

DEPARTMENT OF THE SENATE	
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To the Senate	

1965

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

JOINT COMMITTEE OF PUBLIC ACCOUNTS

SEVENTY-SEVENTH REPORT

TREASURY REGULATION 53

JOINT COMMITTEE OF PUBLIC ACCOUNTS

SIXTH COMMITTEE

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R. H. WHITTORN, ESQUIRE, M.P.

The Senate appointed its Members of the Committee on 4th March, 1964, and the House of Representatives its Members on 5th March, 1964.

(1) Resigned 29th April, 1965.

(2) Appointed 29th April, 1965.

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 Parliament by the Auditor-General in pursuance of sub-section (1.) of section fifty-three of the Audit Act 1901-1950;
- (b) to report to both Houses of the Parliament, with such comment as it thinks fit, any items or matters in those accounts, statement 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.

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JOINT COMMITTEE OF PUBLIC ACCOUNTSSEVENTY-SEVENTH REPORTTREASURY REGULATION 53CHAPTER 1 - INTRODUCTION

Treasury Regulation 53 is one of a number of provisions within Part 111 of the Treasury Regulations under the Audit Act 1901-1964 concerned with the ordering of supplies. The present form of Regulation 53 has been maintained since 1961. Paragraph (1.) of the Regulation reads :-

"Subject to the next succeeding sub-regulation, a summary of the provisions of a contract for supplies the cost of which exceeds Two hundred pounds shall be published in the Gazette as soon as practicable after the contract is made."

The Regulation, therefore, enunciates the basic principle of public disclosure of all Commonwealth contracts arranged. However, this principle is modified by the exemption of all supplies the cost of which does not exceed £200, and, in addition, by two forms of exception provided for in paragraphs (1A.) and (2.) of the Regulation. These are :-

- "(1A.) The last preceding sub-regulation does not apply to a contract for supplies obtained from or rendered by a State Government Printing Office or for supplies that can only be obtained from or rendered by a State Government Department, an authority of a State or a municipal or other local governing body.
- (2.) Where the contract for supplies has been entered into by a State Government and the contract has been published in a State Government Gazette, or by the Administration of the Northern Territory and published

in the Government Gazette of the Northern Territory, it shall not be necessary for the contract to be published in the Commonwealth of Australia Gazette".

3. The Treasury has issued a number of Instructions which relate to Regulation 53. These Instructions are as follows :-

"13/28. If the amount of a contract exceeds £200, Regulation 53 provides that a summary of its provisions shall be published in the Gazette as early as practicable. Gazette summaries should be published under a common heading "Contracts Arranged" and cover all contracts whether arranged as a result of selected quotations, the public invitation of tenders, the issue of certificate of inexpediency or approval of the Governor-General in Council. It is not necessary to publish details of contracts entered into in respect of supplies obtained from a State Government Printing Office or those referred to in paragraph (d) of Regulation 52(2). Orders by Departments on the Commonwealth Printing Office, Commonwealth factories, workshops, etc., are not contracts within the meaning of Regulations 52 and 53."

"13/28A. The words "summary of provisions of a contract" in Regulation 53 imply that details shall be limited in publication and that unit prices should not be given in the Gazette."

"13/28B. Departments shall, however, accede to all reasonable requests for a disclosure of terms accepted and of contracts entered into when made bona fide by interested parties."

* * * * *

4. Your Committee's attention had been drawn to differences of interpretation and practice between Commonwealth Departments as to the amount of detail concerning Commonwealth contracts which they were prepared to disclose to

inquirers. Accordingly, in September, 1964, Your Committee held preliminary discussions with representatives of the Treasury and the Audit Office on a document prepared by the Treasury relating to the history, purpose and interpretation of Regulation 53. Following upon this meeting, Your Committee resolved to proceed to a public inquiry during 1965."

5. In March 1965, Your Committee sought advice from all Departments, Commonwealth Railways, the Commonwealth Stores Supply and Tender Board and the Commonwealth Scientific and Industrial Research Organization on the following subjects :-

- (a) the total number and approximate total value of all contracts, over £200 let during 1963-64 (but excluding contracts let on behalf of the Department or Authority by the Commonwealth Stores Supply and Tender Board);
- (b) the amount of detail included in Gazette notices pursuant to the requirements of Treasury Regulation 53;
- (c) the practice adopted in regard to the information made available to interested parties subsequent to the official publication of contracts let;
- (d) the interpretation placed on the meaning of Treasury Regulation 53 and its attendant Treasury Instructions 13/28, 13/28A and 13/28B.

