to have derivations from an Audit query of February, 1929. The Chief Auditor for Victoria had maintained that the public inviting of tenders meant publication in the public press. However, the Department of Defence believed that there was sufficient compliance with the intention of the Regulation if selected firms were invited to tender for supplies. In the contemporary correspondence, the Auditor-General made it clear that the intention of the Regulation was not only to give possible tenderers a chance of tendering, 'but to prevent departmental favoritism to certain tenderers'. He went on to elaborate the undesirability of increasing the number of cases in which full publicity was not given or in which favoritism might take place. The Auditor-General said that he regarded the obtaining of quotations, sometimes by telephone, as not being as satisfactory as definite tenders resulting from advertisement. He reported that recent experience had indicated that there was a chance of a mere quotation 'being overlooked, or withheld, or of possible suppliers being inaccurately informed (by design or otherwise) as to requirements'.

From this correspondence suggestions were developed that, in certain cases, it would be impracticable and/or unnecessary publicly to invite tenders by press or Gazette advertisements. These were for items which could be purchased from one or two suppliers only, or for others which were sold, e.g. copper and lead, on the basis of public market prices. Thought then turned towards the introduction of a further exemption in the Regulation for purchases by the Department of Defence; this was introduced in Statutory Rules 1932 No.81.*

This alteration was accepted by the Audit Office and by the Department of Defence as meeting the problems raised in 1929.

The form of the amendment is important. It provided for the exemption of specified purchases, namely, those for which supplies could be obtained from only one source,

those from which there were not more than four suppliers (in which case each should be invited to tender under uniform conditions), or, those the urgency of which was such that the Secretary of the Department of Defence believed that time would not permit the calling of tenders or the obtaining of the approval of the Governor-General in Council. This form of the Regulation in 1932 was clearly the pattern from which the amendment of 1940 was developed, requiring certification of the individual purchases to be excepted from the principle of public invitation of tenders. The 1932 amendment also provides some guide to the interpretation of the words 'impracticable or inexpedient' and to the consideration of the subject in the Treasury in recent years e.g. the provision for emergency supplies required by the Department of Civil Aviation."

The Treasury concluded the submission as follows:

" In all its forms since Federation there is expressed in Treasury Regulation 52 the principle of public invitation of tenders. The Auditor-General's reports in 1929 upon the practices of the Department of Defence led to the prescribing of the circumstances in which public tenders need not be invited by that Department. The enquiries which preceded this amendment confirmed that, in practice, almost all the bodies then mentioned in the Regulation usually called tenders in almost every instance. To remove any doubts that there were no general exemptions from the requirement for public invitation of tenders a similar form of Regulation was applied from 1940 to other purchases."

Ibid,
page 4.

17. Under present day conditions the effect of Treasury Regulation 52 is far reaching. Estimated to have applied to works, supplies and services costing £9,000,000 per annum in 1922-23 (when the monetary limit was raised from £100 to £200), annual expenditure in excess of £150,000,000 now comes within its ambit. Three quarters of that expenditure relates to supplies, the remainder to works and services. Regulation 52, consequently has become a provision of particular importance.

Exhibit
No.42/6,
paragraph 7.
Exhibit No.
42/11, para-
graph 19.

CHAPTER IIIAN EXAMINATION OF THE EXISTING
TREASURY REGULATION 52(a) The Legal Position

18. At an early stage of our Inquiry Your Committee, through the Treasury, sought legal opinion on a number of matters affecting Regulation 52. One of the questions we raised was whether the Regulation was validly made under the Audit Act and the short answer given by the Secretary, Attorney-General's Department, Sir Kenneth Bailey, C.B.E., in an opinion dated 17th April, 1959, was that:

"Except insofar as it relates to contracts for the purchase of stores, regulation 52 is, in my opinion, invalid."

Exhibit
No.42/20,
para. 2.

Amplifying this answer in the body of the opinion, Sir Kenneth said:

"4. Regulation 52 lays down a detailed procedure to be observed in the procurement, execution and furnishing of works, supplies and services for the Commonwealth in all cases in which the estimated cost exceeds £200.

Ibid,
paragraphs
4-12.

5. The statutory authority for the making of regulation 52 is to be found, if at all, in section 71 of the Audit Act. Insofar as it is material, that section provides:

' 71.- (1.) The Governor-General may make regulations (not inconsistent with the provisions of this Act) for carrying out the provisions of this Act and in particular for -

- (a) the collection receipt custody issue expenditure due accounting for care and management of all public moneys and the guidance of all persons concerned therein,
- (b) the more effectual record examination inspection and departmental check of all receipts and expenditure and the keeping of all necessary books and accounts,
- (c) prescribing the necessary forms for all books and documents whatever required under the provisions of this Act or the regulations,
- (d) the purchase, safe custody, issue, sale or other disposal or writing off of stores and other property of the Commonwealth, and the proper accounting for, and stock-taking of, such stores and property.'

6. A power to make regulations for the purchase of stores and other property of the Commonwealth is explicitly provided for in paragraph (d) of sub-section (1.). The word 'stores' is defined in section 2 of the Act to mean 'chattels the property of, or in the possession or control of, the Commonwealth'. Clearly the execution or performance of works or services must, on any view, fall outside a power so expressed.

7. It therefore becomes necessary to consider whether any other parts of section 71 provide authority for regulation 52 to the extent that it relates to works and services.

8. In this regard, the general covering words of section 71(1.) call first for examination - i.e. the power to make regulations 'for carrying out the provisions of this Act'. But in order to invoke a power expressed in these terms, it is necessary to be able to point to some specific substantive provisions to which the regulations in question may be ancillary (Morton v Union Steamship Co. of New Zealand Ltd. 83 C.L.R. 402). The Audit Act seems to me to contain no such provision.

9. There remains the possibility that regulation 52 as a whole may be supported as a regulation 'for the management of all public moneys' (section 71 (1.) (a)). I do not think it can.

10. In accordance with a familiar rule of statutory interpretation, words take color from their context and their meaning may be narrowed or extended by other words used in association with them. In the context in which the words 'management of all public moneys' appear in section 71 - that is to say in the context of the words 'collection, receipt, custody, issue, expenditure and due accounting for all public moneys' - I think they should probably be construed narrowly. But in any event the phrase 'management of public moneys' in its natural meaning does not seem to me to include all the processes of administration and decision - making which are anterior to the expenditure of public moneys, notwithstanding that they will ultimately involve expenditure of public moneys. In my view, it would be as illogical to extend the meaning of the words 'management of all public moneys' to include the procedures to be followed in the procurement of works and services for the Commonwealth as it would be to extend their meaning to include the procedure to be followed in making appointments to the Commonwealth Service. In each case, the expenditure of public funds would be the necessary result of the procurement or the appointments. In other words, I would regard the procedures to be followed in procuring works and services for the Commonwealth as too remote to be included within the concept of 'management of all public moneys'.

11. To sum up, my view is that regulation 52 is invalid to the extent to which it purports to apply to the procurement of works and services. The fact that some parts of the regulation are invalid does not, however, invalidate the whole regulation. By reason of section 46(b) of the Acts Interpretation Act, regulation 52 has a valid operation to the extent to which its provisions are not in excess of the regulation - making power conferred by section 71 of the Audit Act. It follows that the regulation is valid insofar as it relates to the procedures to be followed in the purchase of stores for the Commonwealth.

12. If, in light of what I have said in paragraphs 7 to 11 above, it should be decided to recommend the amendment of section 71, attention might usefully be given to the structure of section 71 (1.) (d). On a very strict and literal interpretation, the words 'purchase ... of stores and other property of the Commonwealth' might be thought to be limited to chattels that already belong to the Commonwealth. No doubt, however, these words would be interpreted, as I think was clearly intended, to mean 'the purchase of stores or other property that are to become the property of the Commonwealth'. But the expression as it stands is not altogether idiomatic."

19. The Public Service Board, when pursuing the earlier investigation into Treasury Regulation 52 did not consider the validity of that Regulation. Q.1159

20. The opinion means that approximately £40,000,000 per annum or one quarter of the annual expenditure previously accepted as coming within the ambit of Treasury Regulation 52 falls outside its scope. The Department of Works, which is the authority most concerned with expenditure on works and services, said that it would not alter its procedures pending clarification of the situation.

"COMMITTEE MEMBER: Can we take it now that in view of the legal opinion you would possibly interpret the Department of Works to be a construction authority for a Commonwealth Department, and that therefore constructional activities and works of that character would be outside the ambit of this regulation?---(MR. DAVIDSON)* That is how I interpret it, but presumably some more water will need to flow under the bridge. We will have to get a clearer interpretation. Qs. 873-875

COMMITTEE MEMBER: If that is the opinion held within your Department, could you indicate to the Committee what you might propose to do about the situation?---(MR. DAVIDSON) I do not think the Department will initiate any action. We will await the outcome of consideration of the opinion.

COMMITTEE MEMBER: You would expect that something now will be done?---(MR. DAVIDSON) As the result of the opinion one would expect that works and services are not covered by regulation 52 but we do not intend to stop our present procedures until this matter is clarified."

(b) An examination of certain terms used in Treasury Regulation 52

21. "Publicly invited" The Regulations issued by the Lords Commissioners of the United Kingdom Treasury in 1852 provided that advertisements of tenders were "... to be published in the public Newspaper of the place in which Advertisements usually appear ...". However, the practice in the Commonwealth is to advertise in the Commonwealth Gazette and this is accepted as satisfying the requirements of the Regulation. This practice was confirmed in a Treasury direction issued in 1955 which went on to say that "additional extensive advertising in the press should only be for the purpose of achieving practical results". Elaborating this the Treasury representative before the Committee, Mr. C.L.S. Hewitt, said:- Paragraph 348
Qs.1353 and 1354.
Exhibit No 42/44.

" In order to meet the suggestion of patronage and favouritism, I think the solution is to require publication in a journal which is known and available. For instance, the Government Gazette is available to anyone who wishes to read it. From there on, it becomes basically the responsibility of the Chief Officer of the purchasing department because he is the person appointed under the Treasury Regulations to buy goods for which there are funds available and for which his Minister approves. It is for the Chief Officer to decide the extent to which he thinks Q.40

* Mr. E. A. Davidson, Chief Finance Officer, Department of Works.

better prices might be obtained by interesting a wider field of suppliers through more extensive press advertising..."

However, it is not mandatory that departments should advertise in the Gazette, the Department of Territories, for one, has found it expedient to advertise only in the press. The Department of Works in Canberra is another that on occasions relies solely on press advertising.

Q.1354.

See paras. 70 and 185.

22. "Contracts Taken" The phrasing of Treasury Regulation 52 in this respect "... tenders shall be publicly invited and contracts taken ..." conforms exactly with the introductory wording of Regulation 26A of the Victorian Regulations of 1891 promulgated under the Victorian Audit Act of 1890. The 1857 Regulations included somewhat similar phrasing (Regulation 44) viz. "... tenders are to be invited and a contract taken ...". But the spirit of the provision also appeared in the 1852 Regulations and Instructions of the United Kingdom Treasury: Paragraph 351 of those Regulations provided that "the Officer-in-Charge of the Commissariat will then enter into a contract or other written engagement for the supply, taking good and sufficient security for its performance. ...".

Op cit

23. At the time of our public hearings there were no Treasury Instructions or directions elaborating upon the words "contracts taken" and Your Committee found some lack of certainty on the part of departments as to how the words should be interpreted. Treasury Regulation 52 could be read to mean that once tenders had been publicly invited, a formal contract should be executed, in addition to the Purchase Order issued in accordance with Treasury Regulation 49. However, it was generally agreed before Your Committee that the execution of a formal contract was not essential; that it was necessary only that a legal contract exist between the Commonwealth and the other party, it being the responsibility of the department concerned to ensure that the Commonwealth was adequately protected.

See paragraph 201 below.

"COMMITTEE MEMBER: What does it mean by 'contracts shall be taken'?--(MR. DAVIDSON) We have accepted that as meaning contracts should be taken for all work. We either enter into a formal contract or issue an official order, which is also the completion of a contract. We have an offer and an acceptance. That is the contract. I do not think the Treasury Regulation means anything more than that.

Qs.581 and 582.

COMMITTEE MEMBER: What you have just said is sufficient so far as the word 'taken' is concerned?--(MR. DAVIDSON) I think so. That has been accepted as the position. We have accepted it and Mr. Hewitt accepts it in so far as he said it was a matter for the department to say whether it should be a formal contract or not. (MR. HEWITT) Yes."

24. "Person" Paragraph (2) of the Regulation provides that tenders for certain categories of works, supplies and services need not be publicly invited if "... the Secretary, Department of the Treasury, or a person thereto authorised by him in writing, certifies that the inviting of tenders is impracticable or inexpedient."

25. Your Committee noted that among the authorities issued by the Secretary, Department of the Treasury were some to unincorporated bodies such as the Commonwealth Stores Supply and Tender Board. Doubts which we had that such a body could be regarded as a "person" within the meaning of the Regulation were subsequently confirmed in an opinion of the Secretary, Attorney-General's Department, who advised:

" The primary meaning of the word 'person' is an 'individual human being' (Concise Oxford Dictionary).

Exhibit No.42/20 Paragraph 13.

Where the word is used in an Act or regulation, however, the word is, unless a contrary intention appears, to be interpreted as including a body politic or corporate as well as an individual (Acts Interpretation Act, sections 22 (a) and 46 (a)). But even assuming that the word 'person' as used in Regulation 52 may be given this extended meaning, there is no warrant for including within its connotation unincorporated bodies such as contract boards."

Steps have since been taken by the Treasury to rectify the position.

Qs.1161-1163.

26. "Impracticable or Inexpedient" The opinion given by the Attorney-General's Department as to the meaning to be attributed to these words in the Regulation is as follows:

" The words 'impracticable or inexpedient' are not, of course, defined in either the Act or the Regulations, but some guidance as to their meaning may be found in the dictionaries. I mention only the definitions given in the Shorter Oxford English Dictionary, which are, I think, appropriate for present purposes. These are -

Exhibit
No.42/20
paragraphs
14-16.

'Impracticable' : Not practicable; that cannot be carried out or done; practically impossible.

'Inexpedient' : Not expedient; disadvantageous in the circumstances; unadvisable; impolitic.

The dictionary definitions of these words are, however, helpful only in a broad general sense. The fact is that the criteria laid down by the words 'impracticable or inexpedient' involve something more than the mere ascertainment of facts, since the words themselves necessarily imply some idea of a judgement. In any particular case, the answer to the question whether a certain course of conduct is 'impracticable or inexpedient' will usually depend, at least to some extent upon the subjective appraisal of the situation by the authority to whom the question is put. This comes out most clearly perhaps in meanings such as 'practically impossible' or 'unadvisable'. Of course, any decision under the regulation must, like any other administrative decision, be made honestly and by reference to relevant considerations.

In some cases no real difficulty would arise in deciding that it would be 'impracticable or inexpedient' to call public tenders - as, for example,

- (a) where goods are required urgently and time does not permit the calling of tenders; or
- (b) where the goods required are known to be available from only one source; or
- (c) where the cost of calling tenders would be disproportionate to the estimated cost of the goods required."

The Treasury had not issued instructions to authorised officers as to the way they should interpret the words when exercising their authority; the issue of a certificate in any particular case has been left to the judgement of the officer concerned.

(c) The legal effect of certain "authorisations" by the Secretary to the Treasury

27. Paragraphs (a) to (k) of Treasury Regulation 52 list various categories of works, supplies and services in respect of which the Secretary to the Treasury, or a person authorised by him, may certify that to invite tenders is impracticable or inexpedient. However, the authorities issued by the Treasury have not been limited to those categories but have been extended "in anticipation of amendment to the Regulation" to the following:

Exhibit
No.42/5

- (i) Purchases made or approved by the Tender Board of the Postmaster-General's Department - the authorisation was issued to the Contract Board of the Postmaster-General's Department on 17th August, 1949.
- (ii) Purchase of pancreas and pituitary glands and chemical glassware by the Commonwealth Serum Laboratories - the current authorisation was issued to the Director-General, Department of Health on 10th March, 1952.
- (iii) Emergency works, supplies and services for aerodromes and airways facilities and, in respect of specific accidents for accident investigation, research and rescue operations - authorisations were issued to the Chairman, Central Contract Board and the Chairmen of all Regional Contract Boards of the Department of Civil Aviation on 8th November, 1955 (amended 13th June, 1957).

Furthermore, two classes already specified in Treasury Regulation 52 - "works, supplies and services for the Marine Branch of the Department of Commerce in connection with the overhaul of and repairs of vessels, boats and launches" (paragraph (i)) and "works, supplies and services for the Works and Services Branch of the Department of the Interior" (paragraph (e)) - became inoperative in 1942 and 1945 respectively when the particular functions were transferred from one department to another - the Marine Branch of the Department of Commerce being incorporated in what now is the Department of Shipping and Transport and the Works and Services Branch of the Department of the Interior transferring to the Department of Works. However, officers in both the Department of Shipping and Transport and the Department of Works have continued to exercise "authorities" to certify that the calling of tenders is impracticable or inexpedient "in anticipation of amendments to the Regulations".

28. An opinion was obtained from the Secretary, Attorney-General's Department upon the legal effect, if any, which was to be attributed to these various "authorisations". He advised:

"17. Since 1942, when regulation 52 was made in its present form, the Treasurer and certain officers of the Treasury have, by notice in writing, purported to authorize the making of contracts for the supply of certain works, supplies and services in accordance with the procedure laid down in sub-regulation (2.) of regulation 52 in cases in which the works supplies and services specified in the 'authorizations' were not in fact referred to in that sub-regulation.

Exhibit
No.42/20
paragraphs
17-20.

18. These 'authorizations' were given, I understand, on the assumption that regulation 52 would be amended by including in sub-regulation (2.) references to the types of contracts specified in the 'authorizations'.

19. According to my instructions, these 'authorizations' could derive no support from sub-regulation (3.), even if the regulation is assumed to be valid in its entirety. The purported effect of the 'authorizations' was to dispense from the necessity for compliance with sub-regulation (1.) in cases that were not specified in sub-regulation (2.).

20. In the case of 'authorizations' for the procurement of works and services, no dispensation from the requirements of regulation 52 (1.) was needed since the regulation was and is, in my view, invalid to the extent that it purports to apply to works and services. In the case of authorizations for the procurement of stores, those which fall outside the list set out in sub-regulation (2.) would be inoperative as inconsistent with so much of regulation 52 as was validly made."

29. At the time of our public hearings in April, May and June, 1959, over 9½ years had elapsed since an "authority" had first been issued to the Postmaster-General's Department, with lesser but still substantial periods in the cases of the Departments of Health and Civil Aviation. (It was not until 1957 that the Treasury became aware, after receiving an opinion from the Attorney-General's Department, that the authorisations to the Departments of Works and Shipping and Transport were ineffective.) Your Committee are concerned that the Treasury allowed so long a time to elapse without amending the regulations to validate the authorities; making the necessary amendments would have presented little difficulty. While accepting the statement of the Treasury that it has been operating with shortages of staff Your Committee do consider that this particular matter, involving as it did certain departments acting outside the existing law, was one that warranted some priority of attention.

Exhibit No.
42/46

Qs.113,
1175.

30. On 4th March, 1959, the Parliamentary Draftsman was asked by the Treasury to put in hand the drafting of these and other minor amendments to Treasury Regulation 52.

Exhibit No.
42/45,
Appendix
No.3.

31. There is one other aspect of this matter to which we find it necessary to direct some attention. The Audit Office concurred in the issue of the "authority" to the Postmaster-General's Department in 1949. In this regard the advice of the Treasury to the Department read:

Q.1178

" The difficulties experienced by your Department are fully appreciated and therefore the Treasurer has approved that your Department be authorised to anticipate an amendment of Treasury Regulation 52 (2). to add a further subparagraph on the following lines:-

Exhibit
No.42/19,
Statement
D, para.2.

'Purchases made or approved by the Tender Board of the Postmaster-General's Department.'

The Auditor-General has given an assurance that this approval by the Treasurer will obviate any query which would otherwise be raised by him in this matter."

32. While successive Auditors-General have drawn attention in a number of their annual reports in recent years to the need for a comprehensive review of the Audit Act they have not informed the Parliament of those persisting departures from the provisions of Treasury Regulation 52.* Quis custodiet ipsos custodes!?

* Section 51 of the Audit Act 1901-1959 provides, inter alia:-

"The Auditor-General shall forthwith examine such statement and prepare and sign a report explaining such statement in full and showing:-

.... (b) full particulars of every case in which the provisions of the Constitution or of this or any other Act or the regulations or any forms shall not have been carried out or adopted or shall in any manner have been departed from,

(d) The approval of the Governor-General

33. Since the promulgation of the Treasury Regulations in 1902, the practice of seeking the approval of the Governor-General in Council to expenditure has been an important exception to the general principle of public invitation of tenders. Initially it was the sole alternative available to those departments that had not specifically been granted exemptions from the operation of the Regulation - more recently it has been one of a number of alternatives open to a department that did not wish publicly to invite tenders. In Victorian Stores and Transport regulation of 1874 seems to have been the first occasion on which the provision now embodied in the Commonwealth regulations took shape. The action then taken, followed the recommendation of a Committee which was of the opinion "that important public works should not be executed nor large supplies be obtained without contract except with the sanction not alone of the Minister concerned but of the Executive Government...".

Victorian Gazette No. 37 of 30th May, 1874, page 1064.
Q.68
See also paras. 11 and 12 above.

34. Your Committee considered the notifications of expenditure approved by the Governor-General which appeared in the Commonwealth Gazette during a period of some months in 1958 and 1959. Because of the apparently trivial nature of some of the items notified, we called before us representatives of the Prime Minister's Department (which provides the secretariat for the Executive Council) and the Department of Health (which submitted the greatest number of items to the Executive Council in the period reviewed).

35. During 1958, 363 items of expenditure, totalling £903,804 were approved by the Governor-General under Treasury Regulation 52. Of these, 147 items or 40% were for amounts between £200 and £500 and a further 76 or 21% for amounts between £500 and £1,000. Thus some 61% of all orders so approved were for amounts of £1,000 or less.

Exhibit No 42/31.

36. Of the remaining 140 orders, 87 were for amounts between £1,000 and £3,000, 19 for amounts between £3,000 and £5,000 and only 34 or 9.4% for amounts in excess of £5,000. Executive Council Minutes submitting items of expenditure for approval under Regulation 52 represented 8.6% of all Minutes submitted by departments.

Exhibit No.42/31.

37. The four Departments which mainly used this procedure for approving expenditure in 1958 were:

<u>Department</u>	<u>Number of items Submitted</u>	<u>Total amount £</u>
Department of Health	149	324,680
Department of Territories	73	117,274
Department of the Interior	52	265,927
Department of Civil Aviation	31	122,450

The items covered a wide range and included specialised equipment, motor vehicles, expenditure on special functions, printing and clothing.

38. Of the 149 items submitted by the Department of Health, 59 (40%) involved amounts not exceeding £500 and our discussions with the Department disclosed that it had come to use the Executive Council procedure as an easy expedient to avoid alleged time-consuming methods. It seemed to Your Committee that, when the authority could not be exercised to certify that public invitation of tenders was impracticable or inexpedient, it had become the rule to seek the approval of the Governor-General, and to invite public tenders

the exception. This is reflected in the following statistics of orders in excess of £200 placed by the Department of Health in a period of three months in 1958:

Exhibit No
42/33.

Value Category	Total number of	Analysis of Orders			
		Executive Council Approval	Certificates of in expediency [†]	Public Tenders	Period Contracts
200- 500	32	(<i>β</i>) 9 (15)	20	2	1
501-1000	27	8 (9)	13	5	1
1001-1500	15	7 (3)	5	3	-
1501-2000	1	1 (2)	-	-	-
2001-3000	3	2 (3)	1	-	-
3001-4000	2	1 (1)	1	-	-
4001-5000	1	- (-)	-	1	-
5001 & over	12	7 (4)	1	4	-
	93	35 (37)	41	15	2

* The certificates related to purchases of special glassware, pancreas and pituitary glands by the Commonwealth Serum Laboratories. See paragraph 27 (ii) above.

[†] These figures represent quarterly averages based on the statistics for twelve months submitted by the Prime Minister's Department (Exhibit No. 42/31).

39. In its submission to Your Committee the Department said:

" Except for the Commonwealth Serum Laboratories and the Northern Territory Division of this Department, other requirements in excess of £200 are submitted for Executive Council approval unless specifically exempted by Treasury Regulation 5E. In the Northern Territory a Tender Board has been constituted and where practicable public tenders are called for period supplies. Otherwise Executive Council approval is obtained.

Exhibit
No. 42/33

In the case of the Commonwealth Serum Laboratories where orders are over £200, the procedure is as follows -

- (a) Orders are placed under existing contracts of the Commonwealth Stores Supply and Tender Board for items available in this manner.
- (b) Where there are no contracts that can be used public tenders are called wherever possible.
- (c) Where it is not practicable to call tenders at least three representative quotations are solicited and Executive Council approval obtained. The only exceptions to this rule are where there is only one source of supply.

- (d) For special glassware, pancreas and pituitary glands, certificates of inexpediency are obtained.

No difficulty is experienced in obtaining supplies in accordance with the current procedure. The present limit of £200 imposed by Regulation 52(2) is extremely low, based on present-day values. The calling of public tenders is now required to be undertaken in many instances for what are comparatively small amounts. As a result, although tenders are called, it is cumbersome and time-consuming to prepare and execute contracts. A number of items are therefore submitted for Executive Council approval in lieu of executing contracts.

In a Department such as this one with many different activities with widely different tasks to perform using specialised equipment, the most expeditious way to obtain supplies in many instances is by use of the Executive Council approval method...."

(In both cases the underlining has been added by the Committee)

40. An amendment to the Treasury Instructions dated 1st March, 1959, and circulated late in April 1959, suggests that the approval of the Governor-General should be sought only in special cases. Paragraph 28 of section 13 of the Instructions reads:

"Tenders to be Invited and Contracts Taken.

28. The underlying intention of regulation 52 is that tenders should be publicly invited, by press or Gazette advertisement, thereby giving to all persons interested an opportunity to tender. If, for special reason, it is necessary that quotations be obtained from only a limited number of suppliers and the proposed expenditure exceeds £200, those provisions of regulation 52 (2) which relate to the authority of the Governor-General in Council, or to the obtaining of a certificate of inexpediency from the Secretary, Department of the Treasury or a person authorized by him, shall apply."

Treasury
Manual
Page 192.

(The underlining has been added by the Committee.)

However, the earlier instructions made no suggestion of restriction and appeared to allow a department to exercise a clear preference in the matter. Paragraph 28 then read:

"Tenders to be Invited and Contracts Taken.

28. The underlying intention of regulation 52 is that tenders should be publicly invited by press advertisement, thereby giving to all persons interested an opportunity to tender. Where it is found preferable to obtain quotations from a limited number of persons or firms and the proposed expenditure exceeds £200, that provision of regulation 52, which relates to the authority of the Governor-General in Council, operates."

(The underlining has been added by the Committee.)

Paragraph 29 commenced "Regulation 52 lays down the principle clearly that tenders are to be taken or the approval of the Governor-General in Council obtained ..." and, read in conjunction with

paragraph 28, could have supported a view that a department might either seek the approval of the Governor-General or invite public tenders, without evoking adverse criticism.

41. The Department of Health maintained that there was no specific restriction placed upon the use of the Executive Council procedure and that the Department had operated in strict compliance with Treasury Regulation 52.

"COMMITTEE MEMBER: ... First, do you interpret from Regulation 52 that tenders shall be publicly invited and contracts taken for all requirements when the estimated cost is £200 or more, except under approved circumstances?--- (MR. DUNLOP)* No, I think the procedure that we have been following is specifically provided for in Treasury Regulations, and there is no particular restriction that I know of placed on that particular regulation under which we operate.

Qs. 762-765.

COMMITTEE MEMBER: Would you say that to comply with Regulation 52, the approved exceptions from the calling publicly for tenders should be kept to a minimum?--- (MR. DUNLOP) There is no requirement that I know of necessitating that to be done. If there were a requirement, we would follow any particular procedure set out in the Regulations.

COMMITTEE MEMBER: Do you not feel that the wording of Regulation 52 establishes a basic principle and goes on to provide several provisos or exceptions to the rule?--- (MR. DUNLOP) No.

COMMITTEE MEMBER: You would say, then, that the Department of Health in your opinion has operated in strict compliance with Regulation 52?--- (MR. DUNLOP) Yes."

42. Although the Department of Health may have operated strictly within the limits of Treasury Regulation 52 Your Committee cannot support the Department's attitude in this matter. We are of the opinion that the Department did not evince a proper appreciation of the standing of the Executive Council, and the Governor-General in the administration of Government, otherwise it would have hesitated to submit to the Governor-General some, at least, of the items that were the subject of Executive Council minutes.

43. We discussed with the Department seven items which appeared amongst those notified in the Gazettes of 15th January, 12th February and 5th March, 1959. The explanations given by the Department in respect of these items are:-

- (a) "£980. - British United Dairies Pty. Ltd., 33 King-street, Melbourne, Victoria - Purchase of 5 tons refined lactose, required for the manufacture of penicillin at Commonwealth Serum Laboratories, Melbourne."

Exhibit No. 42/34
Gazette No. 4 of 15th January, 1959.

In this case the Department sought quotes from a number of suppliers but received two only. The successful supplier submitted the lower quotation.

Qs. 778 and 779.

- (b) "£650. - J. W. Handley, 649-655-7 Victoria street, Abbotsford N9, Victoria. Purchase of cases and pocket-clips used in the assembly of hearing aids

Exhibit No. 42/34

* Mr. D. G. Dunlop, Assistant Director, Establishment and Finance, Department of Health.

at Commonwealth Acoustic Laboratories, Sydney."

The Department explained:

"...About 1955 we first bought these items from this firm. It was the only firm interested in making the dies for them. So, naturally, that firm having made the dies, further orders are placed with it. I would say that at some stage should we change the form of our particular hearing-aid, bringing in some modifications, we would again call quotations for the dies and the placement of the order. But at present in regard to that item, that firm gave the only quote for the dies involved. I think that since 1955 we have bought from that particular firm. ... We feel that we get quite a good product at a very reasonable price from this firm. ..."

Q.779

(c) "£346. - Hardie Rubber Co. Ltd., 63-65 Hansen-street, Adelaide, South Australia - Purchase of 528 pairs of sandshoes, various sizes required for use by the inmates of the East Arm Leprosarium. Northern Territory."

Exhibit
No.42/34

In this instance the Department sought quotes from ten potential suppliers located throughout Australia. The quotation was accepted on the basis of quality and price.

(d) "£270. - D. & W. Murray (Aust.) Ltd., cnr. Creek and Elizabeth-streets, Brisbane, Queensland - Purchase of 288 pairs pyjamas, for use by patients in Alice Springs Hospital, Northern Territory.

Exhibit
No.42/34

£290. - G. & R. Wills & Co., 573 Wellington-street, Perth, Western Australia - Purchase of 288 pairs winter pyjamas, for use by patients in Alice Springs Hospital, Northern Territory."

The Department said:

"... both (items were) dealt with at the same time. In this case, we obtained 26 quotes from 21 suppliers, and again we sought quotes in all States. The lowest quotation was, I think, round about 11/- or 12/- and the highest about 32/-. The one we accepted was of the order of 17/6. ... So far as that item is concerned, the quote we accepted and the item itself were examined by the matron of our hospital and the recommendation was based on a quality-price basis."

Q.783

(e) "£740. - Sterling Henry Limited., 309 Queen-street, Brisbane, Queensland - Purchase of clothing for use by patients at East Arm Leprosarium, Northern Territory."

Exhibit
No.42/34

Twenty-one quotes were obtained from all States and the successful firm was chosen on the recommendation of the matron of the Darwin Hospital.

Q.787

(f) "£550. - Lebel (Aust.) Ltd., Actil-avenue, Woodville, South Australia - Purchase of 400 white hospital sheets for use in Darwin Hospital, Northern Territory."

Exhibit
No.42/34

Quotations were obtained from 25 potential suppliers.

Q.794

44. Your Committee consider that there were alternatives available to the Department of Health for dealing with these matters

that would have avoided the need to bother the Executive Council and the Governor-General with them. Taking first the order placed with J.W. Handley, we suggest that, if the Department was justified in its view that public tenders need not be invited then either the Department of Supply Contract Board or the Commonwealth Stores Supply and Tender Board would most likely have been willing to issue a certificate under sub-section (2) of Regulation 52. We were told that such an arrangement existed for special purchases by the Commonwealth Scientific Industrial Research Organisation* :-

"(MR. HEWITT).... This problem came before the Treasury in connection with the Commonwealth Scientific and Industrial Research Organisation, which was perturbed at what it believed to be the very large number of purchases which it could make only from one source or one supplier, or which were of an urgent nature, and it had to resort to the Executive Council. The Treasurer took the view that for reasons which the Chairman earlier touched upon a new exception should not be put forward at this time, in anticipation of the amendment of the regulations, but it was suggested to the Organisation that it could be assisted by the Commonwealth Stores Supply and Tender Board which also provided an opportunity to lessen the burden of work involved in making purchases without the calling of tenders and quotations. That course was followed by the Organisation and I tender for the information of the Committee the record of the number of purchases which have been approved on behalf of the organization by the Stores Supply and Tender Board without the public invitation of tenders. This covers the period from July, 1957 to the end of January, 1959."

Q.53

45. In the remaining six cases where the Department of Health obviously went to some trouble to obtain quotes from a large number of potential suppliers, the requirements of Regulation 52 would have been met if, as well, an advertisement had been inserted in the Commonwealth Gazette - a relatively simple matter.

46. As mentioned earlier, because the Department of Health considered it cumbersome and time-consuming to prepare and execute contracts for some items, it adopted the alternative of submitting those items for the approval of the Governor-General. The Department explained this further:

"... With regard to the comment that the calling of tenders is cumbersome and time-consuming, that is to be read in relation to our present procedure, particularly in regard to our business undertaking, the Commonwealth Serum Laboratories. At present we have no contract forms as a regular course of handling these things, so if we are required to enter into a contract - and we do in some cases - special documents have to be prepared. In the light of that procedure and the fact that we do operate mainly under Treasury Regulation 52(2), it is time-consuming and cumbersome. But it is in relation to the present system that we have made that comment, and it relates mainly to the fact that we have not a normal contract procedure and the documents have to be filled in on each occasion."

Q.772

* A similar arrangement operates for purchases by the Department of Territories - see paragraphs 186-187 below.

∅ In this period 44 requests were approved covering items such as livestock, wool and equipment - See Exhibit No.42/9.

47. Your Committee make three comments. Firstly, it may not have been essential for the Department to have executed formal contract documents* but if so, then there should have been few problems about establishing a standard contract document. Secondly, we consider it hardly appropriate that the time of the Governor-General and his Executive Council, of the Minister of the Department and senior departmental officers should be taken up simply because it was considered time-consuming to prepare and execute a formal contract. Thirdly, assuming that a formal contract was necessary adequately to protect the Commonwealth, then that protection was lost when, in lieu, the Department sought and obtained the Governor-General's approval.

48. The attitude of the Prime Minister's Department also caused us some concern. This Department provides the secretariat to the Executive Council and Executive Council minutes are channelled through it. The Department contends that since such minutes are prepared by responsible officers and approved by a responsible Minister it is quite outside its prerogative to question the appropriateness of a minute so prepared.

Q.745

49. Discussing the use that has been made of the Executive Council by the Department of Health, Mr. M. C. Timbs, First Assistant Secretary, Prime Minister's Department, said:

"The Department of Health is using the Executive Council procedure in accordance with its right under the Regulation. It is not abusing the principle of the Regulation in so doing. Having said that, I would go back to my original observation that these matters having been considered in that department by responsible officers, and, more particularly, having the approval of the Minister for Health, we would regard it as quite outside our prerogative to query them, or even to form an opinion on whether the use of this procedure was in any way doubtful.

Qs.749
and 750

COMMITTEE MEMBER: Does the Council itself regard it as satisfactory that it is used as a vehicle in connection with such a large number of small orders?--- (MR. McCUSKER)¶ The Council has not expressed a view in those terms, but there is a general feeling that it would be desirable if the number of minutes involved could be reduced without affecting efficiency, in view of the heavy load that the Governor-General carries already in the signing of a large number of documents every week."

At a later stage Mr. Timbs said:

"... We would think that ministerial responsibility having been exercised, and a Minister having decided that he wants to put a matter through the Executive Council, it is no part of the function of a public servant to tell him that this could not be done."

Q.755

50. Of course, Your Committee would agree that it is not the function of a public servant to tell the Minister of another department what he can or cannot do and the witness knew quite well that the question is not posed or decided in this bald fashion. But as the body servicing the Executive Council we feel

* For an earlier discussion on this question see paragraphs 22 and 23 above.

¶ Mr. J. McCusker, Secretary, Federal Executive Council.

it incumbent upon the Prime Minister's Department to review from time to time the practices and procedures associated with the Council, including the nature and substance of the matters submitted to it.*

51. As we commented earlier, Your Committee consider that the use made of this provision in Treasury Regulation 52 has not always been appropriate and we suggest the Prime Minister's Department might review the situation. Moreover, if, as seems possible, the lack of review has extended beyond the field of Regulation 52, we recommend that a general review be undertaken of the type and nature of matters being submitted to the Executive Council and the Governor-General.

(e) Certificates of Inexpediency

52. The origin of the provision that the Secretary, Department of the Treasury, or a person authorised by him may certify that to invite tenders publicly is impracticable or inexpedient is discussed in Chapter II, while earlier in this Chapter Your Committee have considered the meaning of the words "impracticable or inexpedient" and the legality of certain authorities issued by the Secretary Department of the Treasury.

Paragraph
16

Paragraphs
24-32.

53. Prior to 1940, the exceptions to the Regulation were in the form of exemptions which were listed in sub-paragraphs (a) to (j). The 1940 amendments were achieved broadly by retaining the list of exceptions but making them subject to the issue of a "certificate of inexpediency". The form of the amendment had certain defects; some types of expenditure, which now became subject to certification, in fact still warranted an unrestricted exemption from the Regulation. Two items in this category are at present specified in sub paragraphs (a) and (j) of the Regulation, viz:

"(a) works executed at and supplies issued from the Commonwealth or a State Government Printing Office, Commonwealth factories, Commonwealth workshops, Commonwealth stores or Commonwealth dockyards;

Treasury
Regulation
52, sub-
section
(2).

(j) works, supplies and services which by their nature can be rendered by a State Government Department only."

These defects were recognised by the Treasury in a Treasury Instruction, subsequently issued, which purported to exempt generally these two classes of expenditure from the statutory requirement that tenders be publicly invited. Instruction 32 of section 13 of the current Treasury Instruction reads:

" A general exemption has, however, been granted by the Secretary, Department of the Treasury, that the inviting of tenders is impracticable or inexpedient for the following:-

Treasury
Manual,
page 192A.

* Sub section (2) of Section 25 of the Public Service Act 1922-1957 reads:-

"The Permanent Head of a Department shall be responsible for its general working, and for all the business thereof, and shall advise the Minister in all matters relating to the Department."

- (i) works executed at and supplies issued from the Commonwealth or a State Government Printing Office, Commonwealth factories, Commonwealth workshops, Commonwealth stores or Commonwealth dockyards; and
- (ii) works, supplies and services which by their nature can be rendered by a State Government Department only."

54. In the light of this instruction, Your Committee were interested to find that the Treasury had recently questioned the validity of a certificate under Treasury Regulation 52 issued in 1941 by the Secretary, Department of the Navy, dispensing generally with the calling of public tenders in the following cases:-

Exhibit
No.42/43.

- "(a) Works, supplies and services for the Department of the Navy in connection with ship building, the fitting out of, overhaul of, and repairs to, vessels, boats and launches. Document T.R.40.
- (b) Freight paid to shipping companies.
- (c) Urgent purchases by H.L.A. Ships when time will not permit of public tenders being invited.
- (d) Purchases made from State Supply and Tender Boards."

In this context the Treasury and the Audit Office considered that individual certificates were necessary on each occasion that tenders were not publicly invited. The Navy did not agree.

"COMMITTEE MEMBER: Mr. Hewitt, under Regulation 52, can there be such a thing as a general certificate of inexpediency?---(MR. HEWITT) I do not think so. (MR. COLGAN) Might I disagree with that? Regulation 52(2) indicates the occasions when the certificate of inexpediency may be utilised. There is no restriction in that particular sub-regulation to say that an individual certificate only must be issued. If you read Regulation 52 (2) (k) in conjunction with the preamble to that sub-regulation, I think it speaks in the plural and could easily be taken, at least by a layman, to suggest that a general certificate is adequate or appropriate in certain circumstances. We have been working under a general certificate for many years, and also during the war period, which suggests that it was legal in those days with the Treasury, and no doubt it still is legal. (MR. NEWMAN) I would not agree with that, that any blanket authority is given at all. I should say that the certificate of inexpediency must be given in relation to each particular undertaking or work, or individual order, that is being issued. I would not read Regulation 52 as giving a blanket authority, despite the fact that the inexpediency provision does relate to works included in the defence of the Commonwealth.

Qs.658,
659 and
662.

(MR. COLGAN)... The Treasury issued a general certificate to the Department in 1941. That would suggest that it was legal then. The regulation has not been altered since, so is it illegal now? That is the point I am trying to make.

COMMITTEE MEMBER: Would you care to explain that matter in a little more detail, Mr. Hewitt?--- (MR. HEWITT) I am trying to turn up the 1941 advice. I have not got it in front of me at the moment.* It was an authority to the Department of the Navy consistent with the authorities that had been given in the past to departments. There was no thought expressed in the papers that someone would have been able to say that all purchases of that class henceforth were exempt from public tenders. The matter came under the notice of the Treasury in correspondence in 1957, and the Navy was advised in March 1958 that while the previous wartime delegation virtually provided for a block exemption of certain categories, it explained that it was considered that the issue of this type of certificate was not in accordance with the intention of Regulation 52 and that the Treasury did not agree to its continuance. The belief was that there should be individual certificates on individual occasions."

Should Regulation 52 be retained in its present form, the validity or otherwise of general exemptions such as have been given by the Secretary, Department of the Treasury and the Secretary, Department of the Navy, would need to be determined.

55. The following statistics, based on a "typical" period of three months in 1958, show the extent to which major purchasing departments have availed themselves of certificates of inexpediency.

Department	Total No. of Orders	Total No. of Certificates	Relationship - Certificates to Orders.			
			Overall	£201-£1000	£1001-£5000	Over £5000
Postmaster-General's	2,538	147	5.8%	6.0%	5.3%	4.3%
Supply	2,071	728	35.0%	37.0%	36.0%	28.0%
Works	2,116	560	26.0%	30.0%	24.0%	5.8%

56. The statistics show a wide variation in use of certificates between the Postmaster-General's Department on the one hand and the Departments of Works and Supply on the other. But what perhaps is more significant is the relative stability in the relationship between certificates issued and the total number of orders; over the whole range of value categories the only marked drop in the over £5,000 group is in the case of the Department of Works. Additional statistics which Your Committee obtained from the Australian Capital Territory Branch of the Department of Works suggests that this drop is a characteristic of the works and services activities, as distinct from the stores purchasing activities of that department. See paragraphs 60-65 below.

57. Both the Departments of Supply and Works have used the certificates to add flexibility to their purchasing arrangements and this agreed with the Treasury view of the purpose of the provision. The Treasury emphasised that the procedure placed responsibility where it should rest when individual purchases were made without the invitation of public tenders. Q.1393

* See Exhibit No. 42/43.

58. Authorisations by the Secretary, Department of the Treasury to persons to certify that the calling of public tenders is impracticable or inexpedient have not been extended to all departments. Only the Department of Supply (through its Contract Board), the Postmaster-General's Department and the Department of Works, and three other organisations - the Commonwealth Stores Supply and Tender Board, the Commonwealth Railways and the War Services Homes Commission - have what might be termed full power to issue certificates in respect of their operations; limited authority has been extended to the Departments of Civil Aviation, Health, National Development, Shipping and Transport, and Navy and the Commonwealth Scientific Industrial Research Organisation. Details of the authorisations current at April, 1959 appear in Appendix No.2.

Exhibit No.
42/5.

59. The extent to which authorisations could be issued by the Secretary, Department of the Treasury, has, of course, been limited by the form of the Regulation; however, this has not, as earlier mentioned, prevented the Secretary from issuing authorities beyond the limits of his power. However, since 1940, the Treasury has also refused a number of requests from departments to be granted authority in the terms of the Regulation. Regarding this the Treasury said:

See paragraphs 27-32.

" In considering the requests it has been the practice in the Treasury not to extend the authorities unless there has been a real need demonstrated. The Treasury has considered that in principle, a wide extension of the authorisations that would be infrequently used is not desirable."

Treasury memorandum B.A.59/1026 of 10th August, 1959.

60. So that we might examine the use made of the certificates, Your Committee arranged for the Australian Capital Territory Branch of the Department of Works to submit details of the certificates issued by the Branch between 1st January, 1959 and 31st March, 1959. In this Branch, three officers - the Director of Works, the Assistant Director of Works (Construction) and the Construction Manager, have been authorised by the Secretary, Department of the Treasury, to issue certificates.

61. The information was submitted in two broad categories - purchases made by the Stores Section of the Branch and expenditure processed through the Contracts Section. The statistics of orders placed over the three months' period in the two categories are as follows:

STORES SECTION ORDERS

Value Category		No.	No. in each Category		
Over £	Up to £		Public Tenders Invited	Certifi- cates of Inexped- iency	Period Contracts Used
200 -	500	73	14	14	45
500 -	1000	19	4	3	12
1000 -	1500	8	4	3	1
1500 -	2000	17	11	4	2
2000 -	3000	16	3	6	7
3000 -	4000	1	-	-	1
4000 -	5000	-	-	-	-
5000 -		2	1	-	1
Totals		<u>136</u>	<u>37</u>	<u>30</u>	<u>69</u>

Exhibit
No.42/25.

CONTRACTS SECTION ORDERS

Value Category		No.	No. in each Category		Period Contracts Used	Exhibit No. 42/25 Appendix 2.
Over	Up to		Public Tenders Invited	Certificates of Inexpediency		
£	£					
200 -	500	21	-	21		
500 -	1000	23	6	16	1 (£780)	
1000 -	1500	10	6	4		
1500 -	2000	12	6	6		
2000 -	3000	7	3	4		
3000 -	4000	5	4	1		
4000 -	5000	10	9	1		
5000		44	43	1 (£7080)		
Totals		132	77	54	1	

62. The reasons given by the Branch for the issue of certificates may be summarised as follows:

	Urgency	Sole or Special Supplier	Local Supplier	Minor Contracts Procedure*
Stores Section	10	11	9	-
Contract Section	33	1	1	18

* This procedure is discussed in paragraphs 66-71 below.

63. In relation to the Stores Section Orders Your Committee note that:-

- (i) the relationship between public tenders and certificates issued is relatively static over all value categories; and
- (ii) extensive use has been made of period contracts particularly in the lower value categories; 61% of all orders of a value between £200 and £1,000 were placed under period contracts.

These characteristics follow fairly closely those shown by the statistics relating to the Postmaster-General's Department and the Department of Supply whose activities under Treasury Regulation 52 relate essentially to the purchase of stores, supplies and equipment. Only the Department of Works has any appreciable activity in the field of works and services.

See paragraphs 55 and 56 above.

64. The statistics for the Contracts Section show substantially different characteristics; here there is a clear inverse relationship between the use of certificates and the value of orders.

65. There are two other matters associated with this provision to which Your Committee wish to refer. Firstly, although there is no legal requirement, the departments generally agreed that, as a matter of sound administrative practice there would, or should be, a record of why a certificate had been sought or granted in any particular case. Secondly, it was also agreed that the certificate should at least be given before the contract was arranged, although we find evidence in the data submitted by the Australian Capital Territory Branch of the Department of Works that this did not always occur; on occasions tenders have not been publicly invited and orders have been placed in anticipation of the issue of a certificate.

(f) The Minor Contracts Procedure of the Australian
Capital Territory Branch of the Department of Works

66. In September, 1958, by advertisement in the local press, the Canberra Branch of the Department of Works invited contractors, who were interested in quoting for work up to the value of £2,000 to register with the Department. It was stated that those contractors who registered would be given the opportunity to submit quotations for work of the type in which they were interested. Classes of work specified in the advertisement were small buildings, building alterations, plumbing, electrical, painting, hot water and heating, ventilation, concreting kerbs and gutters, footpaths, drainage, fencing and tennis and basketball courts. These firms which registered then formed the basis for operating a procedure which provided for the issue of a certificate of inexpediency and the call of quotations from a limited number of operators, in lieu of publicly inviting tenders. In the three months, 1st January to 31st March, 1959 the procedure was invoked on eighteen occasions for jobs ranging in cost from £274 to £1,521.