6. Your Committee held private discussions with representatives of the Department of the Treasury, the Public Service Board and the Auditor-General on 7th May, 1965 to discuss the replies received from Commonwealth Departments and Authorities to the questions listed above. A summary of the answers to those questions is attached as Appendices Nos. 5 & 6. Following this meeting, the Treasury submitted a memorandum to Your Committee which indicated that under the terms of the Commonwealth

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Railways Act and the War Service Homes Act it should be inferred that the Commonwealth Railways Commissioner and the Director of War Service Homes are outside the terms of the inquiry. The acting Secretary to the Attorney-General's Department in a written opinion dated 19th November, 1965, indicated that Regulation 53 has no application to contracts authorized under Sections 17 and 17A of the War Service Homes Act 1919-1962, i.e. to contracts for the erection of group homes on land acquired by the Director and contracts for the erection of homes for eligible persons on land owned by those persons.

7. Having obtained the foregoing information, Your Committee proceeded to public hearings on Friday, 14th May, 1965, Thursday, 20th May, 1965 and Tuesday, 12th October, 1965. The following persons appeared before Your Committee to give evidence on behalf of their Department or Authority :-

COMMONWEALTH STORES SUPPLY AND TENDER BOARD

Mr. A. Harris	Chairman
Mr. F.R. Paice	Acting Chief Executive Officer

DEPARTMENT OF THE TREASURY

Mr. A. Harris	First Assistant Secretary, Budget and Accounting Branch.
Mr. R.J. Ferriman	Acting Administrative Officer

POSTMASTER-GENERAL'S DEPARTMENT

Mr. F.R. Paice	Acting Deputy Assistant Director-General, Stores and Contracts Branch.
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DEPARTMENT OF SUPPLY

Mr. A.J.D. McGill	Assistant Secretary (Contracts and Disposals)
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DEPARTMENT OF HOUSING

Mr. K.D.A. Medbury	Director, War Service Homes Division
Mr. J.P. Elliott	Director of Finance

DEPARTMENT OF CUSTOMS AND EXCISE

Mr. D.J. Roche	Director, Establishments
Mr. J.L. Bloomfield	Chief Accountant

DEPARTMENT OF TRADE AND INDUSTRY

Mr. K. P. Jorgansen	Finance Officer
Mr. P. W. Hickey	Executive Officer, Trade Publicity Department

DEPARTMENT OF THE INTERIOR

Mr. L. L. Gillespie	Assistant Secretary, Planning Establishments and Finance
Mr. D. M. Lalor	Director of Finance and Supply

DEPARTMENT OF THE ARMY

Mr. J. W. Nunn	First Assistant Secretary (Finance and Logistics)
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DEPARTMENT OF CIVIL AVIATION

Mr. G. K. Verney	Assistant Controller, Supply and Transport
Mr. F. M. Pickett	Secretary, Central Contracts Board.

DEPARTMENT OF WORKS

Mr. J. P. Sparkes	Controller of Stores
Mr. J. W. Parsons	Contract Officer

COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH ORGANISATION

Mr. R. W. Viney	Finance Manager
Mr. R. C. McVilly	Deputy Finance Manager

DEPARTMENT OF TERRITORIES

Mr. L. W. Temby	Officer-in-Charge, Finance Section
Mr. A. J. Sutherland	Official Representative, Department of Territories, Sydney.
Mr. O. J. Cameron	Superintendent of Stores, Department of Territories, Darwin.

DEPARTMENT OF LABOUR AND NATIONAL SERVICE

Mr. B. K. Phelan	Director, Establishments and Finance Branch
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DEPARTMENT OF HEALTH

Mr. M. Carroll	Assistant Director-General, Establishments and Finance Branch
Mr. L. B. Holgate	Director, Finance Section

REPATRIATION DEPARTMENT

Mr. R. G. Kelly	Secretary, Repatriation Commission
Mr. G. K. Lewis	Inspector, Stores

Following upon the evidence taken in Public Hearings, Your Committee held private discussions with the Observers and the representative of the Secretary to the Attorney-General's Department on Monday, 15th November, 1965 and Thursday, 18th November, 1965. The Observers who assisted us at both private discussions and Public Hearings were as follows :-

Mr. B. J. O'Donovan	-	Attorney-General's Department
Mr. F. C. Nordeck	-	Office of the Public Service Board
Mr. A. Harris	}	Department of the Treasury
Mr. M. G. Cowie		
Mr. G. J. Balfour		
Mr. R. G. Parker	}	Audit Office
Mr. E. S. Flear		

CHAPTER 2 - THE ORIGIN AND HISTORICAL DEVELOPMENT OF TREASURY REGULATION 53

The Treasury submitted a most informative paper to Your Committee which set out the various changes made to Regulation 53, Committee file 1965/1/76 or its counterparts, between 1902 and 1961. A chronological record of these changes together with amendments to the relevant instructions, are set out in Appendices Nos. 2 and 3.