Exhibit No
42/24.

67. The Department informed Your Committee that the procedure had been introduced for two main reasons:

- (i) Following an investigation of the Department's day labour activities, the Public Service Board had recommended that greater use should be made of small contractors.
- (ii) There had been difficulties in arranging for small jobs to be done under the normal tender system. The Department said generally the response to invitations to tender for small jobs had not been good because of the extent of larger straight-forward jobs on the market. Moreover, it had been necessary to cancel a number of small contracts arranged under normal tender procedure, particularly in the painting category, because of the contractors' failure to carry out the work.

Exhibit No.
42/25,
page 1,
paragraph 3.

68. The procedural instructions* established by the Branch required a record to be kept in respect of each class of work, showing the names of interested contractors, the various dates on which they had been invited to quote for work, whether quotes had been submitted, and the successful contractor for each job. This record served as a rotation register. As well, a card was maintained for each contractor while other cards recorded details of interviews with persons seeking inclusion on the departmental list. New contractors could be added to the lists at any time. The instructions provided for six contractors to be selected to quote for each job solution being on the basis of nomination by the officer requiring the quotes to be called with the balance, if any, being chosen in strict rotation from the rotation register.

Committee
Document
T.R.50

69. When Mr. G. D. B. Maunder, Director of Works, Canberra, appeared before Your Committee in May, 1959, he told us that the "minor works procedure" had operated satisfactorily and that no complaints whatever from contractors had come to his attention.

Q.893

Qs.898 and
899.

* The first instructions issued were on a verbal basis. Brief written instructions were issued in February, 1959, and a more comprehensive set in June, 1959. (Committee Document T.R.50)

He added that he was quite sure that the prices that were being obtained under the procedure were equally as good as, if not better than, would have been obtained by calling for public tenders; but he went on to say that he did not wish it to be assumed that the procedure could be extended beyond the narrow limit to which it was confined. He continued:

"... We are operating here in Canberra in a field where the contractor potential is very heavily committed on capital works. It has been my experience that no contractor will tender for one of these messy little jobs if he can get a clear-cut job like building a new cottage. Alteration work and things of that nature are most unpopular." Q.900

70. Subsequently, however, the Department found it advisable to vary the procedure; as a result of an inquiry directed to the Canberra Branch by Your Committee early in August, 1959 we were informed:-

" Although the small contracts procedure was functioning satisfactorily, experience disclosed that it had minor weaknesses: Committee Document T.R.56

- (a) Persons or firms in need of work might not have the opportunity to submit a quotation at the critical time.
- (b) Persons or firms with sufficient work in hand - Departmental and/or other - might be invited to quote under the rotational system and not respond because of the work in hand.

In either of these instances the Department would not know the position with the person or firm when requests for quotations were being prepared.

It was decided that invitation of public quotations by advertisement, in addition to the rotation system, would prove advantageous to the Department and small contractors. Whilst it would not overcome (b) above, it would help persons or firms coming within (a) above.

One distinct Departmental benefit is the dispensing with the need for the Certificate of Inexpediency for jobs over £200.

The new scheme was introduced with one quotation that closed on 28th July, 1959, and it is too early yet to form any real conclusions. However, of the four (4) quotations that have been advertised to date, results have been:-

- (a) Number of registered contractors to whom invitations were sent under the rotational system: 16
- (b) Number as per (a) who responded: 7
- (c) Number of registered contractors not invited, but who submitted quotations: 1
- (d) Number of "outside" contractors who submitted quotations: 2

Under the new scheme, any prospective contractor may request information (plans, specifications, quotation form, etc.)

as a result of the public advertisement. A record is kept of the names of such contractors and of quotations submitted by them.

It will be appreciated that the short time involved prevents advertisement in the Gazette, but all quotations accepted as a result of public advertisements will be published in the "Gazette" in accordance with Regulation 53."

71. The arrangements now made by the Branch for small contracts are of particular significance because they illustrate a degree of flexibility which is already available to departments within the limits of the present Treasury Regulation 52.

(g) Period Contracts

72. Recourse to existing period contracts is both a permissible way to avoid the calling of quotations or public tenders and a means of ensuring efficient and economic purchasing. Once a period contract has been arranged - usually after the invitation of public tenders - orders may be placed with the supplier with a minimum of delay. Departments, generally, agreed that the negotiation of period contracts was a most satisfactory way of obtaining regular supplies; indeed the practice is most extensive amongst Commonwealth Government departments.

73. According to the statistics submitted by the Public Service Board covering eight departments over a period of three months in 1958, 42.9% of all orders in excess of £300 were placed under period contracts. The following table, which has been compiled from the Public Service Board statistics, shows the situation in more detail:

<u>Value Category</u>	<u>Number of Orders within Category</u>	<u>Period Contracts Utilised</u>	<u>Particular Contracts</u>	<u>Other*</u>
£s.		%	%	%
200 - 500	4998	55.2	36.4	8.4
500 - 1000	1996	41.5	51.9	3.6
1000 - 2000	1146	34.4	60.3	5.3
Over 2000	1708	14.5	81.4	4.3

* Supplies obtained under certificates of in expediency or with Governor-General's approval.

74. The extensive recourse to period contracts for purchases of comparatively low value is well illustrated by the following table which is based on information submitted to the Committee by the departments concerned:

Department	Total Orders for 3 Months	Ratio of orders placed under period contracts within particular value categories.			
		£200-£500 %	£500-£1000 %	£1000-£2000 %	Over £2000 %
Civil Aviation	238	62.6	71.4	50.0	Nil
Postmaster-General's*	2538	59.6	55.0	50.5	20.5

(Table continued on following page)

Department	Total Orders for 5 Months	Ratio of orders placed under period contracts within particular value categories,			
		£200-£500	£500-£1000	£1000-£2000	Over £2000
		%	%	%	%
Repatriation	659	59.3	49.5	46.0	31.3
Supply ^φ	1193	50.6	45.2	51.1	41.6
Works	2116	37.1	20.7	12.1	4.3

* Figures include contracts placed on behalf of the Postmaster-General's Department by the Commonwealth Stores Supply and Tender Board, the Department of Supply and the various State Governments.

φ These statistics represent orders placed for delivery to and payment by the Department of Supply. Contracts acceptance and purchase orders issued by the Department of Supply Contract Board for delivery to and payment by any other department are not included.

The lower ratio evident in the case of the Department of Works probably stems from that Department's extensive work and services activities which do not normally lend themselves to the letting of period contracts.

75. The extent of the use of period contracts by departments is such that it becomes an important factor in any consideration of the impact of Treasury Regulation 52 on departmental supply activity.

(h) Treasury Regulations 46 to 53

76. Treasury Regulation 52 is only one of a series of Regulations, numbers 46 to 53 which are concerned with the ordering of works, stores and services; these Regulations establish a set of basic rules within which departments are required to operate. The following statement, which was submitted by the Treasury sets down in broad terms a sequence of actions which comply with those rules:

" Treasury Regulation 47(1) and Form 11 provide for supplies to be obtained under a contract. The sequence of action if there is a contract (either Commonwealth or State) or if supplies can be obtained from Commonwealth factories, Commonwealth workshops, Commonwealth stores etc., is:-

Exhibit
No.42/4

- (1) Requisition (Form 11) -
 - (a) prepared by the officer requiring supply;
 - (b) submitted to the Authorising Officer for a certificate that 'Funds are available';
 - (c) submitted for the approval of the Minister administering the Department or that of an officer appointed by the Minister for the purpose.
- (2) Upon approval of the Requisition (Form 11) the Chief Officer or an officer authorised in that behalf by the Chief Officer issues a purchasing Order in accordance with Form 13.

If there is no contract Treasury Regulation 47 (3) and 52 provide for the public invitation of tenders prior to the issue of the Purchase Order except that:-

- (a) if the estimated cost is between £25 and £200 quotations may be obtained;
- (b) if the estimated cost of the supplies exceeds £200 and they are supplies described in (a) to (k) of Treasury Regulation 52, certification may be sought of the Secretary, Department of the Treasury, or a person authorised by him, that it is impracticable or inexpedient to invite tenders;
- (c) the Governor-General's authorisation may be sought to the expenditure without the public invitation of tenders."

77. The Regulations thus extend to departments a large degree of autonomy in the field of supply management. The appointment of officers to approve requisitions (Regulation 48) and purchase orders (Regulation 49) and the arrangement of supply procedures are all matters which are the concern of a department itself.* This relative freedom of departments to manage their own affairs became an important consideration as our inquiry proceeded.

See Chapter VII

See paragraphs 14, 22 and 23, below.

(i) Earlier proposals to change Treasury Regulation 52.

78. Between 1942 (when the present Treasury Regulation was promulgated) and 1958 when the Public Service Board initiated proposals to amend Treasury Regulation 52, which later resulted in the reference of the matter to Your Committee, there have been a number of proposals made to the Treasury to vary the amount of £200 at present specified in Treasury Regulation 52. Those of which Your Committee have been informed are:

See paragraph 85 below.

1948 - Department of Civil Aviation.

The Department proposed that the amount be increased to £300, its main reasons being the "marked increases in costs of production and distribution," since the limit of £200 was promulgated, and the need to speed up certain types of purchases.

Civil Aviation memorandum 461/11/8 of 14th October, 1948.

1951 - Department of Supply

An increase to £300 was proposed because of the "difficult supply conditions".

Exhibit No. 42/10.

1952 - Department of Defence Production

It was proposed that the amount be raised to £500. A number of reasons were given including:

- (a) changes in the cost structure since the time the limit of £200 was established;
- (b) the purchase of certain stores could be greatly

* This is not entirely true of Service Departments which are required by the Supply and Development Regulations to channel their purchases through the Contract Board, Department of Supply.

facilitated; and

- (c) having regard to changes in money value and the present (1952) cost structure the interests of the Government and the Treasury would be no less well protected than they were when the limit of £200 was established.

1953 - Department of Trade and Customs

Ibid.

The increase proposed was to £500. The main reason given was the alteration in the value of money.

1956 - Department of Works

The Department proposed a figure of £500 which it considered was more in keeping with the original intention of the Regulation. The Department said:

"The retention of the £200 limit during an extended period in which prices have doubled, or in many cases trebled, has greatly increased the proportion of instances in which tenders should be called; it has meant the application of full tender procedure to purchases which ten years ago would have been well below the £200 limit."

1956 - Customs and Excise

A figure of £500 was suggested as being more realistic in the light of present day costs. Reference was made to the "considerable savings" which would arise from such an increase. The Department added:

"... At present tenders must now be called for all items of expenditure over £200. Owing to the high cost of advertising, the actual cost is considerably increased, particularly for items within the £200 to £500 range. In addition, there are other costs (which are incalculable) concerned with the preparation of drafts for advertising, as well as the time taken in obtaining initial quotations which, if the restriction was raised to £500, would be eliminated in most cases."

Ibid.

79. Major alterations to the Regulation (which, however, did not involve any change in the amount of £200) were proposed by the Treasury in 1951 and notice of these was given to departments in Treasury Circular 1951/48 of the 24th April, 1951. A draft of the Regulations which still had to be confirmed by the Attorney-General's Department was attached to the circular. Subsequently, however, the Parliamentary Draftsman cast doubt upon the validity of some of the alterations suggested and the proposals were left in abeyance for consideration with Audit Act amendments. The matter was still in suspense at the time of Your Committee's hearings.

Exhibit
No. 42/1

Q. 89

80. A proposed new Regulation 47 provided that three representative quotations should be obtained for purchases costing over £10 but not more than £200. The proposed Regulation 52 contemplated three major changes:-

- (1) there was no provision for approval of expenditure by the Executive Council;
- (2) a general power was conferred upon the Secretary, Department of the Treasury, to certify and to authorise persons to certify, that to invite tenders was impracticable or inexpedient; and
- (3) there was a general requirement that purchases be made through Contract Boards.

81. The Regulation 52 proposed by the Treasury in 1951 read as follows:

"Tenders to be invited and contracts taken for supplies

- (1) Subject to these regulations, tenders for supplies shall be publicly invited and contracts taken -
 - (a) in regard to the defence of the Commonwealth by the Contract Board of the Department of Supply or, subject to delegation by that Board, by the Commonwealth Contract Board or the Contract Board of a Department; and
 - (b) in regard to other requirements of the Commonwealth, by
 - (i) the Commonwealth Contract Board;
 - (ii) the Contract Board of the Department of Supply; or
 - (iii) the Contract Board of a department.
- (2) The last preceding sub-regulation shall not apply in relation to any supplies
 - (a) which are executed at or issued from a Printing Office of the Commonwealth or of a Commonwealth Authority, a State Government Printing Office, Commonwealth stores or Commonwealth dockyards, or the factory, workshop or store of a Commonwealth Authority;
 - (b) which by their nature can be rendered by a State Government Department only; or
 - (c) in respect of which the Secretary, Department of the Treasury, or a person thereto authorised by him in writing, certifies that the inviting of tenders is impracticable or inexpedient and the purchase of which is made or approved by the Commonwealth Contract Board, the Contract Board of the Department of Supply, or the Contract Board of a Department."

The Commonwealth Contract Board was to handle those purchases which at present are made or approved by the Commonwealth Stores, Supply and Tender Board. The Contract Board of the Department of Supply is the existing Contract Board established under the Supply and Development Regulations.

82. "The Contract Board of a department" was defined as follows:

- "(a) the Contract Board;
- (b) a Regional Contract Board within a State or Territory

of a Department of the Commonwealth appointed, and to which powers and functions, subject to the approval of the Treasurer, have been delegated, by the Minister; or

- (c) a person employed by the Commonwealth to whom, in relation to any matter or class of matters and subject to the approval of the Minister, any of those powers and functions have been delegated by that Contract Board."

It is of some relevance that the definition provided that a Contract Board could delegate any of its powers and functions to an individual.

CHAPTER IV.THE DEPARTMENTS' PROPOSALS TO
CHANGE TREASURY REGULATION 52

83. The events that ultimately led to your Committee considering Treasury Regulation 52 commenced when the Public Service Board, in June 1958, submitted to the Cabinet Committee considering Public Service functions a proposal that the amount in Treasury Regulation 52 be increased to £500. Subsequently, and working to a time limit of three months fixed by the Government, the Public Service Board circularised the major purchasing departments and organized a small working party to examine the purchasing procedures prescribed by Treasury Regulations 47 and 52. As a result of this activity in which the Treasury did not participate to any appreciable extent, the Public Service Board in due course proposed to the Government, amongst other things, that the amount of £200 in Treasury Regulation 52 be raised to £2,000 or perhaps £5,000 and that the inexpediency provision be liberalised substantially. A number of the departments that were represented in these activities supported the Public Service Board's views on that occasion.

Q.1093

84. The following table shows the various amounts proposed by departments in their initial submissions to Your Committee :-

Department	No change proposed	£500	£1,000	£2,000
Air				x
Army			x	
Auditor-General		x(works)	x(supplies)	
Civil Aviation			x (a)	
Health	x			
Navy			x	
Public Service Board				x(b)
Repatriation			x	
Supply			x	
Territories	x			
Treasury	x			
Works			x	

(a) The proposal of Civil Aviation was "not less than £1,000"

(b) In the course of the public hearings the Public Service Board changed its proposal to £1,000 or £2,000.

See paragraph 145 below.

85. The proposal of the Public Service Board that the amount be increased to £2,000 was subject to two important qualifications, viz.:-

- (a) that public tenders should be called for all period contracts; and
- (b) that it be left to the discretion of departments whether tenders would be publicly invited for purchases where the estimated expenditure did not exceed £2,000.

The Public Service Board also proposed that the existing restrictions upon the power of the Secretary, Department of the Treasury, to authorise persons to certify to inexpediency be abandoned. The Auditor-General, on the other hand, while also suggesting a general authority, proposed that it be vested in the Treasurer.

Exhibit
No.42/32.

86. Two other proposals relating to the inexpediency provision are of some interest. The Department of Civil Aviation suggested that sub paragraph (a) of paragraph (2) of Regulation 52, which permits certificates of inexpediency to be issued in respect of "works executed at and supplies issued from Commonwealth and State Government Printing Offices or Commonwealth factories, etc." might be amended to read "works, supplies and services from Commonwealth Departments or instrumentalities, State Government Departments or instrumentalities or local Government authorities." The Department of the Navy proposed that those persons who were authorised by the Minister of a department, under Treasury Regulation 48, to incur expenditure should also be empowered to issue certificates of inexpediency. This, of course, would represent a substantial liberalisation of the inexpediency provision. Exhibit No. 42/22, 27.

x x x x x

87. In judging the effect of the various departmental proposals for variation in the amount of £200 it is first necessary to consider in conjunction, the overall pattern produced by Treasury Regulations 47 and 52. Treasury Regulation 47 is designed to deal with expenditures of lesser amount than those which come within the ambit of Treasury Regulation 52.

88. Under existing Treasury Regulations 47* and 52 the minimum requirements (if public tenders are not called) are as follows:

- (a) Expenditure up to £25 :- If possible advantage should be taken of existing contracts.
- (b) Over £25 but not exceeding £50:- At least three representative quotations, either orally or in writing, shall whenever possible be obtained. In the case of oral quotations the details of the quotations shall be recorded in the appropriate departmental file.
- (c) Over £50 but not exceeding £200. At least three representative quotations shall be obtained in writing.
- (d) Over £200. As provided in Treasury Regulation 52.

89. Thus the effect of the Public Service Board's proposals, subject to the proviso that public tenders will be called for all period contracts, is to enlarge, from £50-£200 to £50-£2000 the area within which three written quotations would represent the minimum requirements of the Regulations. It is upon this change in range and the results which might accrue from it that the greater part of Your Committee's inquiry has been centred.

* As varied by Statutory Rule No. 9 of 1959.

CHAPTER VTHE DEPARTMENTS' REASONS FOR THEIR PROPOSALS(a) Introductory

90. In seeking the views of the various departments as to what might be done with Treasury Regulation 52 Your Committee asked for clear justification of any proposals put forward. Of the supporting arguments and reasons later submitted to us, we found that many could not withstand critical examination, that they were erroneous or misleading. We were forced to the conclusion that some departments had not properly understood the purpose or effect of Treasury Regulation 52, or the inter-relation between the Regulation and other Treasury Regulations connected with the expenditure of money, and this was disturbing to Your Committee.

91. We make that comment in the knowledge that our inquiry followed an investigation by the Public Service Board and certain departments. The subject of Treasury Regulation 52 was not novel to those departments that we approached and the majority had, after due consideration, supported, at least in principle, the proposals for substantial alterations in Treasury Regulation 52 which were submitted to the Government by the Public Service Board late in 1958.

See paragraph 85 above,

(b) The case of the Public Service Board

92. Of those submissions to Your Committee proposing a change in the amount of £200, that of the Public Service Board is, of course, the most important. The individual departmental submissions reflected (or should have reflected) a view related to their own individual needs or requirements; the Public Service Board's submission, however, was the result of a general investigation; it represented the broad approach: what the Public Service Board considered would be the best way of conducting the business of government procurement.

93. Broadly the Board's submission was based on :

- (a) discussions with departments and procurement officers about problems of supply.
- (b) a detailed statistical analysis of departmental supply transactions and the general pattern of those activities.
- (c) the cost of alternative procurement processes and
- (d) consideration of the purchasing procedures of other governmental bodies and outside agencies.

The purposes which the Public Service Board considered would be achieved by its proposals were asserted to be "faster procurement action and lower administrative and other costs".

Exhibit
No.42/11
Summary
page 4.

94. The following extracts from the Board's summary of its initial submission to the Committee explain the Board's approach to the problem of Treasury Regulation 52 in more detail.

"(The Board's arguments) are based on the following guiding principles:

Exhibit
No.42/11
Summary
page 2.

Consistent with procedures which ensure reasonable prices and are above public criticism -

- (a) to apply the simplest and most expeditious procedures to the greatest possible number of transactions;
- (b) to restrict the use of more detailed and formal procedures to those transactions where the value involved is significant or other circumstances warrant such action.

The Board's recent survey on which the suggestions for revision of Treasury Regulation 52 are based cover a representative period of (in the main) three months' orders placed by the major ordering Departments and one representative of the smaller purchasing Departments. (Postmaster-General's, Works, Civil Aviation, Supply, Navy, Army, Air and Repatriation).

During the survey the views of representatives of the State Tenders Boards of Victoria and N.S.W., of the N.S.W. State Auditor-General, of the Commonwealth Departments which collaborated with the Board in the exercise, and of the Commonwealth Auditor-General were secured. Some discussions were also had on related problems with representatives of commercial and industrial enterprises. The comments and suggestions included in these papers reflect the Board's views after discussion with representatives of these various authorities.

It will be noted from the schedules of statistics attached to the detailed statement that, in respect of those orders which would be affected by the proposed amendment, in an approximate three months' period, only £2.2 million worth of orders representing 6.1% by value (out of a total of £37 million) fell in the £200-£2000 group, while these orders constituted 35.9% of the total number of orders placed."

The Board's submission continued :-

" It is important to note:

- (a) that while the suggested amendments would increase flexibility and reduce costs in Departmental administration, they would also provide for public invitation of tenders in the area where by far the greatest supply requirements by value fall;

Exhibit
No.42/11
Summary
pages 3-4.

- (b) that the suggested amendments considered in conjunction with other existing Treasury Regulations would provide:
- (i) for the greatest possible use of period contracts,
 - (ii) for the public invitation of tenders for supply transactions under £2000 if the circumstances warrant it,
 - (iii) that other orders for supplies estimated to cost more than £50 but less than £2000 must be the subject of at least three written quotes wherever possible. Departments are not restricted to three quotes and should obtain additional quotes if circumstances warrant it.

The particular figure to which the present £200 in Regulation 52 should be raised is a matter of opinion. This opinion must be based on a balance between:

- Public interest and the possibility of malpractice through collusion; and
- Application of the principle of calculated risk and the desirability of providing the means for flexible and economical administration.

As it is not feasible to publicly advertise all Commonwealth supply requirements, this opinion must also be influenced by:

- The relative importance, according to the value and the numbers of transactions involved, which any particular area of supply (proposed to be excluded from public advertisement) bears to the total field of supply transactions; and
- The safeguards for reasonable price and protection of the public interest which otherwise apply to such particular area of supply activity.

The Board considers that £2000 would be a realistic figure ... While this opinion was arrived at independently by the Board as a result of its survey of departmental purchasing, it is interesting to note that the provisions of a relevant N.S.W. State Public Service Regulation provide for public invitation of tenders above £1500 for any one item, while the suggested variations to the present Commonwealth Treasury Regulation provide for a figure of £2000 for each transaction, which may include several items.

See also paragraphs 107-113 below.

Comments on possible savings are included in paragraphs 20-24 of the detailed report,^{*} for the reason stated therein the figures quoted should be treated cautiously. Generally, the Board considers that more flexible arrangements based on sensible practicability require amendment to present procedures to bring them into line with current needs. The purposes to be achieved by the amendments proposed by the Board may be summed up to be faster procurement action and lower administrative and other costs."

* See paragraphs 105-107 below.

Change in Money Values

95. The Public Service Board drew attention to the changes in price indexes since the figure of £200 was established in 1923 and said that it could be argued, on the basis of those index figures, that there was a prima facie case for raising the amount of £200 to £500 or £600. However, the Board considered that it would be unsatisfactory to propose a variation of the financial limit merely on the basis of conversion of the 1923 figure of £200 to its current equivalent. The Department of Civil Aviation was another to draw attention to the change in money values. That Department submitted statistics (wholesale price index numbers) which suggested that the amount of £200 in 1959 was approximately one quarter as effective as it was in 1923.

Exhibit
42/11
Paragraph
11.

96. In his formal submission the Auditor-General, after referring to the change in the amount in 1923, continued:

" I have no recollection that £200 was ever challenged as being excessive. Due to the decrease in the purchasing power of the £ during the years 1923 to 1959, it would not seem unreasonable that the limit of £200 imposed in 1923 by Regulation 52 should be increased to a comparable amount in terms of present day costs and values."

Exhibit
42/22
Statement
No. 5
Paragraph
2.

Exhibit
No.42/32,
para.3.

Later, however, at our public hearings, he observed:

" It was considered at that time that £200 was a reasonable figure. It obtained for many years subsequent to that, even during the depression years. The figure of £200 was regarded as adequate being neither too high nor too low. It is a matter of opinion or a matter for decision whether on present-day values the £200 is now too low to allow the efficient administration of the departments. If it is too low it is then a matter of determining what the figure should be. It is purely a matter of opinion as to what the ceiling should be."

Q.17

97. Your Committee agree with the Public Service Board, whose view was also shared by the Treasury, that the change in purchasing power between 1923 and 1959 is not, of itself, sufficient justification to vary the amount in Treasury Regulation 52. To accept the change as a basis, it would be necessary to assume that the amount of £200 when established in 1923 was accurately assessed and that since then conditions other than purchasing power had not varied. There was no evidence to support these assumptions.

see also
paragraph
200 below

Statistical Analysis of Departmental Procurement Transactions.

98. Detailed statistical analysis of departmental procurement transactions was an essential prerequisite to any comprehensive study of what variations might be made in Treasury Regulation 52. It enabled the level of Commonwealth procurement to be gauged, the extent to which the various alternative processes were being adopted, and the value levels at which transactions were most frequent. While the Public Service Board has not claimed that the figures obtained by its review are completely accurate they are sufficiently so to enable broad conclusions to be reached.

99. The following statistics of orders placed in excess of £200 were provided to Your Committee by the Public Service Board. Except in the case of the Department of Air they represent a "typical" three months' transactions during 1958.

<u>Department</u>	<u>Stores</u>	<u>Works & Services</u>	<u>Total</u>	Exhibit No. 43/ 11, page 7.
	£	£	£	
Postmaster-General's	11,150,000	786,000	11,936,000	
Works	924,000	7,215,000	8,139,000	
Army *	5,337,000	115,000	5,452,000	
Navy *	2,144,000	495,000	2,639,000	
Supply	1,809,000	434,000	2,243,000	
Civil Aviation	227,000	54,000	281,000	
Repatriation	248,000	10,000	258,000	
Commonwealth Stores				
Supply & Tender Board	141,000	---	141,000	
Air * (1 year)	<u>8,677,000</u>	<u>---</u>	<u>8,677,000</u>	
	<u>30,657,000</u>	<u>9,109,000</u>	<u>39,766,000</u>	
<u>Annual approx- imations</u>	116,000,000	37,000,000	153,000,000	

* To a large extent these transactions would be passed through the Contract Board, Department of Supply.

∅ This would not include purchases made by other departments under contracts arranged by the Board.

100. In its submission the Public Service Board provided also a detailed schedule showing, over a wide range of value categories, the total number and value of orders placed under three main headings :-

- (a) Individual contracts,
- (b) Period contracts; and
- (c) Certificate of inexpediency or Executive Council approval.

It is not proposed to reproduce that schedule entirely, but the following table, which shows only total orders and orders placed under particular contracts, is based upon it. It is in the area of particular contracts where the Board expected to achieve the main administrative gains from its proposals.

Value Category	Total Orders (all categories)				Orders placed under particular contracts			
	No.	Percent- age of grand total	Value £	Percent- age of grand value	No.	Percent- age of grand total	Value £	Percent- age of grand value
200-500	4,998	50.8	1,599,360	4.3	1,817	18.4	581,440	1.6
500-1000	1,996	20.3	1,399,196	3.8	1,055	10.5	725,535	1.9
1000-2000	1,146	11.5	1,574,211	4.3	691	7.0	964,501	2.6
Over 2000	1,708	17.4	32,430,247	87.6	1,391	14.2	*	*
	9,848	100.0	37,003,014	100.0	4,934	50.1		

* The values of orders over £5000 and relative percentages were not calculated by the Public Service Board as the results did not affect the Board's proposals. However, 82% of all orders in excess of £2000 were placed under particular contracts and the great bulk of expenditure would have been processed in that way.

101. It will be noted that while the great majority of orders fall within the under £2000 category - 82.6% - the value of those orders represent only 12.4% of the total. The Board, however, directed attention particularly to the characteristics shown by those orders placed under particular contracts; in the £200 - £1000 category, particular contract orders accounted for 28.9% in number but only 3.5% in value; in the £200-£2000 category, the relative ratios are 35.9% and 6.1%.

102. The Public Service Board and, indeed, some of the departments, attached a degree of importance to these characteristics. We do not regard them as specially significant and suggest that the presence of a few orders of substantial amount introduce to the value ratios an element of distortion. What we think the more important is the gross value of orders which would be affected by the proposed variations in the monetary limit. These are (for the period of three months) :-

<u>Value Category</u>	<u>Orders under Contracts</u>		<u>Orders under all Categories</u>	
	£s.	No.	£	£
200-1000	2,852	1,306,975	6,994	2,998,556
200-2000	3,543	2,271,475	8,140	4,572,767

Projected on an annual basis, these figures provide the following approximations:

<u>Value Category</u>	<u>Orders under Contracts</u>		<u>Orders under all Categories</u>	
	£s.	No. 000's	£m.	No. 000's
200-1000	11.4	5.2	28.0	12.0
200-2000	14.2	9.1	32.6	18.3

Thus the Public Service Board proposal means that, say, 14,000 orders to a value of £9,000,000 per annum, which previously have been put to public tender, would not be subject to that requirement. If the limit were £1,000 then some 11,000 orders valued at £5,000,000 p.a. would be affected. This, we suggest, places the proposals in a clearer perspective.

Reductions in administrative costs

103. Benefits which the Public Service Board saw would be gained from its proposals were :

- (a) Notable reductions in the time required to secure supplies or arrange contracts.
- (b) a reduction in administrative costs.

See paragraphs 202-206 below.

The Board accordingly attempted to assess the administrative costs and time involved in various procurement processes. About these assessments the Board said :

" ... It will be appreciated that it is virtually impossible to gain more than an approximate comparison of these factors because conditions vary from one transaction to another. Comparisons were made between orders based on written quotation procedures and those based on publicly invited tenders. The assessments made, which are necessarily generalizations but which are based on detailed analyses of specific cases, were as follows :-

Exhibit
No.42/11,
pages 7
and 8,
paras.
20 & 21.

Written Quotations

10/- to £1 - 2/3 weeks.

Public Tenders

£5 to £40 - 6/20 weeks, depending on nature of supplies, area of supply, completion of formal contract, etc. (Probably £5 and 6/8 weeks could be taken as the approximate figures applicable to those cases which, under the amendments suggested hereunder, would be transferred from tendering procedure to written quotation arrangements.)

On the figures quoted in the previous paragraph, it will be seen that it would cost about £4 per order less by way of direct costs to place an order under written quotation procedures than to place a similar order on the basis of publicly invited tenders."

Assuming, for the purposes of example, that, of the 3543 orders within the value category £200-£2000, only half would have been processed by written quotations instead of public tenders, the Board assessed that there could have been a direct saving in processing costs of approximately £7,200 for the three months surveyed or an annual saving of £28,000. According to the Board "this figure could only be taken as a very approximate indication of probabilities so far as direct savings are concerned. Considerable importance should be attached to the possible indirect savings.. (which) are not readily measurable (less elaborate planning and control, less disruption of work schedules, smaller stock holdings.)" The Board's assessment made no allowance for savings in advertising costs.

See
paragraph
102
above.

Ibid
page 9,
paragraph
23.

See
paragraphs
209-215
below

104. Later, when forwarding to Your Committee copies of some of the departmental statements on which the assessments of savings were based, the Board said:

" You will appreciate that the information included in the statements was prepared at very short notice and that any inconsistencies between the various statements were not followed up by the departments or the Board at the time, as their only immediate purpose was to secure a general appreciation of the comparative administrative costs and delays involved."

P.S.B.
Memor-
andum
of 22nd
June,
1959,
para. 2.

In not devoting closer attention to the nature of the comparisons submitted we think the Public Service Board erred. The comparisons received varied greatly; it seems that the assessments were based on existing procedures within the departments concerned and were not necessarily adjusted to ensure that the assessments related to like items. Had the Board devoted more time to analysing these comparisons and

then to considering whether the existing departmental procedures were appropriate to the area of purchases under consideration i.e. the £200-£2000 category, it is possible that the Public Service Board's conclusions would have been different.

105. There is, we suggest, little doubt that quite noticeable savings would be achieved by replacing the procedures, which at the time of our inquiry were being applied by many departments to particular contract orders between £200 and £2000, with the procedures being applied to orders of a value of £200 or less. What, it seems, was not considered in any detail was :

- (a) Whether inefficient or unnecessarily involved procedures, as distinct from the requirements of Treasury Regulation 52, were the main cause of the current problems;
- (b) whether the savings contemplated, or the bulk of them, could, in fact, be achieved within the framework of the existing Treasury Regulation 52; and
- (c) whether the procedures being applied to particular contract orders of a value less than £200 would be appropriate for application to contracts of higher value, say, £500, £1000 or £1,500.

See paragraphs 202-206 below.

Your Committee consider these questions later in this Report.

Procurement Arrangements in State Government Services

106. The submission of the Public Service Board made reference to the procurement arrangements in the Government services of Victoria and New South Wales. Regarding Victoria the Board said:

" In Victoria, the Public Accounts and Stores Regulations provide that tenders shall be publicly invited and contracts taken for all works, services, goods, tools, materials, machinery or other chattels the cost of which is estimated to exceed £100 (£250 in the case of the Board of Land and Works) provided that where stores not on contract are required :-

Exhibit No.42/11 page 9, para. 26.

- (a) if the amount involved does not exceed £25, the Permanent Head may authorize the purchase;
- (b) if the amount involved exceeds £25, three or more quotations shall be obtained where practicable and a requisition, approved by the Minister, transmitted to the Tender Board to give a direction as to purchase, which may be on the basis of the quotations submitted or on any other basis determined by the Tender Board."

107. The Public Service Board then drew attention to New South Wales Public Service Regulation 203 governing the State Contracts Control Board:

See also para. 225 below.

" Tenders or quotations shall be obtained for the supply of all stores or other material or requisites where the estimated value of any one item exceeds the sum of £20, as provided hereunder:

Exhibit No.42/11 page 10.

- (i) Tenders on the authorised forms shall be invited* for all period contracts and in all other cases where the estimated value exceeds £1,500 for any one item. Tenders may be invited where the estimated value is less than £1,500 for any one item.
- (ii) Quotations shall be invited* where the value does not exceed £1,500 for any one item and where it is not proposed to invite tenders in terms of paragraph (i) of this Regulation.

At least three written quotations shall be invited..."

The Board also pointed out that in New South Wales the State Contracts Control Board is the authority for inviting and accepting tenders and quotations, determining conditions under which tenders are invited and completing contracts for all departments: however, the (N.S.W.) Public Service Board is empowered to grant exemptions from the Regulations.

108. The Board used the New South Wales provisions as a forceful argument in support of its proposals. We discussed these provisions with the Board and because of some uncertainty asked that further information be sought on two aspects:

- (a) whether relief was provided, as in the Commonwealth provision, to the requirement that tenders should be publicly invited for items of an estimated value in excess of £1500; and Qs. 1324
- (b) to what extent public tenders were called for items of an estimated value of less than £1500. Q.1327

109. The information was later submitted to Your Committee under cover of Public Service Board memorandum 59/2334 of 27th July, 1959. Broadly, the answers given to our two questions were:

Committee Document T.R.51.

- (a) Because of certain problems which had arisen, Regulation 205 had been amended (on 6th March 1959) by adding the following paragraph :-

* Regulation 204 reads: "Tenders shall be invited at such times as may be considered most advantageous, by advertisement in the Government Gazette and in such newspapers as may be deemed advisable. Quotations may be invited by advertisement or otherwise, but they shall be invited in such a way as to induce the greatest possible competition. The Board may delegate to the Manager the power to determine the times at which tenders shall be invited and whether quotations shall be invited by advertisement."

"Provided that where to comply with normal business practice or for other good reason it is considered by the Board that the prescribed procedures should be varied, such action may be taken, subject to the approval of the Public Service Board, prior to the placing of an order or the signing of a contract or letter of acceptance."

- (b) that, generally, invitations to quote for items estimated to cost over £20, are publicly advertised.

110. As an addendum to the information then provided the (Commonwealth) Public Service Board commented:

" In giving evidence to the Committee, the Public Service Board's witness described the general practice of the New South Wales Public Service in obtaining supplies where the value did not exceed £1500 for any one item as being based on invitations to quote sent to suppliers recorded on quotation and tender lists. This understanding was gained from discussions (during August, 1958) with interested officers of the New South Wales Public Service.

Committee
document
T.R.51.
page 3.

The use (in July 1959) of the words 'written public quotations' (in the statement received from the New South Wales Public Service Board) led the Board to make further enquiries about the procedures described. These enquiries disclosed that, in addition to sending quotation forms to all listed firms the State Board advertises publicly the requirements in respect of which it invites written quotations. This means that requirements above £20 are generally the subject of publicly-advertised invitations to quote.

The procedure outlined is inconsistent with what the Board had been given to understand was the practice followed; it also conflicts with the Board's understanding that one of the reasons for enactment of Regulation 205 in its present form was to eliminate the need for publicly advertising requirements below £1500. Apparently the only significance in practice of the figure of £1500 quoted in the Regulation is to restrict the more formal requirements of 'tenders' (e.g. consideration by a Tender Committee, lodging of deposits with tenders etc.) to items in excess of £1500, leaving transactions below that amount to be dealt with on the less formal basis of 'quotations'."

x x x x x x

111. Because of the importance of the New South Wales' provision to the case submitted by the Public Service Board (and the provision was also a major argument presented by the Department of Civil Aviation in its proposals to have the amount increased) Your Committee considered it desirable formally to approach the Public Service Board of New South Wales to establish, so far as possible, the procurement arrangements within the New South Wales Government services and in particular the interpretations placed on Public Service Regulation 205 and other associated Regulations (197 to 242). Extracts from the advice given by the Public Service Board as a result of the Committee's request appears in Appendix No.3.

Exhibit
42/22
Statement
No.5

112. That advice indicates that there are important differences between the New South Wales arrangements and those of the Commonwealth. The ordinary Commonwealth Department has a large measure of autonomy in the procurement field; the ordinary New South Wales department has not. The basis of the New South Wales system is the maintenance of comprehensive lists of prospective tenderers, classified under various headings of goods, to whom invitations to quote or tender are distributed. Superimposed are :-

N.S.W.
Government
Stores
Manual
Section
8-02

- (a) the practice to invite quotations, by advertisement in the press, for items estimated to cost over £20 but not more than £1500 (Regulation 204 requires that quotations "shall be invited in such a way as to induce the greatest possible competition").
- (b) the requirement that invitations to tender for items estimated to cost in excess of £1500 be advertised in both the Government Gazette and "such newspapers as may be deemed advisable".

N.S.W.
Public
Service
Regulation
203.

113. Thus, in practice, the procurement arrangements in the New South Wales Government services are more restrictive than those of the Commonwealth and introduce accepted safeguards against patronage and malpractice at a much lower monetary level viz. £20. It is significant too that the present Treasury Regulation 52 provides no barrier to Commonwealth Departments following, for all purchases in excess of £200, the public quotation procedure adopted by the New South Wales State Contracts Board for items costing between £20 and £1500.

Procurement arrangements in other authorities

114. Apart from the references to the procurement arrangements for the Victorian and New South Wales Government Services, the Public Service Board had little to say in its first submission regarding procurement in other Government agencies. However, at a later stage of the Inquiry the Board submitted a further document, commenting upon certain aspects of the evidence so far taken, putting forward further views in support of its proposals and, as well, submitting advice which it had received regarding the procurement arrangements of the following four authorities:

Exhibit
No. 42/40

Trans Australia Airlines;
Commonwealth Hostels Limited;
State Electricity Commission of Victoria; and
State Rivers and Water Supply Commission of Victoria.

The Board told us that it had not had this information at the time of its earlier investigation; that it had decided to obtain it following the public hearings on 21st April.

"(MR. GLEESON)... After the last day^{*} of hearing evidence when we left this Committee and went back to our offices, we felt probably we should go a little wider in endeavouring to get support for the proposals which we had put to the Committee. We were not looking for biased support but only for information which might either support it or not support it."

Q.1134

Later, at our request, the Board also obtained and submitted information about the Snowy Mountains Hydro-Electric Authority.

Committee
document
T.R.52.

* Tuesday, 21st April, 1959.

(i) Private Enterprise

115. In its initial submission the Public Service Board had this to say:

" Understandably, the general approach to procurement of supplies in private enterprise is fundamentally different from that adopted in Government Departments. In private enterprise, the emphasis in material supply is on minimum inventories, which demands a flexible buying code. Consequently, the most common practice is negotiated buying, where the many factors involved, such as trade inter-relations, reliability of suppliers in terms of quality of goods and delivery undertakings, price bargaining etc., are taken into account to derive the best possible investment of shareholders' funds. Exhibit No.42/11 paras. 31 & 32.

To enable Government Departments to operate on such a basis, it would be necessary to grant Departments full discretion of action and exempt them from present regulatory provisions. Any such proposal could hardly be considered seriously in the light of the strict measure of accountability required in the conduct of Government business."

The second paragraph of the Board's comments is particularly significant.

(ii) Trans Australia Airlines

116. The Airline valued its annual purchases of supplies (excluding aircraft fuel and oil*) at approximately £1,565,000, the three major items being:

	£
Aircraft spares and specification materials	750,000
Sundry stores	325,000
Airport handling and aircraft maintenance ground equipment	175,000

Exhibit No.42/40 Attachment A.

The bulk of this expenditure would be represented by contracts not exceeding £250.

117. Contracts for aircraft fuel and oil and certain recurring services are let by calling tenders but otherwise purchases are made on the basis of verbal and written quotations. Wherever possible at least three quotations are obtained except in the case of low value orders of a non-recurring nature for commitments subject to a uniform price.

Ibid

* Expenditure on fuel and oil in 1957-58 was £2,481,128. See Thirteenth Annual Report of the Australian National Airlines Commission, page 29.

Frequently receipt of written quotations is followed up by negotiations which result in reductions in basic price, more attractive discounts and improved delivery conditions.

118. However, the Airline stated that, in many instances, it has little choice in its source of supply; for most aircraft parts, specification material, oils, lubricants and many other products the sources of supply are determined by manufacturers' warranties (written or implied) governing the operation, maintenance or overhaul of aircraft components. In some cases avenues of procurement are limited by specific requirements and/or standards laid down by the Department of Civil Aviation (Aust.) the Aeronautical Research Bureau (U.K.) and the Civil Aeronautics Bureau (U.S.A.). As well there is an over-riding control exercisable by those authorities in determining who may manufacture aircraft parts and materials for sale under the terms of certified inspection and release requirements. In most cases, specific aircraft parts are available only from a single supply source and it is, accordingly, rarely possible or practicable to obtain competitive quotations.

Ibid

119. One of the questions the Public Service Board asked each authority was "whether it is considered that the most favourable prices can be secured by means other than by public invitation of tenders". In reply to this question the Airline said :-

"... the limitation of sources of supply... precludes a system of tender in many cases. In those cases where operating supplies might be procured by tender, there are other very powerful considerations. One of the major requirements in airline stores procurement policy is that it shall keep a nice balance between the normal minimum of inventories necessary to keep the fleet in operation, and the additional requirements for emergency use, and the capital investment involved. Miscalculation can ground aircraft on the one hand or result in over-stocking at the expense of available capital on the other. Where operations are carried on at great distance from the sources of supply this calls for highly technical assessment and ability to obtain supplies with as little delay as possible.

Ibid
Attachment
A, page 2,
paragraph 4.

It is considered that the purchasing staff of T.A.A. can obtain the necessary continuity of supply necessary for the maintenance of minimum stores inventories because of its specialised knowledge of supply channels and of the products it requires, its appreciation of values and proved ability to negotiate minimum prices. In this course it follows world practice in airline supply procurement.

Our centralised procurement and stores stocking policy is designed to ensure constant flow of spares and material representing 90,000 items valued at £3,000,000 which compels T.A.A. to consider closely its costs of acquisition, also costs of possession. Purchasing by tender where competitive markets exist would inevitably involve a much larger reserve inventory than we now maintain and for reasons already mentioned, it is considered that prices negotiated under our present procurement policy would compare quite favourably and indeed in many instances would be much better than would be achieved by public tender."

120. Your Committee note:

- (a) The bulk of the expenditure of £1,565,000 is represented by contracts not exceeding £250;
- (b) Expenditure on fuel and oil (expenditure in 1958-59 of £2,481,128) and on certain recurring services, is subject to tender procedure; and
- (c) Under Treasury Regulation 52, provision exists whereby purchases of urgent requirements of specialised equipment, etc. need not be subjected to the public tender procedure.

In the circumstances it seems to Your Committee that the Commonwealth Departments operating under the existing Treasury Regulation 52 and holding an inexpediency delegation, can achieve much the same flexibility in their procurement arrangements as does Trans Australia Airlines.

(iii) Commonwealth Hostels Limited

121. One of the principles established when Commonwealth Hostels Limited was formed in 1951 as a Company was that the Company should operate on the basis of commercial business practices. In the year ended, 30th June 1958, the Company's expenditure on supplies and services totalled £1,774,000. 60% of that expenditure related to purchases of foodstuffs. Ibid
Attach-
ment B.

122. The Company does not publicly advertise tenders or quotations; the most favoured procedure is to seek written quotations which are followed up by direct negotiation. However, other methods are widely utilised as is indicated by the following statistics which show the relationship on an expenditure basis between the various methods:-

Written quotations followed by direct negotiations	44.4%
Direct negotiation	26.9%
Fixed prices - negotiations where practicable, for concessions (discounts, etc.)	19.2%
Fixed prices and suppliers (no concessions available)	9.5%

The Company considers that in its class of business the seeking of written quotations followed by further negotiations must generally result in price advantages as compared with a system of public tendering.

123. Amongst its comments the Company said:

" The tender system relies upon procedures rather than officers expert in the knowledge of products and in the art of buying - when, where and how much to buy. Ibid
pages
2 & 3.

Specifications laid down for tenders by the client 'departments' are, for the Company's class of business, too inflexible. They can and do involve 'tooling up' costs, whereas a minor variation from a standard product can frequently be bought to better advantage - a product good enough for the purpose required.

When negotiation is possible the client (in this case, the Company) can and does frequently assist the manufacturer by indicating sources of cheaper raw materials - resulting in an end product much cheaper than manufacturers could supply left to their own resources (as they would be as public tenderers). The purchaser must, where possible, educate the supplier to the mutual advantage of both.

It is important that the buyer must know:

- (a) who are the suppliers in the market who can supply the product specified and maintain a continuity of supply on the conditions specified;
- (b) the processes of manufacture and vulnerability of suppliers because of idle time in their processes of manufacture. (Recently the Company has obtained bread price advantages by convincing the supplier that he would gain by baking the Company's bread at cost because it is prepared to accept later than normal deliveries);
- (c) the "tricks" of every suppliers' trade and trends in the market prices for every product."

124. Your Committee notes that the Company was careful to relate its comments to "its class of business".

(iv) State Electricity Commission of Victoria

125. The value of supplies purchased by the Commission in 1957-58 approximated £19,000,000, the main categories being:

Ibid
Attachment C.

	£
Plant machinery and equipment	7,100,000
Purchased fuel for power stations	5,100,000
Materials direct to construction jobs	1,000,000

In the category of "Other materials" involving expenditure of £5,800,000 the main items were:

	£
Miscellaneous	1,000,000
Cables and wires	800,000
Accommodation supplies, building materials, etc.	800,000
Distribution Transformers	750,000
Poles and cross arms	550,000
Oils, paints and bitumen	550,000

Approximately 50,000 orders were issued, spread as follows:

Under £50	37,700	75.4%
£51 -£200	7,100	14.2%
£200 -£500	3,200	6.4%
over -£500	2,000	4.0%

126. It is the Commission's policy to advertise publicly for all orders in excess of £2,000 so as to ensure that all interested parties have an equal opportunity to tender. However, the Purchasing Officer has discretionary authority to approve the calling of quotations by direct negotiation or by formal quotation provided the estimated value of the order does not exceed £5,000. Should the estimated value exceed £5,000 the prior approval of the Manager of the Supplies and General Services Department of the Commission is necessary before there can be a departure from public tender procedure. Broadly, if the estimated value of the order does not exceed £2,000 the following arrangements apply:

Under £2 - No special requirement.

£2 - £50 - Oral quotations may be sought from selective suppliers by telephone inquiry. Where practicable three quotations are obtained for each item.

£50-£2000 - Written quotations are required which may be obtained in two forms:

"(i) Purchase Enquiry lists. (This method is) used for requirements obtainable from suppliers whose representatives regularly call at our Purchasing Branch and are subject to a limitation of £200 in the value of any one item. The lists are prepared daily and are laid out in a public section of the office for perusal by all interested suppliers.

Ibid
page 2.