The Treasury informed us that the origin of public disclosure of tenders can be traced back to colonial regulations. As far as the Treasury was able to ascertain, the requirement to gazette information concerning contracts entered into by an Australian Colony first occurred in New South Wales in 1823. It was stated that the regulations regarding the Commonwealth's contracts have been influenced mainly by the rules obtaining in the Colony of Victoria at Federation. That Colony's "General Regulations Respecting Public Moneys" used the expression "an abstract", in 1857 in requiring that all contracts entered into on behalf of the Government of Victoria be published in the Government "Gazette". Since its inception in 1902, Treasury Regulation 53 has retained the principle of publication in abstract.

Q. 6 and
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The Treasury stated that it seems quite clear (although no definitive statement can be located) that the prime purpose of notification of contracts arranged in the Government Gazettes has been public disclosure of government contracts. This practice would tend to prevent any tendency towards, or suggestion of, departmental favouritism to certain tenderers; and to provide the public with an assurance that, "justice must not only be done, but must appear to be done". The Treasury added that public disclosure ensures that all interested parties can ascertain the result of the particular tenders in which they may have been interested.

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CHAPTER 3 - AN EXAMINATION OF THE EXISTING
TREASURY REGULATION 53

(A) SUB- REGULATION 53 (1.)

2 In a written opinion dated 13th May, 1965, the Secretary to the Attorney-General's Department, Mr. E.J. Hook gave us these answers to the following questions:-

"(a) Q. Does the fact that regulation 53 of the Treasury Regulations requires publication of a summary of the provisions of a contract for supplies give rise to an implication that unit prices for supplies that are the subject of a contract shall not be published?

A. No.

(b) Q. Are Treasury Instructions 13/28A and 13/28B or either of them invalid?

A. Instruction 13/28A is invalid in so far as it directs, in effect, that unit prices should not be published in the Gazette. Instruction 13/28B is probably valid.

(c) Q. If Instruction 13/28B is valid, does it impose an obligation on Departments to obtain the consent of successful tenderers before releasing to interested parties details of contracts in addition to those details that are gazetted?

A. No."

3 Amplifying these answers in the body of the opinion, Mr. Hook said:-

Question (a)

It seems clear that the answer to this question depends entirely upon the meaning to be attributed to the words 'a summary of the provisions of a contract' in regulation 53(1.)"

These words are to be construed according to their ordinary grammatical meaning. The Shorter Oxford English Dictionary defines 'summary' to mean -

'A statement containing or comprising the chief points or the sum and substance of a matter'."

The question therefore arises whether a publication of a matter relating to a contract which omits any reference to unit prices or to material from which unit prices may be deduced amounts to publication of a statement

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...containing the chief points or the sum and substance of the provisions of the contract. In my view it does not. The publication of such a statement in the Gazette would not, in my view, satisfy the requirements of regulation 53."

Question (b)

Treasury Instructions are made by the Secretary to the Treasury in pursuance of powers conferred upon him by sub-regulation (1.) of regulation 127A of the Treasury Regulations, which provides:-

'127A - (1.) The Secretary to the Department of the Treasury may give to persons employed in the service of the Commonwealth or to any other persons who are subject to the provisions of the Act directions, not inconsistent with the Act or any other Act or with any regulations under the Act or any other Act, for or in relation to any of the matters referred to in paragraphs (a) to (f), inclusive, of sub-section (1.) of section 71 of the Act.'

Having regard to the answer I have given to question (a), it follows that I am of the opinion that Treasury Instruction 13/28A is in part inconsistent with Treasury Regulation 53. As the power conferred by regulation 127A is specifically a power to give directions 'not inconsistent with the (Audit) Act or any other Act or with any regulations under the (Audit) Act or any other Act', I think that so much of Treasury Instruction 13/28A as deals with the publication of unit prices is invalid."

As to Treasury Instruction 13/28B, the legal position is not entirely clear. Perhaps, for present purposes, it would be sufficient to say that that instruction seems to me to read as though it was not intended to have any operation independently of the purported restriction on publication of unit prices in the Gazette provided for in Treasury Instruction 13/28A."

As a matter of law, however, I am inclined to the view that Instruction 13/28B is valid in so far, of course, as it is not inconsistent with any provision of a Commonwealth Act or Regulation that is applicable to a particular case."

Question (c)

Even on the assumption that Treasury Instruction 13/28B is valid, it does not in terms place an obligation upon Departments to obtain the consent of successful tenderers before releasing to interested parties details of contracts in addition to those gazetted. In my view, such an obligation cannot be read into the Instruction by implication."

14. In regard to contracts let overseas, the Treasury (Overseas Accounts) Directions issued by the Governor-General (under Section 63 of the Audit Act) which came into force on 1st July, 1965, specifically preclude Regulation 53 from applying outside Australia. During the Public Hearing on 20th May, 1965, the Audit observer, Mr. Parker said that he understood that the Overseas Accounts Arrangements operating until 1st July, 1965 did not exempt the provisions of Regulation 53 from accounting outside the Commonwealth; the Treasury's observer, Mr. Balfour, concurred with this view.