Quotations for items included in the lists are submitted in writing by interested firms and lodged in the Quotation Box provided for the purpose.

(ii) Formal Quotations are invitations to quote and are mailed to the various firms from whom the Commission usually obtains the type of item required, firms who have asked to be put on the mailing lists for the type of item required or any other firms whom it is thought might be interested in quoting. These quotations are usually sought where the estimated value of the order does not exceed £2,000."

127. The following table shows the extent of use of each method on a value basis:-

Public Tender	75%
Written quotations	24%
Oral quotations	1%

While there is also provision for quotations to be obtained by direct negotiation it is strictly supervised and very few contracts are arranged by this method.

128. Commenting generally on the various methods of procurement the Commission said:

" Taking all factors into account, the public tender method is considered the best way of obtaining prices for items having considerable value. For items of smaller value, the public tender method is not favoured as it takes longer time and involves more administrative work. Whilst in some cases it might be possible to obtain keener prices it is also a fact that new suppliers are not always familiar with the quality of goods required and procurement delays must be taken into account as an element of cost. The purchasing enquiry list and formal quotation method both preserve keen competition among suppliers and prices obtained are considered very comparable with those procured by public tender. It is contended that Public Tenders tend to work better under a buyers' market. In times of short supply, it is the seller who has to be chased and under such conditions more informal methods of procurement are more successful in obtaining the goods.

Ibid,
page 3.

The Commission's supply policy is aimed at keeping inventory investment at the lowest practical level consistent with the need for making stores materials available as and when required. Hence, procurement practices, whilst designed to protect the sanctity of purchasing routines, must also enable speedy ordering and delivery particularly of items for operational requirements, the need for which cannot always be foreseen or estimated. These cannot easily be subjected to the public tendering system which involves a lengthier time factor than other methods. However, the bulk of stores materials are items in repetitive demand and these are purchased under annual or two year contracts, generally after public tenders have been called. These tenders provide for unspecified quantities to be made available by the supplier at contract prices on receipt of a simple delivery instruction originated from time to time by any store in need."

129. The information submitted by the Commission is of particular interest because the extent of its purchases tends towards the levels achieved by the Commonwealth Departments mainly concerned with procurement. Bearing in mind the proposals of the Public Service Board, Your Committee note that:-

- (i) The Commission's three quotation procedure is limited generally to requirements not exceeding £50 in value.
- (ii) Between £200 and £2000, where the written quotation procedure functions, the minimum requirement is not that three quotations be obtained but that invitations to quote should be forwarded to all those firms:
 - (a) from whom the Commission usually obtains the type of item required;
 - (b) which have asked to be placed on the mailing lists for the type of item; and
 - (c) other firms which the Commission considers might be interested in quoting.

(v) Snowy Mountains Hydro-Electric Authority

130. During 1957-58 the Authority's purchases were valued at £2,483,500 but this does not include purchases of heavy electrical and mechanical plant and equipment which is installed in power stations, dams and permanent structures. Such equipment is purchased under separate contracts which are let after calling public tenders in Australia and overseas; the annual value of those purchases is between £1,500,000 and £2,000,000.

Committee document No.T.R.52.

131. The main items in the purchases totalling £2,483,500 were :-

	£
Electrical and Mechanical Stores and Equipment	670,000
Construction Plant and Motor Vehicles	467,000
Construction materials	320,000
Foodstuffs	270,000
Fuel and Oils	240,000

To achieve those purchases 9,156 orders were placed in the following value categories :

<u>Value Category</u>	<u>Number of Orders</u>	<u>Percentage</u>	
Under £50	6,613	72.2	Ibid
£51 - £200	1,572	17.2	
£201 - £500	435	4.7	
Over - £500	536	5.9	
	<u>9,156</u>	<u>100.0%</u>	

On a value basis the orders were divided between the three main methods of procurement as follows:

Ibid page 2.

(a) Oral quotations	10%
(b) Written quotations including standard and proprietary lines	30%
(c) Public Tenders including Government contracts	60%

132. Generally, the Authority adheres to the following purchase procedures:

"(a) Oral Quotations

Where the amount involved does not exceed £50 only one quotation is required and may be oral or in writing. In the case of an oral quotation details of the quotation must be recorded on a quotation file and signed by the Purchasing Officer receiving the quotation.

Ibid page 2.

(b) Written Quotations

Where the amount involved exceeds £50 but is less than £2,000, at least three written quotations are obtained.

See following paragraph.

(c) Public Tenders

Tenders are invited publicly where the amount exceeds £2,000 or the period of supply is for one year or more."

However, the procedures are varied in the following cases:

" Where the goods are available under Commonwealth or State contracts.

Ibid
page 1.

Proprietary or standardised lines are available from only one supplier. In this case a current quotation from the supplier is considered adequate.

Where a variation is directed or approved by the Commissioner or an Associate Commissioner usually on the grounds of inexpediency of using the standard procedure."

133. To operate its written quotation procedure the Authority maintains comprehensive trades lists designed to cover the full range of interested and reputable suppliers in each field of supply in which it is interested. The Authority said:

" As a general rule, invitations to quote are not sent to all listed firms interested in a particular field. It will be appreciated that there are numerous suppliers for some types of goods. Usually, at least 4 and in some cases up to 20 suppliers are invited to quote, the actual number and selection depending on the number of firms interested in the particular field, the range of goods required and the expectation of price variation, availability and delivery. In certain cases, for example, when a new line comes on the market, we would call public tenders to test the market even though the standing instruction does not require this."

Committee
document
No.T.R.58.

134. On the subject of procurement generally, the Authority commented as follows :

" Whilst the Authority subscribes to the principle of public tendering and considers it essential in the case of major purchases, it has no hesitation in departing from the principle in other cases where there is an advantage to be gained in quality, time and/or expense. Although it is difficult to generalise in such matters, we agree with the State Electricity Commission of Victoria that in the field up to, say, £5,000 the calling of public tenders in all cases can be too slow and expensive from the administrative point of view.

Committee
document
No.T.R.52.

Advertising and administrative costs are quite formidable and we think that these should be kept to the absolute minimum consistent with giving all suppliers an equal opportunity in their particular field. We find it far more effective and efficient to employ a reduced number of experienced and well-paid purchasing officers than a large number of lower grade clerks handling the routine paper involved in an extensive public tendering system. Consequently, we use the 'Invitation to Quote' system (and subsequent negotiation,

if necessary) quite extensively and are convinced that equally as good, and in some cases better, prices can be obtained by these means.

Another factor that has a big influence on the Authority's policy in this matter is time. The Authority's holdings of stores and materials at 30th June, 1953 were £2.3m. whereas today they are about £500,000, and we are thus avoiding heavy interest and storekeeping charges as well as keeping depreciation of value through obsolescence to the minimum. This has only been achieved by a positive and relentless policy of purchasing direct to works wherever possible. As a consequence, we now have the situation where the Authority looks to suppliers to meet our demands as required. Some of these demands are necessarily made at short notice and we just could not afford the time to call public tenders. We plan our purchasing as far as possible, of course, and make extensive use of Government Contracts and our own annual contracts which are arranged on a public tender basis.

There is a further set of circumstances where the Authority has found that the most favourable prices are not obtained by public tenders. This is where the members of a trade association or group submit level prices in their individual tenders for the same product. This practice of 'level tendering' is designed to defeat one of the main purposes of the public tendering system by eliminating competitive bidding by suppliers. On at least two occasions the Authority has felt compelled to resort to direct negotiation with one of the tenderers to obtain what it considered to be an appropriate lower price. The difficulty in these direct negotiations is to determine what that price should be and which tenderer should be chosen. The Authority's approach has been to refer to past tenders or existing contracts to establish an appropriate price; and to choose the tenderer who, in the Authority's knowledge or estimation, is most likely to provide the best service in the way of delivery and other contractual conditions."

135. In a personal letter to Mr. W.T. Gleeson of the Public Service Board, who appeared before the Committee, the Business Manager of the Authority, Mr. K. See said:

" You will see that the Authority's view is that whilst we subscribe to the principle of public tenders, and consider it essential in the case of major purchases, it is too slow and expensive for the day-to-day operations of a construction organisation such as the Authority. Generally speaking, the Authority calls public tenders where the value of the purchase is estimated to exceed £2,000. However, where there is good and sufficient cause there would be no hesitation in dispensing with tenders in the field up to, say, £5,000.

Ibid

The primary aim of the Authority is to build the Snowy Scheme as quickly and economically as possible. As a statutory corporation we are expected to apply, and do apply, a commercial approach to achieving this end.

At the same time, we are conscious of our responsibility as a Commonwealth Authority to act consistently with the public interest. We are convinced that our approach to the public tendering system conforms to these requirements."

Arrangements in the United Kingdom

136. The Treasury first made reference to procurement arrangements within the United Kingdom Government services on the opening day of our Inquiry. Subsequently, the Public Service Board incorporated advice about the United Kingdom system in a formal statement and later submitted additional information at the public hearings of Friday, 8th May and Thursday, 4th June.

Q.64

Exhibit
No.42/40.
Qs.1130-
1133;
1367-
1370.

137. It is not the practice publicly to advertise tenders in the United Kingdom - the emphasis there is upon the distribution of invitations to tender to firms appearing on Trade Lists maintained in departments. The Treasury stated that one reason for this system was the conditions which existed there - if a department were publicly to advertise for tenders the result, in terms of numbers of traders, could well be so great as to be unmanageable. The Australian High Commissioner's Office in London follows the United Kingdom practice and normally does not publicly invite tenders by press advertisement.

Q.1393

138. In an extract from a letter read to Your Committee the representative of the Public Service Board stationed in the United Kingdom had this to say about the United Kingdom Trade Lists procedure with particular reference to arrangements in the Ministry of Supply:-

"...Competitive offers for supply of goods and services are never invited by public advertisement. Before 1939 it was the custom to insert a yearly advertisement in the press explaining how to apply for inclusion in the Trades Lists of Government departments. This is no longer done because it is considered that the great public attention given to government purchases during and since the 1939-45 war have made the procedure well known and the advertisement is unnecessary.

Q.1367

The judicious selection of firms invited to tender is fundamental to the advantageous placing of contracts. The essence of effective tendering is the skilled use of an appropriately constructed Trades List.

In the selection of firms, the primary object is to obtain a proper field of tender, i.e., one which will lead to the keenest competition and leave no firm with a legitimate grievance at not having been invited, without, on the other hand, causing unnecessary work by extending the invitation to too many firms or to firms who are not likely to be interested.

If for any reason (e.g. lengthy list or limited number of drawings or specifications) it is not possible to invite all the firms on the list, special care has to be exercised. The general rule is that invitations are always sent to the immediately previous satisfactory contractor, and to other firms who have held recent contracts for the stores required, or who have been well in the running in recent tenderings. In this regard special advantages are also enjoyed by firms in certain unemployment areas, and by what are known as priority suppliers, e.g., certain organizations employing wholly disabled ex-servicemen.

The actual number to be invited is a matter for the exercise of judgment by the responsible officer of the Contracts Branch. Obviously, the amount of money involved is a relevant factor. There are no rules providing for a minimum number or for invitations to be rotated."

139. It will be noted that emphasis is placed upon achieving the keenest competition: confirmation of this approach appears in a booklet "Government Contracts" issued by the United Kingdom Treasury in October 1954 for official use. Therein competition is termed the first principle of government contracting and on this theme the booklet continues:-

"...One fundamental principle of contract procedure.... is that contracts should be let as a result of competition by tender unless there are convincing reasons to the contrary. Competition avoids any suggestion of favouritism or of encouraging monopoly, and also has the healthy effect of promoting efficiency and economy in manufacture."

"Government
Contracts
October
1954"
Para.4.

Earlier, when drawing the distinction between Government and commercial contracts it is stated:-

"...While an outside body can freely choose the suppliers with whom it wishes to deal, a Government Department is not only responsible to Parliament and the public for laying out the taxpayers' money to the best advantage, but must avoid even the appearance of favouritism, and is thus obliged to consider the claims of all qualified firms wishing to work for it."

Ibid
para.3.

140. A United Kingdom Committee, when reporting in 1944 on the Placing and Management of Building Contracts (the Simon Report), while favouring competitive tendering, spoke strongly against what it described as indiscriminate tendering.

"...Any system of tendering which does not suitably limit the number of firms invited to compete throws upon the industry an unnecessary burden of time, effort and expense in the preparation of tenders. The more serious consequence, however, is that it gives an advantage to those firms which work to the lowest standards and seek opportunities to avoid their responsibilities. We have already shown that very low prices resulting from indiscriminate tendering lead to bad building; this system is bad for the owner, unfair to the honest builder, encourages unscrupulous methods by the builder, and lowers the standards of honesty and craftsmanship in the industry. Any builder who has quoted too low a price and is faced with a heavy loss if he does a good job, will almost inevitably cut the quality of his work. There is much truth in the saying that the owner gets not the building that is specified by his architect, but what he pays for.

"The
Placing
and
Management
of
Building
Contracts"
His
Majesty's
Stationary
Office,
London,
1944.
Page 16,
para-
graph 37.

There is only one definite guarantee of a good job; a competent and honest builder, who has obtained a contract at a fair price, and is just as determined as the architect to maintain a good standard of work. It is therefore a fundamental condition of good building that every contract shall be placed at a fair price with a responsible builder.

Competitive tenders should, therefore, in all cases be called from a limited number of firms carefully selected as being capable of and likely to do work of the standard required."

141. In relation to Government departments the Simon Report said:

" Government Departments, when placing orders for building, have, in the past, in order to avoid criticism, generally considered it necessary to advertise for tenders and accept the lowest. In war-time, however, they have tended to work from selected lists of contractors recommended to them by their advisers as being suitable and competent to carry out works of appropriate extent and character. Such lists in our view form a satisfactory basis for selecting contractors to tender. There is, however, a tendency for these lists to become rigid, and we consider that it is essential that they should be kept up-to-date, and completely reviewed at least once a year and that transfers from one list to another should be carried out in suitable cases according to the experience gained from employment of the firms. In making selection of contractors to tender, due consideration should be given to the employment of local firms. The lists should be available both to Government Departments and Local Authorities and, on application, to private architects.

Ibid
para-
graphs
44 & 45.

We recommend that Government Departments should in no circumstances revert to the habit of issuing indiscriminate permission to tender but should always confine permission to tender to a limited number of selected firms who work to the right standard. It is of the first importance that Government Departments, and above all the Ministry of Works, should set a good example to building owners in this matter."

142. These views were echoed ten years later by a Joint Committee on Tendering Procedure, representative of the Royal Institute of British Architects, the Royal Institution of Chartered Surveyors and the National Federation of Building Trades Employers, which reported in March, 1954. That Committee, which recommended that selective tendering should be universally adopted, accepted that in Government Departments it could be based on a Trade Lists procedure rather than a process by which firms were first invited to apply for permission to tender.

"There are two main methods of selection. The first is to advertise each contract and call for firms to apply for permission to tender and then to make a suitable selection from the applicants. The second is to maintain lists of firms in different areas suitable and competent to carry out works of varying extent and character. In principle the former is preferable because all wishing to tender can ask for and receive consideration, but we recognise that a Government Department such as the Ministry of Works would face a very serious problem if required to advertise the large number of contracts with which they are concerned. Having been assured by them that their lists are regularly reviewed and kept up-to-date, both by the addition of new firms and the transfer of others to different categories, we do not wish to criticise their practice. Indeed, we see no objection to it being followed where thought desirable."

The
Journal
of the
Royal
British
Institute
of Arch-
itects.
Third
Series,
Vol.61,
No.6,
April,
1954,
p.219,
para.11.

Regarding the number of tenders to be invited on each occasion the Committee said:

"Number of Tenders.

42. This will depend on the size and type of contract. We consider that the schedule of ratios between numbers of tenders and costs of works which the Ministry of Works use is satisfactory and might well be followed generally. Ibid
para-
graphs
42 & 43.

43. This schedule is as follows

For contracts		
below £500		4 firms
between £500 and £10,000		6 "
" £10,000 and £50,000		8 "
" £50,000 and £200,000		10 "
over £200,000		12 "

For very large and important jobs the list may be restricted to a smaller number of firms known to be suitable for the particular type of work involved, and thought to have available capacity at the particular time."

143. Your Committee note that the Simon Report and the Report of the Joint Committee on Tendering Procedure both related to the building industry and not to the field of stores and supply procurement. *

Summing up the Board's case

144. The initial proposal of the Public Service Board to Your Committee was that the present Treasury Regulation 52 should be replaced by a new Regulation on the following lines:

"...Tenders shall be publicly invited and contracts taken for all supplies which are to be executed, furnished or performed within the Commonwealth, the estimated cost of which exceeds £2,000, provided that:-

Exhibit
No.42/11
page 13,
paragraph
35.

- (a) tenders shall be publicly invited for all period contracts and the greatest possible use shall be made of this type of contract in obtaining supplies for which there is a recurring need;
- (b) tenders may be publicly invited where the estimated cost does not exceed £2,000;
- (c) it shall not be necessary to invite tenders publicly where the expenditure is authorized by the Governor-General, or the Secretary to the Treasury or a person thereto authorized by him in writing certifies that the inviting of tenders is impracticable or inexpedient."

* These references to the Simon Report and the Report of the Joint Committee on Tendering Procedure did not form part of the case of the Public Service Board.

As we explained earlier, this proposal would mean that, for expenditures estimated to exceed £50 but not more than £2,000, the requirements of the Regulations would be met (except in the case of period contracts) if at least three representative written quotations were obtained. In its initial submissions and evidence before the Committee, the Board did not propose that any additional requirements or procedures should be established outside the Regulations. In fact, the Board's intention seemed to be that these matters should be left to the discretion of departments. This is implied in two of the reasons which the Board gave to support its figure of £2,000:

See
paragraph
89
above.

"... While it would not be obligatory for departments to invite tenders or quotations publicly where the value involved is less than £2,000, there will be circumstances in which it would be desirable to do so. This decision would be a matter of discretion for the Department which, of course, must accept responsibility for operating on a basis which is beyond public criticism.

Exhibit
No.42/11
page 14.

Orders for supplies estimated to cost more than £50 but less than £2,000 which are not based on public tenders must be the subject of at least three written quotes, wherever possible. Departments are not restricted to three quotes and should obtain additional quotes if circumstances warrant doing so."

145. As our Inquiry developed, the character of the Board's proposals changed. Towards its close the Board suggested two amounts for consideration by the Committee - £1,000 and £2,000. Earlier the Board had said:

Q.1412

"(MR. GLEESON)...The Board considers that present needs would be substantially met by a figure of £1,000. However, for reasons that the Board stated to the Committee, the Board suggests that £2,000 would be an appropriate figure, particularly having in mind the fact that the current level in Commonwealth supply activity is approximately £153,000,000 annually on orders over £200, and that transactions under £2,000 in this field are of relatively small value - 6 per cent. - which brings in 35 per cent., by number, of the transactions in that field."

Q.1386

At this stage, too, the Board linked its proposals with the United Kingdom procedures stating:-

"(MR. GLEESON)...the Board is not suggesting that the Committee should recommend that the United Kingdom's system be applied completely at this stage. It is only suggesting that a very minor step be taken in the direction of the United Kingdom approach..."

Q.1370

We were then also informed that when the Regulation was amended the Board visualised the issue of a Treasury Circular "to tidy up the situation in the light of the evidence governing quotation procedure and so on". The Board continued:

Q.1372

"(MR. GLEESON)...We visualize that (in the Circular) the Treasury would prescribe that departmental instructions be issued to ensure adequate safeguards in handling quotations and tenders so that all interested parties would have an assurance against irregularity in connexion with competition for Government business, and that it would prescribe that departmental instructions should be issued to ensure appropriate use of a well-organized trades list. Many departments - perhaps all of them - have trades lists at the moment. Whether they are the best organized, we do not know, but we think the Treasury instruction should prescribe that departmental instructions should be issued to ensure the appropriate use of a well organized trades list. Q.1372

We consider, too, that the Treasury instructions should provide an explanation that the use of the Governor-General-in-Council's approval should be restricted to the unusual, exceptional type of case. That would amount to some elaboration of the present Treasury instructions. We visualize also that the Treasury instructions should provide an elaboration of the term impracticable or inexpedient, and that they should prescribe that the reasons for granting an inexpediency certificate should be adequately recorded in the departmental papers."

The Board added:

" So we would have the general situation where, consequent on the receipt of a Treasury circular, the department would be required to issue instructions or amended instructions covering the safeguard of tenders and the maintenance and proper use of trades lists. We would envisage at that stage that the Board would play an assisting and co-ordinating role in helping departments to work out quickly along uniform lines as between departments, the details of action to be taken on these aspects of the issue of any necessary amendments to instructions, or the issue of any new instructions, on these aspects. Q.1372

In addition, we would help them to work out the most appropriate procedure for handling the quotations and tenders system in the most efficient and appropriate manner; that is, whether they have to remain open for two weeks, whether all these steps are necessary and so on. That is the sort of action we visualized could be taken to cover adequately the needs of the moment in this field if the amount under Regulation 52 were increased."

146. One of a number of possible alternatives to the Board's proposals is, of course, the use of inexpediency certificates. About this the Board said:

"(MR. GIBSON) I think it might help if I outline as quickly as I can the Board's views on this matter of certificates of inexpediency generally and refute any suggestion that greater use can be made of certificates of inexpediency instead of increasing the amount of £200 to some higher figure. The Board does not consider that that sort of approach is appropriate. The Board desires to see departments given discretionary authority to apply a simplified, but adequately controlled, purchasing routine based on written quotations in cases where the value does not exceed £2,000 and where it is considered there would be nothing to gain but something to lose by inviting public tenders. In many of these cases it could not be substantiated that the public tender system could not be applied and therefore a certificate of inexpediency could not honestly be given without a substantial widening of what is considered should be the spirit behind the granting of inexpediency certificates, particularly having in mind that they are applied also to transactions of very high value where you should have the detailed reasons specifically recorded on the file. The Board visualises that the present guiding instruction would be elaborated, as I mentioned earlier, to provide a clear basis upon which responsible officers will determine the basis of purchasing in each case. This would provide the type of control which would operate under the former granting of inexpediency certificates, without the formalities. We cannot see any usefulness in following formality for the sake of formality. As I have said previously, that is just red tape. The inexpediency approach as we see it should be applied to the unusual type of case and not to the large number of run-of-the-mill cases. Thirty-five per cent of orders fall in that latter category. The Board considers that certificates of inexpediency should be regarded as a very important instrument of authority to be used by senior officers in particular circumstances, and in relation to unusual cases which are of more significant value. In other words, it should be genuinely demonstrated in cases over £2,000 that the use of public tenders is impracticable or inexpedient."

Q.1385

147. Your Committee conclude this summing up of the Board's case by quoting from the last of the series of statements formally presented to us by the Public Service Board:

"16. The Board was moved to seek an increase in the financial limit governing application of the public tender system in order to facilitate departmental administration in the processes of obtaining stores, works and services.

Exhibit
No. 42/40
page 5,
paragraphs
16-21.

17. In the field of Supply, of which purchasing represents an important element, there are many problems which can only be solved by a well-informed, constructive, broad-thinking approach on as wide a front as possible.

18. As mentioned in document T.R. 7^{*} the Board is endeavouring to encourage Departments to adopt this type of approach to ensure the greatest possible efficiency and economy in this important field of Supply Management. (The Board is taking similar action with respect to Finance Management to assist in improving certain features of administration which have been criticised by the Public Accounts Committee).

19. A substantial increase in the amount of £200 at present prescribed in Treasury Regulation 52 and the intelligent application of the principles involved generally in the Board's proposals would undoubtedly facilitate improved efficiency and produce economies in departmental administration.

20. The Board, therefore, reiterates its proposals which involve:-

- use of the public tender system in connection with all period contracts,
- use of the public tender system in all cases where the amount involved is in excess of £2,000 (except where circumstances render the public tender procedure impracticable or inexpedient),
- use of the quotation procedure in cases where the amount involved is less than £2,000 except where circumstances warrant use of the public tender system,
- use of the Governor-General's approval and certificates of inexpediency to cover exceptional cases where the amount involved is in excess of £2,000 and circumstances justify such action.

21. In submitting these proposals, the Board is fully supported by practices followed in the State and Commonwealth Authorities mentioned and in the U.K. Civil Service."

(c) The cases of the Departments

The Postmaster-General's Department

14B. Of the departments surveyed by Your Committee, the Postmaster-General's Department has the highest expenditure upon works, supplies and services; based on the statistics submitted by the Department the current level of this expenditure would be in the vicinity of £45,000,000 to £50,000,000 per annum. In the three months' period ended 30th June, 1958, the number and value of orders in excess of £200 placed by the Department were as follows:-

* Exhibit No. 42/11

Value Category	Total Value of orders in each category	Number of orders in each category	Public Tenders (a) called	Certificate of Inexpediency	Period Contracts Utilized	Arranged by other Authorities (b)
£s.	£					
200 - 500	398,380	1,280	435	82	600	163
500 - 1000	413,916	605	240	32	295	38
1000 - 2000	405,655	311	128	16	144	23
Over 2000	10,718,330	342	255	17	61	9
Total	11,936,281	2,538	1,058	147	1,100	233

(a) This does not include period contracts for which public tenders may have been called.

(b) Contracts placed on behalf of the Postmaster-General's Department by the Commonwealth Supply and Tender Board, Directorate of Contracts in the Department of Supply and the various State Governments.

In its initial submission to Your Committee the Department drew attention to the rise in costs of works, stores and services since 1923 and suggested that an increase to £600 in the amount specified in the Regulation would merely restore relativity. The Department noted that 74% of the total number of orders were for supplies valued at less than £1,000, and then continued:

" In view of the great volume, and comparatively low value, of orders in the £200 to £1,000 range, it is considered that it would now be reasonable to raise the general limit under Treasury Regulation 52(1) to £1,000. This higher amount would be appropriate having regard to changes in the price level and other factors, such as the extent of administrative effort involved and improved budgeting and estimating procedures introduced in the Post Office, which ensure adequate control of expenditure under delegated authority.

Exhibit
No.42/19,
paragraphs
7 and 8.

The Main advantages which would stem from the raising of the limit to £1,000 would be:-

- (i) Senior Officers would be able to devote more time to planning and the overall direction and control of activities; adequate control of purchasing under delegation could still be maintained.
- (ii) The speedier placing of orders would tend to minimise shortages of materials.
- (iii) The maintenance of a regular flow of materials to the large field staff, thus assisting in achieving maximum efficiency, would be facilitated."

The Department also said:

" The extension of delegated financial authority under Regulation 52(1) to £1,000 would not necessarily mean that the calling of public tenders would be dispensed with entirely for supplies up to this limit. The use of the quotation system, which would supersede the existing contract procedure on the raising of the present limitation would not be desirable nor necessary in all instances of obtaining supplies up to £1,000."

Ibid,
paragraph
12.

The Department added that it would not automatically increase the existing financial delegations to officers upon a rise in the amount contained in Regulation 52.

149. Following the first appearance of the Department before Your Committee a further statement was submitted in which the Department said, inter alia:-

" Generally, the chief advantage of the written quotation method, with proper safeguards and reasonable limitation of delegations as already suggested by the Post Office are:-

Exhibit
No.42/37
paragraphs
6 and 7

- (a) Substantial reduction in time required to secure supplies;
- (b) Savings in clerical and typing labour.

The selective invitation of quotations for a wider range of supplies would not, in the view of the Post Office, result in higher prices being paid. This aspect has been examined in the light of the inquiry. There have been some instances where tenders were invited but not accepted because the price offered was considered unreasonable. At a later stage, written quotations were sought and the suppliers offered at a lower figure."

150. Our inquiries established that the Department operated a trade list procedure under which it was the practice to issue invitations to quote to all firms registered for a particular class of material, rather than a selection of those firms; two examples were given where lower than tender price had been obtained after seeking quotations. The Department placed much emphasis upon the additional time involved under its tendering procedure as compared with quotation procedure including the delay associated with the advertising of tenders in the Gazette, and, in general, advocated strongly that the monetary limit in Treasury Regulation 52 be lifted from £200 to £1,000.

Qs.1033/4.

Exhibit No. 42/37 paragraphs 7 and 8. See para. 203 below. Qs.285-288 See also - paras. 209-211 below.

The Department of Supply and the Departments of Navy, Army and Air.

151. The Contract Board of the Department of Supply is a major purchasing agency established under Regulation 29 of the Supply and Development Regulations. Regulation 33 provides that "the Contract Board shall be charged with the duty of arranging for the performance of services and the purchase of supplies including foodstuffs for the Naval, Military and Air Forces and for the Department (of Supply) except as otherwise determined and directed by the Minister." By administrative arrangement the Contract Board also acts as a purchasing authority for many other Government departments and instrumentalities and is the medium through which all purchases are arranged on behalf of the Colombo Plan, United Nations and similar organisations. Your Committee were advised that the value of contracts arranged by the Board approximated £40,000,000 each year but that it plays no part in formulating the requirements of any of the user departments and is purely a purchasing organisation: it arranges the contracts and places the orders.

Statutory Rule No.59 of 1949 as amended.

Exhibit No.42/15, page 2.

152. The following table relating to the three months' period ended 30th June, 1958, refers to those orders in excess of £200 placed by the Department of Supply for delivery to and payment by it. The table does not include details of contracts accepted and orders issued by the Contract Board for delivery to and payment by other departments:

Exhibit No.42/15 Statement No.8.

Value Category £s.	Total Value of Orders £.	Total No. of Orders	Particular Contracts	Period Contracts	Arranged by other Departments.
200 - 500	206,537	644	308	289	47
500 - 1000	168,066	241	126	87	28
1000 - 2000	190,119	135	65	64	6
Over - 2000	1,678,372	173	100	67	6
TOTAL	2,243,094	1,193	599	507	87

153. The Department of Supply in its submission to us did not specifically recommend that the amount in Treasury Regulation 52 be increased: it did say, however, "that it would endorse the requirement for the compulsory invitation of public tenders being increased to £1,000". It gave as its reason the change in money values which had occurred since the existing limit of £200 had been established. The Department went on to say:

" However, because of the advantages of the tender system and the fact that the Contract Board must accept responsibility for operating sound and efficient purchasing procedures on page 7. a basis which is beyond public criticism the amendment of Regulation 52 to make the invitation of tenders obligatory only in those cases where the estimated amount involved exceeded £1,000 would not result in any major

Exhibit No.42/15

change in the present practices of the Board which would continue to invite public tenders wherever practicable. The principle effect of the amendment would be to reduce the number of occasions on which the Board would be required to certify that the invitation of tenders was impracticable or inexpedient."

The Department claimed that where competition was available the invitation of public tenders was the most efficient and economical method of obtaining the bulk of the requirements purchased by the Board. The Department added:

"Charges of partiality or favouritism are avoided by inviting wherever possible all qualified firms to compete for Government business, but, important as this consideration is, the invitation of public tenders serves other useful purposes. Through the encouragement of competition prices are kept at reasonable levels, new sources of supply which might not otherwise present themselves are tapped and all potential suppliers have the same opportunity to submit their offers." l'id, page 5.

154. In evidence before Your Committee, Mr. C. K. Davies, Assistant Secretary and Director of Contracts, Department of Supply, spoke strongly in favour of retaining the public tender system for purchases above £200. He saw no difficulty in operating under the existing Treasury Regulation 52 with its monetary limit of £200 and indicated that there was little additional work involved in issuing certificates of inexpediency when it was not appropriate to invite public tenders.

"COMMITTEE MEMBER: Leaving aside the £300, your Department indicated that a rise to £1,000 would help to reduce the number of certificates of inexpediency. Therefore there would be some benefit?--- Q.256
(MR. DAVIES) I would say not, quite seriously. The only difference it would mean is that there would be fewer certificates given. That only means a stamp on the business paper, and somebody signing it."

The Department also submitted details of cases where the insistence of Exhibit the Contract Board upon calling tenders after quotations had been No. 42/18. obtained, had resulted in better prices for the Commonwealth.

155. Although subject to Treasury Regulation 52, the extent and the way in which the Departments of Army, Navy and Air may arrange their purchases are determined essentially by the Supply and Development Regulations and in particular by the Minister for Supply and the Contract Board of that Department. Except in one case (an unlimited delegation to the Secretary, Department of the Navy, to arrange for the repair and refitting of H.M.A. ships) delegations from the Contract Board to officers within the three departments have not exceeded the amount of £200. All other purchases by them, except purchases made from or through certain Commonwealth or State agencies, should be arranged through the Contract Board.

156. It was clear that all three Departments considered the existing delegations from the Contract Board too low. The Departments of Navy and Army, in particular, were inclined to associate the limit of £200 on the Contract Board delegations with the amount specified in Treasury Regulation 52 and their answer to their problems was to propose an increase in Regulation 52 in the expectation that an increase in Contract Board delegations would follow.

157. There is, of course, no essential connection between the Contract Board delegations and Regulation 52. Mr. Davies of the Department of Supply agreed that the Contract Board could, with the approval of the Minister for Supply, delegate unlimited power to the

Departments of Navy, Army and Air to arrange their own purchases. Mr. Davies also said that for a number of reasons the Contract Board had not considered it necessary to increase the delegations beyond £200 and added later that, to his knowledge, there had not been a request from any of the Departments for delegations greater than £200. We were informed too, that an increase in Contract Board delegations to the Service Departments would not necessarily follow a variation in the amount specified in Regulation 52.

Q.240
Exhibit
No. 42/15
page 7.

158. Your Committee note that it has always been open to Departments of Navy, Army and Air to:

- (a) seek higher delegations from the Contract Board; and
- (b) seek authority from the Secretary, Department of the Treasury, to certify that the calling of tenders publicly is impracticable or inexpedient.

That the Departments have not done so is not without its significance.

159. One of the arguments put to us against increasing the delegations under the Supply and Development Regulations, while the limit in Regulation 52 remained at £200, was that the Departments would need to invite public tenders and to establish contract boards which would duplicate the existing machinery in the Department of Supply. This, of course, is not correct: there is no requirement that tenders must be considered by a tender or contract board or that elaborate machinery is necessary to process tenders for relatively minor purchases.

See paras.
203-209
below

160. Of the three Departments concerned, the Department of Air seemed best to understand the situation and the relative impacts of the Supply and Development Regulations and Treasury Regulation 52. That Department, while generally in favour of arranging its purchases through the Contract Board, felt the need for some alternative way to handle special purchases up to £1,000. The Department agreed that a delegation of £1,000 from the Contract Board under the Supply and Development Regulations, together with authority from the Secretary, Department of the Treasury, to certify that the calling of tenders publicly is impracticable or inexpedient, would solve its problems.

Q.724

161. Because of the confusion as to the relative effects of the two sets of Regulations (and this was particularly evident in the submissions of the Departments of the Navy and Army) Your Committee consider it must discount, to a large extent, the initial proposals of the Departments of Navy, Army and Air regarding Treasury Regulation 52. While so doing we must point out that each of the Departments obviously feels that some relief is necessary from the present requirement of the Contract Board that "outside" purchases costing more than £200 should be channelled through it; the general consensus of opinion was that a lift in the upper limit of Contract Board delegations to £500 or £1,000 would meet the situation. Whether such an increase could only be effective if paralleled by an increase in Treasury Regulation 52 is very much open to doubt; certainly it was not a question which had properly been considered by the three departments.

162. Following the appearances of the Departments of Supply, Navy, Army and Air before Your Committee, the Public Service Board submitted a formal statement dealing with purchasing arrangements for the Armed Services. The Board said:

" The Board envisages that any increase in the present financial limit of £200 in Treasury Regulation 52 would be followed by some extension of delegations from the Department of Supply (under Supply and Development Regulations) to the Service Departments. This would result in more economical and flexible administration and the reduction of lead in procurement.

Exhibit
No. 4./40
page 4,
para-
graphs
11-15.

Such an extension of authority would not necessarily apply to all classes of purchasing. The Department of Supply has a role to play in formulating and co-ordinating procurement policy for the Defence Services in addition to its part as a buying agency. Therefore, the nature and extent of delegations granted must be determined within the framework of the overall procurement policy.

However, as has already been mentioned to officers of the Department of Supply*, the Board considers that an objective review should be made of the whole field of Service procurement, due consideration being given to the various types of purchases being made by and for the Service Departments, both in Australia and overseas, and procedures introduced to ensure:

- (i) that certain types of requirements will continue to be processed through the public tender system operated by the Department of Supply, including recurring items which lend themselves to consolidation and the arrangement of period contracts ... and non-recurring items to which the application of the public tender system would be appropriate; and
- (ii) that the Service Departments are given appropriate delegations to enable them to purchase certain types of supplies (a money figure alone is not likely to provide the most appropriate basis for such delegations).

If higher delegations were given to Service Departments the Department of Supply could oversight such transactions through a system along the lines of the present arrangement whereby the Service Departments provide Supply with details of orders between £100-£200 placed by those Departments.

<p>What is required in the case of the Service Departments is a carefully designed system of decentralization consistent with overall Defence control. Insistence that an outside buying agency must oversight every transaction of a customer Service Department has been seen in other matters to have had the most adverse effects on efficiency and economy. ..."</p>	<p>See Chapter VII, Para .34(b) below</p>
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The Department of Works.

163. While the expenditure of other departments concerned with Treasury Regulation 52 relates essentially to the purchase of stores and supplies, that of the Department of Works is mainly on works and services. Of an expenditure of £8,139,000 on works, supplies and services in a three months' period in 1958, £7,215,000 or approximately 89% was spent on works and services.

164. The number and value of orders in excess of £200 placed by the Department in a "typical" period of three months in 1958 were as follows:

* When the Public Service Board representative, Mr. W.T. Gleeson, was asked when this matter was taken up with the Department of Supply he replied:

"... At what I have referred to as the round table discussions in Melbourne on 5th September (1958) I mentioned that specifically to Mr. Davies, who was the Department of Supply representative at these discussions. At a later stage, I deliberately approached Mr. Sumner, the Deputy Secretary of the Department and put the same thing to him. In fact, I went further and said, 'Whether or not there is any amendment of the Treasury Regulation, I think you should be doing just this.'"

(Question 1148 of Minutes of Evidence)

Value Category	Total Value of Orders in each category £	No. of Orders in each category	Public Tenders Called	Certificates of Inexpediency	Period Contracts Utilized
200 - 500	352,898	1,062	349	319	394
500 - 1000	280,054	392	190	121	81
1000 - 2000	347,645	248	151	67	30
Over 2000	7,114,710	444	343	53	18
Total	8,095,307	2,116	1,033	560	523

In its formal statement the Department informed Your Committee that it found the current contract and tender procedures satisfactory although a decided advantage would be gained by extending the present limit in Treasury Regulation 52 from £200 to £1,000. The Department told us that such a change would result mainly in "streamlining procedure," and that a saving in time and expenditure would result from "the elimination of initial work at present necessary prior to the invitation of tenders and the subsequent receipt and preparation of formal contract documents."

Exhibit
No. 42, '23

165. These arguments were later amplified by the Department when its representatives appeared before us. We were told that because of the limited number of authorities granted to officers under Regulation 52(2) to certify to inexpediency, it was on occasions necessary for officers, who had a financial delegation to approve of expenditure up to, say, £1,000, to refer, to other officers, situated perhaps in other areas, cases in which it was considered inappropriate publicly to invite tenders.

Q.860

166. Other advantages which the Department saw if quotation procedure could be applied to purchases between £200 and £1,000 were:

- (a) fewer copies of specifications would be needed;
- (b) cases would not be submitted to a tender board for consideration unless there were special circumstances;
- (c) quotations need be invited only from firms which the Department knew were reputable and could do the job (the Department said that if public tenders were called and the lowest tender was received from a firm unknown to the Department it might be necessary for its capacity, organisation and other aspects of its operation to be investigated before a decision was made.)

Q.537

Q.557

See paras.
214-215
below.

167. The Department did not press the point made in its original statement that savings would result from eliminating the preparation of formal contract documents: it realised that whether or not a formal contract was prepared and executed was not determined by the monetary limit specified in Regulation 52.

Q.545

See paras.
22-23
above.

168. The Department agreed that the same specifications would be issued for a particular order irrespective of whether quotations of tenders were called. The Department also agreed that there was, in fact, no requirement that tenders should be put to a tender board and went on to say:

Q.555

Q.868

"...It is just a procedure considered to be a satisfactory one by the Department. It has been operative in the Department for years and years. It is the standard accepted practice and we consider it a very good practice.

Qs.868
and 869

/there is
no reason

COMMITTEE MEMBER: Apart from it being a practice, and a good one - which may be a strong reason why small tenders of, say, £800, should not be approved by an individual officer and thereby save the time - consuming procedures of the board? --- (MR. DAVIDSON) We are doing something along those lines at the present time. We are endeavouring to improve the position in that very respect. ... We are endeavouring to draw up a quotation form with a set of conditions on it. We will use it for jobs that are more in the nature of minor tenders which will be dealt with by a lower-status committee or tender board than the existing one. It will be used solely for that purpose and solely cut down some of the documentation associated with the standard form of tenders when publicly invited."

See also
paras.
203-204
below

169. We were also informed by the Department that its Sydney Office was operating a "minor quotation procedure" involving public advertisement.* About this Mr. Davidson said :

"...An advertisement is inserted calling for quotations. Sydney has found that practice to be quite good over the last couple of years and that branch had advertised for quotations. It has used the word 'quotations' apparently to indicate to prospective tenderers that they are minor jobs. But they are not advertised in the Gazette. Acceptance only is notified therein."

Q.854

170. The Department spoke of occasions when it was difficult to obtain a satisfactory tender because of demands from other sources. The Departments generally accepted that there was no great disadvantage in inviting public tenders but said that disadvantage did occur if public advertisement failed to attract suitable tenders. In difficult areas it was sometimes possible to obtain suitable quotations as a result of a direct approach by departmental officers when the calling of public tenders had failed.

Qs.863
and
864.

171. Mr. Maunder, Director of Works, Canberra, expressed the opinion that the calling of public tenders was not more cumbersome than a quotation system; that the procedure only became cumbersome when the response to the public invitation was not satisfactory. But Mr. Maunder also said that the present limit of £200 in Treasury Regulation 52 would be a very serious handicap to the Department of Works if departmental officers had not been granted authority to issue certificates of inexpediency.

Q.914

Q.975A

The Department of Civil Aviation.

172. This Department proposed an increase in the amount specified in Treasury Regulation 52 from £200 to "not less than £1,000", but saw no objection to the Public Service Board's proposal of £2,000. The Department considered that such an increase "would both preserve an adequate degree of control and provide more flexible administrative processes relating to purchases." Details of orders placed by the Department in the three months' period ending 30th April, 1958, are as follows:

Exhibit No.
42/22,
State-
ment No.
5
para. 7.

Value Category.	Total Value of orders in each category	No. of Orders in each category	Public Tenders Called	Certificates of Inexpediency	Period Contracts Utilized
200 - 500	45,053	139	38	14	87
500 - 1000	38,771	56	12	4	40
1000 - 2000	19,072	14	4	3	7
Over - 2000	182,409	29	26	3	Nil
Totals	285,305	238	80	24	134

* For information about a similar procedure operating in Canberra see paragraphs 66-70 above.

173. In support of its proposals the Department, in its formal submission to Your Committee, said:

" Considerable work load and expense are involved in the inviting of public tenders and the placing of contracts, including -

Exhibit No. 42/22, Statement No.5, paragraph 3.

- (a) the preparation of the invitations to tender;
- (b) advertising in the Commonwealth Gazette and press;
- (c) the preparation of technical reports;
- (d) the preparation and processing of Contract Board Business Papers; and
- (e) the preparation and distribution of letters of acceptance and non-acceptance."

In that submission also the Department outlined the steps involved in -

- (a) Obtaining quotations for the supply of a simple non technical item estimated to cost not more than £200 (20 steps); and
- (b) calling tenders and letting contracts for the supply of a simple technical item estimated to cost more than £200 (63 steps).

However, during our public hearings it was established that the two statements did not represent an accurate comparison of the essential procedures which would be followed in purchasing a simple item costing, say, £800. For instance, the Department of Civil Aviation agreed that if the amount in Regulation 52 was increased it would need to introduce additional checks to the existing quotation procedure. Q.436

174. The Department emphasised the additional time involved in tender processes; it has been the practice of the Department to submit all tenders to a contract board.

"COMMITTEE MEMBER:... Would the tender procedure be much more onerous than the quotation procedure?---(MR. LEWIS) I think our main point on this is the amount of work involved. People who should be predominantly getting in touch with suppliers have to devote a lot of their time to administrative functions and submitting memoranda to the Chairman of the Contract Board. Q.426

COMMITTEE MEMBER: How would increasing the delegation to £1,000 speed things up?---(MR. LEWIS) There would be savings in time, as we have pointed out. There is the work load that Mr. Woodward has pointed out. There is a lot of promulgation with tender procedure. (In the quotation field we do not exclude anyone, certainly no one of importance.) We would not have to invoke all those tender procedures, which would take time. As we have pointed out, it is very difficult to say how long tender procedure takes, but it takes a lot longer than quotations, and there are lots of delays. Q.428

There will not be the preparations internally - the preparation of minutes to the Board, etc. We will not have to await the full Board. As was pointed out to you this morning, the members of the full Board are quite often in different places. The time factor in the technical branches is such that we bring in with the relatively small jobs backyard suppliers. It takes time to assess their Q.429

ability to do a job. In most cases we have found that they are not capable of doing these jobs. We know in the first place the people who can do the particular task. In point of fact, I think we have some 200 items in this bracket that we are considering. Assuming we put 90% to quotation procedure and kept the tender procedure for the other 10%, or, say, 15%, we would save the steps that I have mentioned. Admittedly the number of cases is small compared with the figures that have been presented to you by the Postmaster-General's Department, but they are significant as far as we are concerned."

- The Department of Civil Aviation put forward a view similar to the Department of Works, that the receipt of tenders from unknown firms could result in additional work. See para. 166 above.
175. The Department told us that it had based its case for an increase on the way it was handling its purchases at the present time; it had not, it seems, considered whether tenders involving relatively low expenditure could be decided by an individual rather than by reference to a full contract board. On this question of the necessity or otherwise of processing tenders through a contract board Mr. C.L.S. Hewitt, representing the Treasury said: Q.511
- "... I make it clear that the involving of the major administrative head of the Department in deciding which tender to accept or not accept has nothing to do with Treasury Regulation 52 whatever. That Regulation requires tenders to be called in certain circumstances. Treasury Regulation 49 says that the Purchase Order shall be issued by the Chief Officer of a Department or the delegate of that Chief Officer. If the Chief Officer does not delegate under Treasury Regulation 49, and if the major administrative head of the Department has to consider the tenders, that has nothing to do with Treasury Regulation 52 and it is not the restriction imposed by the Regulation." Q.513
176. The Department already maintains comprehensive trade lists and gave us some indication as to how they are established. Q.418
- "...We have a special pro-forma prepared. Every supplier who calls on us is given this pro-forma which covers every type of equipment that the Department buys or is likely to buy and they are interested in, irrespective of price. That is coded onto a machine which will select appropriate suppliers when we want to invite tenders or quotations." Q.438
- The Department also makes extensive use of trade journals. It was claimed that use of the Trade lists had resulted in the Department obtaining better quotations. Q.494
- "...We have had examples in which our technical people have already received quotes and submitted a requisition to us and my superior officer or myself - my superior officer having a high delegation than I have - insisted that other quotes be called for. We have been able to obtain lower quotes because of our knowledge of the market, and because of our system relating to our mailing list..." Q.438
177. It was the opinion of the Department that within the range of £200 to £1,000 better prices on the average would not be obtained by calling public tenders.
- "...In the bracket from £200 to £1,000, firstly you must admit that the officers conducting the purchases must build up a background of the trade in their area. Secondly, the supplier himself is not backward in this matter and he Q.477

becomes almost a problem. Suppliers are often in the purchasing office selling their wares. Thirdly, we must remember that we will still be calling tenders for £1,000 or whatever the limit may be and this helps us to gauge the market for those orders under £1,000 provided that they are for the same category of goods."

The Department of Repatriation.

178. Except for urgent requirements the Repatriation Department has found little difficulty in operating under the present Treasury Regulation 52. However, in the absence of authority to certify that to call tenders is impracticable or inexpedient the need to replace special medical equipment at short notice has resulted, on at least one occasion, in the Department infringing the Regulation. The Department accordingly proposed that the monetary limit in the Regulation be raised to £1,000 or that particular officers be authorised to certify to inexpediency; however, for administrative convenience it preferred an increase in the limit. The Department also suggested that the raising of the limit would enable reductions in administrative costs associated with tender procedure generally but did not amplify this claim.

Q.607

Qs.629
and 636Exhibit
No.42/26,
paragraphs
4 and 5.

179. The following statistics of orders placed, relate to the six months' period ended 30th June, 1958:

Value Category	Total Value of Orders in each category	Total No. of Orders in each category	Public Tenders Called.	Period Contracts Utilized
200 - 500	141,020	459	187	272
500 - 1000	80,814	121	61	60
1000 - 2000	87,775	63	34	29
Over - 2000	57,538	16	11	5
Total	367,147	659	293	366

Like the Department of Civil Aviation, the Repatriation Department maintains trade lists and endeavours to solicit quotations from as many sources as possible. All purchases, with the exception of emergency requirements, are made through procurement and contract boards established within the Department. A large number of purchases already are made under period contracts and the Department did not think that the practice could be extended further.

Q.623

Q.612

180. The Department informed us that, in the event of an increase in the monetary limit to £1,000, it would continue its present practice of publishing invitations for formal tenders for purchases in excess of £200, except in the case of urgent requirements. In answer to a question whether the issue of authority to a number of officers within the Department to certify to inexpediency would meet its requirements as well as an increase in the monetary limit, the Department representative, Mr. C.A. Nettle, Assistant Commissioner (Institutions) said:

Q.619

"I think the answer must be that it would be met as effectively if the delegation were sufficiently spread, but perhaps not as efficiently in that there would be a longer line of communication."

Q.620

181. Mr. Nettle agreed that efficiency within the Department assisted it considerably in operating effectively within the existing limitations imposed by Treasury Regulation 52 but added that the Department was itself aided by the nature of its operations. The Department, he said,

was a continuing enterprise which did not come up against some of the procurement problems which confronted other departments. The Public Service Board representative, Mr. W.T. Gleeson, made a similar suggestion to us:

Q.610

"Some other departments have problems similar to those of the Post Office, but certainly there are departments which have different problems. For example, there is the Department of Repatriation, as you can well imagine. That Department is running hospitals, and the type of supply lends itself to period contracts. There is less need for calling written quotations, by comparison with the Post Office."

Q.373

182. It is of some interest that from 1921 until 1932, the (then) Repatriation Commission enjoyed a full exemption from the provisions of Treasury Regulation 52. The Treasury informed us that in May 1932 the Commission had indicated that a continuance of the exemption was unnecessary saying that cases where tenders were not publicly invited were very rare. The exemption was cancelled by Statutory Rule No.8 of 1932.

Exhibit
No.42/6,
para.3.

The Department of Territories.

183. The Department of Territories was not included in the Public Service Board's survey in 1958, nor were representatives of the Department asked to appear before Your Committee. However, in the closing stages of our Inquiry the Department submitted two statements outlining its current procurement arrangements and mentioning certain changes which had occurred in the preceding two years.

Committee
documents
T.R.48
and 53.

184. It appears that as a result of intervention by the Minister for Territories, who was concerned to ensure that the Department was 'getting the best possible value for the public funds expended', the number and value of orders in excess of £200 (in respect of purchases of the Papua and New Guinea Administration) placed by the Department without inviting tenders decreased from 446 orders valued at £359,200 in 1956 to 88 orders valued at £85,771 in 1958. Of the latter sum 59 orders valued at £38,982 were for purchases of medical equipment and supplies made under arrangements approved by the Commonwealth Stores Supply and Tender Board.

Committee
document
T.R.48

185. The following statistics relate to purchases in excess of £200 made by the Department for the Papua and New Guinea Administration during the three months ended 31st March, 1959.

Committee
Document
T.R.53.

Value Category	Total Value of orders in each category	Total No. of Orders in each category	Public Tenders Called	Certificates of Inexpediency *	Governor-General's Approval	Period Contracts Utilised.
£s.	£					
200 - 500	42,765	133	94	7	1	31
500 - 1000	39,061	57	37	3	3	14
1000 - 2000	45,146	32	25	4	2	3
Over 2000	73,352	13	8	Nil	6	3
Total	200,324	235	164	14	12	51

* These certificates were issued by the Commonwealth Stores Supply and Tender Board in Sydney.

It is the practice of the Department not only to invite tenders by public advertisement but also to distribute copies of the tender schedule to all known likely suppliers of the class of goods concerned. Tenders are advertised in the press only and not in the Commonwealth Gazette; the Department said that generally only two weeks were allowed for the closing of tenders, and this did not permit sufficient time for the notification in the Gazette to be of practical value to tenderers. All tenders received are examined and approved by a tender board consisting of two officers of the Department of Territories and an officer of the Treasury.

Ibid
paragraphs
3 to 5.

186. The only difficulty being experienced by the Department under the existing provisions of Treasury Regulation 52 is when an urgent purchase is necessary. During the period 1st January to 31st March 1959, ten certificates of inexpediency were sought by the Department and obtained from the Commonwealth Stores Supply and Tender Board for purchases valued between £200 and £1,000 while the Governor-General's approval was obtained on four occasions. The Department said that the procedures involved in obtaining certificates of inexpediency and the Governor-General's approval required a certain amount of time and clerical work; in particular the procedure involved in obtaining the Governor-General's approval was time consuming and caused delays.

Ibid,
paragraphs
6 and 7.

187. On the 21st June, 1956, the Department sought from the Department of the Treasury authority for its tender board to issue certificates of inexpediency; the request was refused and the alternative of obtaining the certificates from the Commonwealth Stores Supply and Tender Board in Sydney was adopted. The Department claimed that the granting of this authority to its own tender board would lessen administrative work and speed purchases.

Ibid,
paragraph
8.
See also
paragraph
44 above.

188. Of interest is that Treasury Regulation 52 does not apply to purchases made by the Administration of Papua and New Guinea. However, the Department of Territories has adopted the attitude that, as the Sydney office of the Department (which arranges these purchases) is staffed by Commonwealth Officers and as payment for the purchases is made from the Commonwealth Public Account from grants made available by the Commonwealth, the provisions of Treasury Regulation 52 should be invoked.

Committee
Document
T.R.53

189. The Department of Territories provides another example of how procedures meeting the requirements of Treasury Regulation 52 can be adapted to provide for rapid procurement. The Department said:

"... If purchases costing between £200 and £1,000 were made on the basis of quotes and not tenders there should be no great saving in time. The essential processes are the same whether tenders are publicly invited or quotes obtained from selected suppliers; so far as Sydney office is concerned the maximum time saving should be one week, i.e. the time between Board meetings, and if the business on hand justified it this could be avoided by holding meetings more frequently."

Committee
Document
T.R.53,
page 2,
paragraph
6.

The saving in time could also be achieved by vesting the power to approve purchases up to £1,000 after public tenders have been called, in an individual officer.

(d) The attitude of the Department of the Treasury

190. The Department of the Treasury did not, in its formal submissions to the Committee put forward any firm proposals for variation in, or retention of the amount of £200 in Treasury Regulation 52. Rather, it contented itself - Exhibit No.42/6

- (a) with setting out the principles on which it considered the Government's procurement arrangements should be based;
- (b) commenting upon various facets of the Public Service Board's proposals; and
- (c) making suggestions about the form of some parts of the Regulation.

191. Later, when Sir Roland Wilson, C.B.E., Secretary to the Treasury, appeared before Your Committee we sought from him an opinion whether there was any reason to alter Regulation 52 from a Treasury point of view. After covering, broadly, some of the main issues he saw involved, he said: Qs.1219 and 1220

"... It is for the Committee, after informing itself as far as it can on the facts and relative considerations which might be brought to bear, to exercise its collective wisdom and say, 'We who, in this matter, are acting as representatives of the citizens of Australia, think it would be fair and proper not to arrange the business in this particular fashion but to do it in this way.' If you ask me what is the 'official' Treasury point of view, that about sums it up. To the extent that the Treasury has specific factual information, or specific persons experienced in this particular matter, or to the extent that we can produce information from some other quarter to lay before the Committee to help it to form a judgment, we are happy to do so. I repeat that for myself I am entirely happy to accept the judgment of this Committee." Q.1220

Subsequently, Sir Roland went on to say that any view upon amendment of the Regulation expressed by the Treasury representative sitting with the Committee, Mr. C. L. S. Hewitt, would be his. Hewitt's own and not the official view of the Treasury. Qs.1290-. 1294.

192. Expressions of Treasury opinion in this Report, accordingly should be judged on that basis.

193. In the Treasury's main statement entitled "Public Invitation of Tenders" it was suggested that the amount of £200 in Treasury Regulation 52 was not an end in itself. The Treasury thought it necessary in considering any proposal for increasing the amount to go beyond a comparison between the amounts of £200 and various higher alternatives and beyond movements in prices during 1923 to 1959, to study the effect in terms of the value of purchases which would be withdrawn from public invitation to tender and the probable effects of such a withdrawal. The Treasury noted that some £10,000,000 of purchases spread over some 666,000 orders, each worth less than £200, were now being made each year without the public invitation of tenders, and said that the proposal of the Public Service Board would authorise the placing of yet another 14,000 orders worth £9,000,000 without publicly inviting tenders. Exhibit No.42/6, paragraph 4. Ibid, paragraph 5.

194. The Treasury continued:

" Whilst agreeing with the statement by the Public Service Board that the amount in the Regulation is a matter of opinion, there are yet thought to be three matters of paramount importance to be considered in deciding whether or not very largely to increase the present volume of purchases made without the public invitation of tenders, viz:-

Exhibit
No.42/G,
paragraphs
9 and 10.

- (a) the prices paid by the Commonwealth must be reasonable;
- (b) the procedures that are observed in the expenditure of public money must be, and must be believed to be, above public criticism; and
- (c) all persons who are interested should have the opportunity to participate in public business to the maximum extent reasonably possible.

The Public Service Board's proposal is in effect to modify these principles according to the value of individual transactions, and to authorise those transactions, the value of which is not greatly significant (to the Commonwealth) to be withdrawn from public invitation of tenders."

The Treasury said that there could be no doubt but that the open competition which accompanied the public invitation of tenders was the best means of ensuring lower prices to the Commonwealth and cited three cases where the Commonwealth Stores Supply and Tender Board had effected substantial savings by insisting upon the public invitation of tenders after declining proposals that particular quotations be accepted. The Treasury then gave numerous examples of the wide range of prices which could result from the public invitation of tenders and these, it said, were a further demonstration of the incentive of open competition. The Treasury added:

Ibid,
paragraph
12.

" Those who tender in response to a public advertisement have decided, in their individual circumstances of the moment, to seek a share of that public business. Their circumstances will change and the same supplier will tender on one occasion but not on another. ...

Ibid,
paragraphs
14 and 15.

The alternative that is proposed by the Public Service Board is the selection of three suppliers to quote. Perhaps one of the three to be selected would have submitted the lowest suitable tender in response to a public advertisement. But among the total field of suppliers this is not probable. And if one who would have submitted the lowest suitable tender is excluded from the three who are selected to quote, then the cost of a purchase may be substantially higher than need be."

195. Under the headings of "Public Criticism" and "Public Interest", the Treasury said:

" A public advertisement for tenders is a notification to all who may be interested and wish to participate in the business. The selection of three suppliers to provide quotations is an administrative decision open to all the obvious criticisms and imputations by those who are excluded from the opportunity of tendering. ...

Ibid,
paragraphs
16, 19
and 20.

... Government orders in excess of £200 are important to many small traders. They are unlikely to accept as a reason for their exclusion from public business the reply that the order was relatively insignificant to the total value of purchases by the Commonwealth. To them it is the relation of the order to their own business transactions that is important. Nor are they likely to be satisfied with the statement that, perhaps, more clerical effort may be required by the Government department in the preparation of an advertisement for tenders than in seeking written quotations from those three of their competitors which have been selected by the department.

It is of the utmost importance that there should be no room for suggestions of patronage in the selection of those who are to be suppliers to the Commonwealth."

The Statement concluded:

" The existing volume of purchases made without the public invitation of tenders by the Departments from which the Public Service Board has collated statistics is £10m. per annum. That is already ten times the value of the purchases that were so authorised by the decision to establish the amount of £200 in 1923. It is thought that reasons of considerable substance are needed to justify now any significant increase in these purchases apart from a doubling of their volume to £20m. per annum. The direct savings, estimated by the Public Service Board, at £28,800 per annum are not believed to be of great significance by contrast with the public policy considerations put forward above."

Exhibit
No.42/6,
para.24.

and, on the question of exceptions to the principle of public tendering and exemptions from the Regulation:-

"...Probably there is reason to provide in the Regulation that other individual purchases can be made without the public invitation of tenders on the certificate of a delegate of the Secretary to the Treasury, and provided that the purchases have been scrutinised by a contract board, which should ensure all reasonable precautions against, for example, patronage or favouritism.

Ibid,
paras.
26 and
27.

It would also be desirable to continue the provision that purchases made from Commonwealth or State Government sources need not be the subject of public invitation of tenders and completely to exempt from the Regulation those whose practices are regulated otherwise, e.g. the Commonwealth Railways Commissioner - Commonwealth Railways Act 1917-1957 Section 22."

197. The Treasury representative, Mr. C.L.S. Hewitt, went to some lengths to explain what he saw would be the effect of permitting orders up to £2,000 in value being placed subject to three representative quotations being obtained. At an early stage of his evidence before Your Committee, he said:

"...I go to the extreme of being realistic. My conviction is that if the statutory requirement in the regulation is to call at least three representative quotations the circumstances mostly will mean that people who wish to exercise a discretion and think there is some gain in it will exercise it. They will seek three representative quotes."

"In my humble opinion, it is not formality for the sake of formality; it is placing responsibility where it should rest in relation to individual purchases.* The alternative is for this Committee in its advice, and for the Parliament, the regulations being the instrument of the Parliament, to accept a blanket responsibility. Let us not talk about hedging instructions, hedging qualifications or anything else. The plain fact would be that, in respect of any purchases of up to £2,000, £5,000 or more than £5,000 the Parliament has said, 'We will be satisfied with three quotations being obtained'."

Q.1393

199. While having serious objections to the initial proposals of the Public Service Board, Mr. Hewitt made it clear that he would not have the same objections to procurement arrangements somewhat along the lines of those operating in the "nited Kingdom:

"(MR. HEWITT)... If the proposition of the Committee is that purchases under Regulation 52, so far as the public invitation of tenders is concerned, should mean

Q.1399

- (a) the establishment of lists of all who are willing and fit to supply; and
- (b) when supplies are to be obtained the despatch of invitations to all who are on the lists,

then in my opinion, as I said on the first day, the spirit of the public invitation of tenders is completely met..."

Finally we asked Mr. Hewitt his opinion as to whether the figure of £200 ought to be altered. He replied:

" I think that, if the various reasons that were given by departments as being attributable to the £200 are seen in their true perspective as having nothing to do with the £200, the first task is to clear them up. I would be the first to suggest - and I so suggested in the original Treasury Document - that some reframing of the regulation is necessary in relation to the availability of certificates of inexpediency. I would be the first to agree that the notion of establishing a trade list and checking on the capacity and bona fides of potential suppliers before they are admitted to the list, and the circulation of inquiries to all who are on the list, is the type of improvement that ought to be made. In my opinion, when those changes were made and when all the smoke had dissolved, very little reason would have been adduced for making any change in the £200. I can only say that, no matter how 'stick in the mud' my reputation may be, I have seen nothing in the remaining reasons that would lead me to recommend that the amount be changed. I cannot see in all the papers and in all the evidence specific concrete reasons in relation to the other considerations that are involved to justify making a change.

Q.1406

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* Mr. Hewitt was here referring to the present requirement that a certificate be given if purchases in excess of £200 are to be made without first publicly inviting tenders.

COMMITTEE MEMBER: Can we take it then that your personal expression of opinion, which does not represent the Treasury, is that on the evidence to which you have listened, you do not feel that a sound case has been made out to vary the figure from £200? Is that now, at this stage at the conclusion of the Inquiry, your opinion?--(MR. HEWITT) Yes."

Q.1411

CHAPTER VI

THE DEPARTMENTS' REASONS DISCUSSEDChanges in money value

200. Changes in money value since 1923, as such are, in the view of Your Committee, of minor importance in deciding whether the present Treasury Regulation 52 unduly hampers departments in obtaining works, supplies and services.

See also paragraphs 95-97 above.

Formal Contracts

201. The time involved in the execution of formal contracts has little relevance to the matter at issue. It is axiomatic that the same protection in the form of a legal contract should be sought by a department, irrespective of whether a particular order is placed after obtaining one quote or many quotes or publicly calling quotations or tenders. It is a matter for the department to decide whether it will rely upon the formal placing of a purchase order or seek some other form of legal contract.

See also paragraphs 22-23 above.

Savings in time and reductions in administrative costs

202. These were the two main reasons put forward by those departments which proposed an increase in the amount of £200 (in the Regulation). While it was clear that in most cases the kind of procedures that the Public Service Board and the departments envisaged introducing would save time in comparison with some current departmental practices, it was also clear that insufficient consideration had been given to whether those current procedures were the most efficient that could be established within the existing framework of Treasury Regulation 52. We would agree that if, in practice, the Public Service Board's proposal would result in departments seeking and obtaining in writing only three representative quotations for expenditure up to £2,000 there would be some savings in time and costs over a system based upon the public invitation of tenders or one which sought to achieve similar objects. But the three quotation procedure would make those savings, we suggest, at the expense of higher prices over all and could open the door to the development of patronage and other undesirable practices.

See paragraphs 103-105 above

203. One advantage seen to be gained from a variation in amount was that it would not then be necessary to submit proposals involving expenditures up to £1,000 or £2,000 to a tender board comprising senior departmental officers. Our comment is that, if departments consider such a procedure time-consuming, cumbersome, and unnecessary, then the remedy is already in their hands. There is nothing in Treasury Regulation 52 which requires such a procedure to be followed; the difficulties are of a department's own making.

See paragraphs 159-168 and 175 above.

204. The estimates of savings submitted by the Public Service Board and later by the Postmaster-General's Department both suffered from that fault; their assessments of cost of tender procedure generally involved processing through a tender board; their assessments of quotation procedure generally did not. We suggest that if, at present, a department considers it necessary to subject public tenders for an item costing, say, £800 to the scrutiny of a tender board then there is no less reason (and perhaps more reason) why the same order should not also submit to tender board examination if public tenders have not been called. The converse is also true.

See paragraphs 103-105 above.

205. The claim that substantial savings in time would result from removing the requirement to call public tenders is disproved by the arrangements made by the Department of Territories in Sydney, and more recently, by the Department of Works in Canberra. Each meets the requirements of the existing Treasury Regulation 52. See paragraphs 209-213 below

206. One additional administrative cost clearly associated with public invitation of tenders is advertising, but apart from that, there seems to Your Committee to be no obstacle in the way of departments achieving now most of those savings in time and expense which some have claimed could only be gained by an amendment of Treasury Regulation 52. See paragraphs 209-213 below.

Lower prices from quotations or tenders.

207. There was some variation in the opinions expressed by departments on this question. Your Committee have concluded that under competitive conditions there should be little difference between the prices obtained after publicly calling tenders and under a trades list procedure providing for the issue of invitations to quote or tender to all or a substantial proportion of listed firms. We agree that a system which requires only that a minimum of three quotations be obtained, or which would permit, as a general practice, a relatively small selection of the available suppliers only to be invited to quote, would result overall in higher prices to the Commonwealth. Where, however, there is no competition or restricted competition or conditions of under supply, we consider that the trades list procedure, followed if necessary by direct negotiation, could show to some advantage. However, this advantage would be largely offset under a tendering system based on public advertisement, by use of the inexpediency process.

208. In this context it is appropriate to repeat a comment by the State Electricity Commission of Victoria:

".... The purchasing enquiry list and formal quotation method both preserve keen competition among suppliers and prices obtained are considered very comparable with those procured by public tender. It is contended that Public Tenders tend to work better under a buyers' market. In times of short supply, it is the seller who has to be chased and under such conditions more informal methods of procurement are more successful in obtaining the goods."

See para. 128 above.

The New South Wales Public Service Board said:

".... Generally the system of public tendering is thought to result in the most favourable price, except where prices are fixed and no tenderer is prepared to break the agreement..."

Committee Document No.T.R.51, page 3.

Reference to the statistics submitted by the Public Service Board (which covered eight departments and the Commonwealth Stores Supply and Tender Board only) discloses that within the value area of £200 to £2,000 an overall increase of price of only 1% for those orders at present placed after calling public tenders could raise expenditure by at least £90,000 annually; within the value area £200 to £1,000, the resulting increase would be at least £50,000.

See para. 98-102 above.

Advertising.

209. When outlining the case presented by the Public Service Board Your Committee noted that the Board's assessment of the reduction in administrative costs likely from its proposals, made no allowance for savings in cost of advertising. Mr. Gleeson told us See para. 103 above.

- that the Board had not conducted an examination into those costs as it had foreseen some difficulty in making a reasonable assessment in respect of those items costing between £200 and £2,000. However, based on the statistics of the Public Service Board, *Your Committee* estimate that there would be some 14,000 orders between £200 and £2,000 put to public tender each year and advertised either in the Commonwealth Gazette or public newspapers or journals. These orders would not necessarily be advertised singly; a number might be listed in the one advertisement, thus reducing cost. While the overall expenditure for advertising those 14,000 items would not be inconsiderable, it would represent only a small proportion of the estimated annual cost of the items incurred viz. £9,000,000.
- Q.1349
See para. 98-102 above.
210. Earlier we noted that, while an advertisement in the Commonwealth Gazette was accepted as meeting the requirements of Treasury Regulation 52 it was not mandatory to use this medium. We have referred already to two departments which have preferred public advertising to insertion of notices in the Commonwealth Gazette - the Department of Territories and the Department of Works in Canberra under its minor works procedure. Both these Departments and that of the Postmaster-General said that there were delays involved in advertising in the Gazette.
- See para. 21 above.
See paras. 70 & 185 above.
See para. 150 above.
211. At present the Commonwealth Gazette is published on Thursday of each week and departments are required to have material for publication in the hands of the Gazette Officer, Prime Minister's Department, Canberra, by 11.30 a.m. on the preceding Friday. Accordingly, unless special steps are taken which of themselves would involve additional expense, tender notices originating from Departments and Branches not in Canberra are subject to a delay of at least a week and possibly more before publication. While such a delay, to which should be added the time associated with distributing the Gazette, might be of little moment in a large contract, we do consider it of significance when thinking in terms of rapid procurement action for items of lower value.
212. The Public Service Board's proposal and those of the departments who supported an increase, would avoid those costs and delay by removing the need to advertise for items up to £1,000 or £2,000. The trades list procedure also avoids those costs. But it is interesting, too, to remember that the departments could have overcome the delays associated with notification in the Gazette by relying upon other avenues of advertising. The Gazette, of course, has certain advantages; it is a regular publication, freely available, with an Australia wide distribution, and its advertising rates are comparatively low. Your Committee note the lag of six days between the closing date for receipt of notifications and the issue of the Gazette and it seems to us to be excessive. We recommend that the Treasury and the Government Printer examine the situation to see whether the time lag can be appreciably reduced without unduly adding to the cost of publication.
213. Generally, there was no suggestion from departments that, under competitive conditions, advertising did not achieve the purpose of attracting competitive tenders and keen prices. The important question is, of course, whether those purposes can be achieved at least as well by some procedure and at lesser cost. /other
- Tenders from unknown persons.
214. One of the advantages the Departments of Works and Civil Aviation saw in a selective quotation system was that only known and reputable firms would be invited to quote. Both Departments spoke of the need at present, when an unknown firm submitted the lowest tender, to investigate such relevant factors as the firm's capacity, the quality of its work and previous record, before placing the order, thus involving delay.
- See para. 166-174 above.
215. There is substance in the comment of the departments: although investigation of firms is required whether quotations are invited by public advertisement or from a list, the investigation would in the latter case precede the issue of an invitation to quote and would not delay the placing of an order. However, on the evidence that was presented to us,

some at least of the major departments in the procurement field, although working under a public tender system, are maintaining comprehensive trades lists. Thus most firms supplying within their scope of requirements should already be well known to them; we therefore would not expect this kind of delay to be a serious problem.

Stock holdings.

216. The Public Service Board considered that a reduction in stock holdings in departments was an advantage which would flow from the introduction of its proposals. The Postmaster-General's Department, on the other hand, considered that stock holdings would not be affected greatly. The basis of the Board's view was the substantial reduction in procurement time which it expected to flow from its proposals - from six to eight weeks under public tender procedure, to two to three weeks if quotation procedures were adopted. We have already suggested that these time comparisons are unsound. Qs.141-149
Q.307
See para. 103-105 and 202-206 above.

217. As a general proposition, Your Committee consider that any excess stock holdings in departments would stem from factors other than Treasury Regulation 52. We have found that the Treasury Regulation with its inexpediency provision, presents few obstacles to fast procurement when fast procurement is necessary and advisable. In the ordinary case, we are satisfied that, in terms of time taken, an efficient public tender system need suffer little in comparison with a quotation procedure which incorporates adequate safeguards against patronage and malpractice.

Procurement Arrangements in Other Authorities.

218. The organisations about whose procurement arrangements Your Committee sought, or received, information from the Public Service Board fell into three classes:

- (i) Private enterprise; See paras. 106-143 above.
- (ii) Statutory Authorities; and
- (iii) Government Departments.

219. (i) Private Enterprise. Your Committee include in this category Commonwealth Hostels Limited, a Company limited by guarantee without share capital, registered in Victoria. See paras. 115 & 121 to 124 above.

220. Your Committee consider that the requirement of public interest precludes Commonwealth Departments generally from adopting commercial business methods which, for legitimate business purposes, may involve favouritism, limitation of suppliers or exclusion of suppliers on grounds which could not be accepted as valid in government enterprise. While we agree that the absence of any regulatory control, as is enjoyed by commercial enterprise, could permit faster procurement, whether proper advantage is taken of this depends essentially upon the quality of management and control in the enterprise concerned. There was no evidence submitted to us to suggest that commercial business methods in fact resulted in better prices or that in practice private enterprise procurement was faster than was already possible under Treasury Regulation 52 by following efficient procedures and making extensive use of period contracts.

221. (ii) Statutory Authorities. In a previous Chapter Your Committee summarised information submitted to us about the procurement arrangements of three Statutory authorities, Trans Australia Airlines, the State Electricity Commission of Victoria and the Snowy Mountains Hydro Electric Authority. Such authorities are subject less to Parliamentary and regulatory control than a Government department. Neither Trans Australia Airlines nor the Snowy Mountains Hydro Electric Authority, which are both established by Commonwealth legislation, are subject to the Commonwealth Audit Act, although the accounts of both are audited by the Auditor-General for the Commonwealth. See paras. 116-135 above.

222. Significant points from the statements received from these three authorities are:

(a) Trans Australia Airlines. The major share by value of the Airlines expenditure on goods and services (including fuel and oil) is put to public tender. For much of the remainder the Airline has little choice in its sources of supply.

See paras. 116-120 above.

(b) The State Electricity Commission of Victoria. For orders in excess of £50 (£100 in the case of proprietary goods obtainable from only one source) but not exceeding £2,000 the Commission preserves the principles of public tendering by:-

See paras. 125-129 above.

(i) Purchase Enquiry Lists (limit £200) which are prepared daily and are laid out in a public section of the office for perusal by all interested suppliers; and

(ii) formal quotations which are mailed to firms from whom the Commission usually obtains the type of item required, firms who have asked to be placed on the mailing list, and any other firms whom the Commission thinks may be interested in quoting.

(c) The Snowy Mountains Hydro Electric Authority. Except for the Purchase Inquiry List procedure, the arrangements of this Authority appear broadly in line with those of the State Electricity Commission of Victoria. However, under its trades list procedure, it is not the Authority's practice to forward invitations to quote to all listed firms able to supply the particular requirement. The number of firms invited may vary from 4 up to 20.

See paras. 130-135.

223. Important to any consideration of the practices of statutory authorities is the fact that they are usually established with a degree of independence from public control and criticism, not enjoyed by Government Departments.

224. (iii) Government Departments. The information made available to Your Committee about the arrangements in the United Kingdom was broad in nature; it is sufficient to say that two principles fundamental to the United Kingdom trades list procedure are:

See paras. 136-143 above.

- (a) that contracts should be let as a result of competition by tender; and
- (b) that there is an obligation to consider the claims of all qualified firms wishing to work for the Government.

225. The closer examination given to the arrangements in the New South Wales government service as a result of the Committee's inquiries has shown that the ordinary New South Wales departments have far less independence in the matter of procurement than Commonwealth Departments. Control of purchasing is vested in the State Contracts Control Board. It is, with some exceptions, the practice of the Board publicly to advertise for the supply of items the value of which is estimated to exceed £20 as well as to distribute invitations to quote or tender to firms appearing on trades lists maintained by the Board. The New South Wales Government service has thus not only retained the principle of public invitation of tenders to a much greater extent than the Commonwealth but has also developed the system in such a way as to facilitate rapid procurement.

See paras. 107-113 above.

226. The Public Service Board claimed that the procurement arrangements for these various authorities lent support to its proposals. Accepting the Board's proposal as one which would enable departments to

satisfy the law by obtaining at least three representative quotes for orders of a value not exceeding £2,000, it is our view that, generally, they do not. They do, however, give support to arrangements providing for the maintenance of trades lists in departments and the issue of invitations to quote to those firms interested in supplying the government.

CHAPTER VIICOMMENTS AND RECOMMENDATIONS.

1. The origin of the present form of Treasury Regulation 52 will be found in Regulations promulgated in 1891 under the Audit Act of Victoria, which provided for the public invitation of tenders for works and supplies subject to three categories of exemption:
 - (i) works and supplies estimated to cost £100 or less;
 - (ii) expenditure especially authorized by the Governor in Council; and
 - (iii) particular types of expenditure incurred by specific departments. (Paragraph 12).
2. It is to be noted that the limit of £100 had first appeared 33 years earlier in a regulation promulgated under the Victorian Audit Act in 1857. (Paragraph 11).

The amount of £200 was first prescribed in Commonwealth Treasury Regulations for general application in 1923. The principle that a certificate should be issued when it was not desired to invite tenders publicly was introduced into the Treasury Regulations in 1940. (Paragraphs 14-16).
3. The present Treasury Regulation 52 is invalid to the extent that it purports to apply to the procurement of works and services. (Paragraphs 18-20).
4. Advertising in the Commonwealth Gazette or a public newspaper or journal satisfies the requirement that tenders be publicly invited. (Paragraph 21).
5. The Regulation does not necessarily require that a formal contract be executed. All that is needed is that a legal contract exist between the Commonwealth and the other party. (Paragraphs 22 and 23).
6. Certain authorities issued by the Secretary, Department of the Treasury, to unincorporated bodies such as the Commonwealth Stores Supply and Tender Board have not met the requirements of paragraph (2) of the Regulation. (Paragraphs 24 and 25).
7. Some other authorities issued by the Secretary, Department of the Treasury, since 1949 in anticipation of amendment of the Regulation could derive no support from the Regulation. (Paragraphs 27 and 28).

The then Auditor-General concurred in the issue of at least one of those authorities. (Paragraph 31).
8. Your Committee regard those actions of the Secretary, Department of the Treasury with concern. We note also that successive Auditors-General have not drawn attention to these irregularities in their annual reports to the Parliament. (Paragraphs 29 and 32).
9. Your Committee consider that, while acting within the letter of the law, the Department of Health has unreasonably sought the approval of the Governor-General to expenditure. (Paragraphs 38-47).
10. We are critical of the attitude adopted by the representative of the the Prime Minister's Department towards the review of matters submitted to the Executive Council. Your Committee, therefore, recommend that consideration be given to a general review of the type and nature of matters being submitted to the Executive Council and the Governor-General. (Paragraphs 48-51).

11. Your Committee suggest that the validity or otherwise of general certificates issued by the Secretary, Department of the Treasury and the Secretary, Department of the Navy, may need to be determined. (Paragraph 54).
12. There was some evidence of loose practices in the Department of Works in the issue of certificates under paragraph (2) of Treasury Regulation 52. (Paragraph 65).
13. The extensive use of period contracts offsets the restrictions imposed by the Regulation. (Paragraphs 72-75).
14. The Treasury Regulations extend to Departments a large degree of autonomy in the field of supply management. (Paragraph 77).
15. Your Committee note that proposals by the Treasury in 1951 to amend the Regulation did not contemplate a variation in the amount of £200 prescribed. (Paragraphs 79-82).
16. Your Committee's inquiry was preceded by a departmental investigation which culminated in the submission to the Government of proposals to change Treasury Regulation 52. (Paragraph 83).
17. Your Committee consider excessive the existing time lag of six days between the closing date for receipt of "notices for insertion" and the issue of the Commonwealth Gazette. (Paragraphs 210-212).
18. We, therefore, recommend that the Treasury and the Government Printing Office examine the position to see whether this time lag could be appreciably reduced without unduly increasing the cost of publication. (Paragraph 212).
19. In Chapter V (paragraphs 90-199) Your Committee outline the cases presented by the various departments. Your Committee were disturbed by what seemed to us to be a lack of understanding by some departments of the purpose and effect of Treasury Regulation 52, and the inter-relation between the Regulation and other Treasury Regulations connected with the expenditure of money. (Paragraph 90).
20. In Chapter VI (paragraphs 200-226) Your Committee comment upon the reasons submitted by departments in support of their respective views.

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21. The weight of the evidence presented to Your Committee does not support the proposals to vary the amount in Treasury Regulation 52 from £200 to £2,000, in such a way as would permit departments to meet the requirements of the law by obtaining three representative quotations in writing for orders (excluding period contracts) not exceeding an estimated cost of £2,000. Nor does the evidence support the proposals to increase the amount to £1,000 on a similar basis.

It does, however, show that the present methods of procurement need reconsideration in the light of the rapid developments that are taking place in the Australian economy.

22. While we found evidence that some existing quotation procedures did not provide, in the opinion of Your Committee, effective safe-guards against patronage and malpractice, we also found that many of the difficulties which departments contended had arisen from the present Treasury Regulation are, in fact, of their own making. It seems to Your Committee that certain departments have indiscriminately followed long accepted practices and have persisted with unwieldy, expensive and inefficient procedures, the effects of which they have inaccurately attributed to the restrictions imposed by Treasury Regulation 52.
23. We believe that it is the nature and extent of the delegations by the Minister and the Chief Officer of the Department under Treasury Regulations 48 and 49, and not Treasury Regulation 52, which determine largely whether departmental procurement procedures are efficient or not.

are efficient or not.

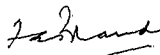
24. (a) We accept as a general proposition that all who wish to participate in government business should be given the opportunity to so do within reasonable limits.
- (b) We agree that government procurement procedures must be beyond reproach.
- (c) We consider it important that government services should maintain a reputation of fair dealing in their contact with the public.
- (d) We agree that prices paid by the Commonwealth must be the lowest obtainable subject to quality and the purpose for which the goods are required.


These are conditions associated with government enterprise which should only be modified or relaxed if they are unnecessarily costly or there is evidence that their application is unduly hampering departmental activity.

25. In other works, Your Committee consider it fundamental to government procurement activity that the public at large feel confident that justice is being done, that patronage is being minimised and that money is being spent effectively and economically. In our view this can best be achieved by a public tendering system or by a trades lists procedure which incorporates similar safeguards.
26. In the body of our Report, Your Committee record the several proposals submitted for amending Treasury Regulation 52. It seems to us, however, that there could be advantages in replacing the present Regulation with the system known as the Trades List procedure subject to the conditions we lay down in later paragraphs.
27. The system of inviting tenders by public advertisement for works, supplies and services has certain inherent disadvantages; it involves the time and cost of advertising and is effective mainly in a truly competitive market. The trades list procedure on the other hand, does not involve advertising, can be expected to be more effective in a market not truly competitive, and can be adapted readily to machine operation.
28. The present system of procurement control, as embodied in Treasury Regulation 52, was devised in a different era, for a different age and for dealing with different conditions of supply and demand in the far-flung parts of the British Empire. As adopted and adapted by the Commonwealth it provides a measure of control above the limit of £200 but far too little control below that level, thus leaving available what can be a fruitful area for patronage and malpractice.
29. Your Committee, as indicated above, consider that the control over departmental procurement should be completely reviewed. It seems to us that the introduction of the trades list procedure could well give better control for purchasing below £200 and also provide a more flexible and efficient procurement system as compared with the procedures under Treasury Regulation 52.
30. However, Your Committee emphasise that we did not conduct a detailed investigation into how the trades list system would operate in practice.
31. We recommend, therefore, the prompt appointment of a Working Party, representative of the Treasury, the Audit Office, the Public Service Board and departments with both a substantial and a minor interest in procurement and works to examine all the factors involved in the introduction of the trades list procedure for each department. Amongst the things which we consider the working Party would need to examine are:

- (i) whether the principle of invitation to tender by public advertisement should continue to apply to certain classes of goods or activities or above a particular monetary limit;
 - (ii) whether an inexpediency provision and the alternative of obtaining the Governor-General's approval should be retained in the Regulation;
 - (iii) whether the protection afforded by Treasury Regulation 53 should remain;
 - (iv) whether the procedure could, with advantage, be invoked at a level lower than £200, say, at £50 or £100;
 - (v) the basis on which the trades lists should be established, maintained and reviewed;
 - (vi) what arrangements should apply to those departments without a major interest in procurement or works;
 - (vii) whether all firms listed for particular requirements should be invited to quote or tender on each occasion; and
 - (viii) whether the directions to departments in this matter should be by Treasury Regulation or by some other means.
32. In the light of our recommendations regarding the Trades List system, Your Committee make no proposals at this stage for altering the provisions of Treasury Regulation 52.
33. Because so much is involved in any system of procurement, Your Committee have decided that we will, at an early date, review the actions that have been taken to give effect to our proposals.
34. Your Committee also recommend:
- (a) that all departments review immediately their existing tender and quotation procedures and related financial delegations to ensure that the procedures are efficient, are not unnecessarily involved or restrictive and that they provide reasonable safeguards against patronage and malpractice.
 - (b) that, concurrently with the activities of the Working Party proposed above, the existing arrangements under which the Service Departments obtain their supplies be investigated by the Treasury, the Public Service Board and the departments concerned to determine whether they are unduly restrictive or uneconomical, and if so, what alternative arrangements should be made.

For and on behalf of the Committee.


 F. A. BLAND
 Chairman


 R. C. Davey, Esq.,
 Secretary,
 Joint Committee of Public Accounts,
 Parliament House,
 CANBERRA. A.C.T.

22nd September, 1959.

CHRONOLOGICAL RECORD OF AMENDMENTS TO TREASURY
REGULATION 52 OR ITS COUNTER PARTS FROM 1902 TO APRIL 1959.
(Exhibit No: 42/8)

<u>Regulation No.</u>	<u>Statutory Rules No.</u>	<u>Amendment</u>
52	Commonwealth Gazette No.5 31st January, 1902	Original.
61	1906 No.19	Re-numbered. No amendment.
	1915 No.24	<u>Additional exception</u> Printing Offices and Commonwealth factories.
	1917 No.137	Department of Home Affairs abolished; Department of Works and Railways created - excepted.
	1918 No.268	<u>Additional exceptions</u> Commonwealth Line of Steamers; Silver and bronze for coinage; Commonwealth workshops, stores and dockyards.
67	1919 No.159	"Works supplies and services", inserted. <u>Additional exception</u> War Service Homes. Nickel for coinage.
	1921 No.141	<u>Additional exception</u> Repatriation Commission.
	1922 No.146	<u>Additional exception</u> P.M.G. Department
	1923 No.211	Increase in limit from £100 to £200. Postmaster-General's Department and Commonwealth Line of Steamers eliminated from exceptions.
	1924 No.65	<u>Additional exception</u> State Government Departments.
	1927 No.158	<u>Additional exceptions</u> Commonwealth Stores Supply and Tender Board. Australian War Memorial.
	1929 No.31	The C.S.S. & T.B. - exception extended to include purchases approved by the Board.
	1929 No.104	<u>Additional exception</u> Freights paid to White Star Line Limited.
	1932 No.81	Department of Works and Railways abolished functions taken over by Works and Service Branch of Department of Interior.

<u>Regulation No.</u>	<u>Statutory Rules No.</u>	<u>Amendment</u>
		<u>Additional exception.</u> Contract Board, Department of Defence.
	1932 No.111	<u>Additional exception</u> Marine Branch, Department of Commerce.
	1935 No.97	<u>Additional exception</u> Commonwealth Railways Commissionr..
	1940 No.46	Regulation re-drafted. Provision included for Certifi- cates of inexpediency to be issued. Defence exception transferred to Contract Board, Department of Supply and Development.
	1940 No.145	Works supplies and services ... "to be executed.... <u>within the</u> <u>Commonwealth</u> ", added in sub-regulation (1).
		<u>Additional exception</u> Defence of the Commonwealth.
52	1942 No.523	Consolidated. No amendment.

AUTHORIZATIONS BY SECRETARY, DEPARTMENT OF THE TREASURY UNDER TREASURY REGULATION 52(2)

(Based on Exhibit No. 42/5 presented by the Department of the Treasury)

SUPPLIES DESCRIBED IN TREASURY REGULATION 52(2)	AUTHORIZATION ISSUED TO		DATE OF ISSUE*
	Department	Office	
Works executed at and supplies issued from the Commonwealth or a State Government Printing Office, Commonwealth factories, Commonwealth workshops, Commonwealth stores or Commonwealth dockyards	All Departments requiring supply		Provided in Treasury Instructions currently No. 13/32
Purchases made or approved by the Commonwealth Stores Supply and Tender Board		Commonwealth Stores Supply & Tender Board Commonwealth Local Stores Board, Sydney Chief Executive Officer, Commonwealth Stores Supply & Tender Board	11. 4. 40
Purchases made or approved by the Contract Board of the Department of Supply	Department of Supply	(limited authorization to approve purchases of certain office machines up to a value of £500 only.) Contract Board & District Contract Boards	28. 2. 56 29. 3. 40

* The date shown in the "Date of Issue" Column is the date of the latest current authorization.
 † In anticipation of amendment to the Regulations.

APPENDIX NO. B
Report Paragraph 23

AUTHORIZATIONS BY SECRETARY, DEPARTMENT OF THE TREASURY UNDER TREASURY REGULATION 52(2)

(Based on Exhibit No. 42/5 presented by the Department of the Treasury)

SUPPLIES DESCRIBED IN TREASURY REGULATION 52(2)	Department	AUTHORIZATION ISSUED TO Office	DATE OF ISSUE*
<p>Works executed at and supplies issued from the Commonwealth or a State Government Printing Office, Commonwealth factories, Commonwealth workshops, Commonwealth stores or Commonwealth dockyards</p>	<p>All Departments requiring supply</p>	<p>Commonwealth Stores Supply & Tender Board Commonwealth Local Stores Board, Sydney Chief Executive Officer, Commonwealth Stores Supply & Tender Board (Limited authorization to approve purchases of certain office machines up to a value of £500 only.)</p>	<p>Provided in Treasury Instructions currently No. 15/32</p>
<p>Purchases made or approved by the Commonwealth Stores Supply and Tender Board</p>	<p>Department of Supply</p>	<p>Contract Board & District Contract Boards</p>	<p>11. 4.40 28. 2.55 29. 3.40</p>
<p>Purchases made or approved by the Contract Board of the Department of Supply</p>			

* The date shown in the "Date of Issue" Column is the date of the latest current authorization of In anticipation of amendment to the Regulations.

SUPPLIES DESCRIBED IN TREASURY REGULATION 52 (2)	AUTHORIZATION ISSUED TO		DATE OF ISSUE*
	Department	Office	
Works, supplies and services which by their nature can be rendered by a State Government Department only.	:All Departments requiring supplies		Provided in Treasury Instructions currently No. 13/52
Works, supplies and services relating to the defence of the Commonwealth	Navy	Secretary (NOTE: Purchase in connexion with ship-building, overhaul and repairs to vessels, boats and launches; urgent purchases by H.M.S. ships, etc.)	1. 3. 41
ditto	C.S.I.R.O.	Secretary (NOTE: In relation to Defence services only)	15. 8. 40
ditto	Health	Director, Commonwealth Serum Laboratories (NOTE: In relation to Defence services only)	21. 11. 44
ditto	National Development - Bureau of Mineral Resources	Mining Engineer, Officer-in-Charge, Run Jungle Operations (NOTE: In respect of supplies for the mining of uranium ore in the Northern Territory, within the limits of the delegations of the Minister for Supply.)	27. 8. 52
Purchases made or approved by the Tender Board of the P.M.C. Department	Contract Board	Contract Board	17. 8. 49
Purchase of pancreas and pituitary Glands and chemical glassware by the Commonwealth Serum Laboratories	Department of Health	Director-General	10. 3. 52
Emergency works, supplies and services for aerodromes and airways facilities and, in respect of specific accidents for accident investigation, research and rescue operations.	Civil Aviation	Chairman, Central Contract Board) Chairman all Regions)	8. 11. 55 (amended 13. 6. 57)

PROCUREMENT ARRANGEMENTS IN THE NEW
SOUTH WALES GOVERNMENT SERVICES

EXTRACT FROM ADVICE RECEIVED FROM THE NEW SOUTH WALES
PUBLIC SERVICE BOARD IN A MEMORANDUM DATED 11TH AUGUST,
1959 (COMMITTEE DOCUMENT NO. TR55.)

- (a) (i) Major Departments or Organisations subject to (New South Wales Public Service) Regulations 197 to 242 (are):

Public Health
Education
Government Stores
Public Works
Lands
Agriculture
Government Printing Office
Technical Education.

- (ii) Major Departments or Organisations not subject to Regulations 197 to 242 (are):

Railways
Main Roads
Government Transport
Metropolitan Water, Sewerage and
Drainage Board
Maritime Services Board
Electricity Commission
Water Conservation and Irrigation
Commission
Housing Commission
Forestry Commission
Soil Conservation Service.

All listed under (ii) above are entitled to purchase under contracts arranged by the State Contracts Control Board. The Department of Railways arranges a number of contracts and publishes a "contract schedule" similar to that issued by the State Contracts Control Board, but much smaller in size and covering only a limited range of goods. Under their constituent legislations these organisations and departments are authorised to make their own purchasing arrangements.

- (b) The Regulations do not apply to works as distinct from stores and materials. Briefly, the following procedures are followed by the Department of Public Works:-

Construction jobs other than schools - Plans, specifications, bills of quantities are prepared by the Department. Tenders are advertised in the press and Government Gazette. Interested parties apply to Department for tender forms etc. On odd occasions in special circumstances, tenders have been restricted to a limited number of selected firms, without advertisement.

Construction of Schools - Generally advertised as above, but in the last year or so, in respect of a number of secondary schools required urgently individual firms have been selected to prepare plans etc. and submit a price for a particular school. During preparation of plans etc. a close liaison is maintained between Department and builders. The builders' proposals, including price, are closely examined and subject to further negotiation if necessary.

Maintenance jobs - Specifications are prepared and advertised. Interested parties apply to Department for tender forms etc.

Painting other than schools - As above for maintenance.

Painting of schools in inner metropolitan area - A list of painters is kept and maintained by the Department from those contractors who have been successful and satisfactory for other public tenders. Five or six are selected from the list and are invited to tender. The selection ensures that a particular painter is given only such work as can be carried out by the required date, and that tenders are distributed over a number of contractors. Prices tendered can be easily checked by reference to the specification and the area to be painted, and prices being continually tested from these and public tenders.

- (c) Regulation 202 provides for the delegation to "other officers of the Public Service approved by the Public Service Board, the power to ..." arrange invitation and acceptance of tenders and quotations. This is a general exemption as distinct from the usually specific exemption in terms of Regulation 242(B), and is little used. Present delegations are to two nominated officers to the Department of Technical Education to invite and accept quotations for items not exceeding £50 in value.
- (d) A list of exemptions under Regulation 242(B) is attached⁴.. The exemptions permit Departments to arrange purchases without going through the State Contracts Control Board, and are reviewed annually.

(The attachment indicated that this kind of exemption was granted "either because of the difficulty in obtaining competitive tenders and arranging contracts or where the circumstances are such that local knowledge is an important factor in determining the most advantageous method of purchasing without reference to this Department." ... Amongst the many items listed in the attachment were foodstuffs for aboriginal stations and reserves, the supply of free milk to schools, the conveyance of school children by motor transport, laundry work for Baby Health centres, clothing for State wards and, in respect of the Government Printing Office, tenders and quotes for printing by private printers.)

- (e)(i) Quotations are publicly advertised except where prices are obtained orally or by direct negotiation
- Where necessary brief specifications are incorporated in the quotation, which is sent to all firms listed.
- (ii) Quotations are not advertised in the Gazette.
- (iii) The period^{for} which quotes remain open is based on the date on which the quotation is distributed, not the date of advertisement, and is entirely dependent upon the urgency of supply and the nature of the goods. In ordinary quotations about a fortnight is allowed to cover postal delays and clerical work involved in the preparation of the quotation by the firm. If the goods are available only from interstate or overseas sources the closing date is extended accordingly. The period of a fortnight may be reduced if goods are urgently required.