15. The Treasury stated that the new Directions recognize the existence of purchasing procedures overseas which differ from those in operation within Australia by specifying that "competitive tenders" be invited (rather than that tenders be "publicly invited" as is the case in Australia). The Treasury added that the change is based largely on the practice in the United Kingdom where Government purchasing procedures require that competitive tenders be sought from selected suppliers - the "trades list system". In these circumstances, publication is not required.

16. Mr. Jorgensen of the Department of Trade and Industry said that whilst Regulation 53 does not, in itself, exclude overseas contracts, to his knowledge, no one has published overseas contracts in the "Gazette", nor does this seem to be the intention of Regulation 53. He added that he could not envisage what reason there would be for

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Q's. 246
and 247

instance, to publish in the "Gazette" the letting of a contract for cleaning an office in Hong Kong. The Audit observer, Mr. Parker stated that from the commonsense point of view there is something in what Mr. Jorgensen said regarding the question of gazetting even summarized details of contracts, such as the Hong Kong contract referred to above.

(B) SUB-REGULATION 53 (2.)

17. The Acting Deputy-Assistant Director-General (Stores and Contracts) of the Postmaster-General's Department, Mr. F.R. Paice, in a letter dated 28th May, 1965 drew Your Committee's attention to the provisions of sub-regulation (2.). Mr. Paice in evidence before Your Committee had said that if the Department acted under the State Government contract, the purchase would not be gazetted as a Commonwealth purchase. He had added that the regulation provides that the Department can only use the State Government contracts, and not gazette them, if the State Government has in fact gazetted the contracts in a State Government "Gazette".

Q's 118 and
122

18. Mr. Paice supplied the following information subsequently in the letter of 28th May, 1965: -

"My understanding is that the New South Wales Government regulations do not provide for gazettal, but the tender price may be disclosed to unsuccessful tenderers only on inquiries at the Board's offices. The name of the successful tenderer is not disclosed.

"In South Australia, the Tender Board does not advertise their contracts, nor do they disclose tender prices or other information."

"My answer therefore needs amplification to the extent that the Post Office is placing orders under State Government contracts in New South Wales and South Australia, that these contracts are not gazetted by the originating authority and to this extent, Post Office orders over £200 in value are not gazetted.

"As indicated in my evidence there are definite administrative advantages in using State contracts and it is considered desirable to continue this arrangement. However, the question now arises as to whether Treasury Regulation 53 precludes their use in New South Wales and South Australia, because of non-gazetted of such contracts.

"This poses a problem of general principle, and I have accordingly raised the matter with the Treasury. I have in fact, suggested that this is a further feature (additional to those already put forward in evidence before the Committee) which might well be examined with a view to amending the existing regulation."

Q. 679

19. The representative of the Secretary to the Attorney-General's Department said that he did not fully understand sub-regulation (2.) of regulation 53. He said:

"I understand that State Governments do not purchase for the Commonwealth and the way in which I have understood Departments to have read sub-regulation (2.) of regulation 53 is rather as follows: That if a State Government has a contract for supplies with a particular contractor for a particular class of item, and the Commonwealth wants supplies of that item, the Commonwealth may, as it were, make a similar contract with the supplier for those supplies on the same terms as the State is supplied with the goods. If the Commonwealth makes such a contract and if the contract which the State has with the contractor has already been published in a State Gazette, it is not necessary for the Commonwealth to publish under 53(i.) in the Commonwealth Gazette the contract with the supplier that it has made."

20. He added subsequently that sub-regulation (2.) assumes the possibility that State Governments may gazette their contracts and that if they do and if the Commonwealth takes advantage of a State contract, as the regulation seems to say, then the Commonwealth does not have to gazette its contract. Q. 680

21. The Treasury's Observer, Mr. Harris, informed us of the way in which the Commonwealth utilizes a State Government contract in order to obtain goods and services. He said that where the Commonwealth has entered into an arrangement with a State Government for the use of its contracts, the State Government, in arranging contracts with suppliers, provides that facilities of that contract will be available to a range of State Departments and authorities and also Commonwealth Departments and authorities. He said that although he was not certain of the exact point at which a contract is formed between the supplier and the Commonwealth, it was probably at the point where the Commonwealth places an order with a contractor under the terms of a particular State contract and that it would be at this time that the question of whether or not gazettal was required, in the terms of this regulation, would arise. Q. 682

22. He mentioned that the ethics of the Commonwealth publishing information which stems from an arrangement made basically between a State Government and a supplier, where that State Government does not see fit to publish the information itself, were doubtful. He added that if the terms of the regulation were carried out as its present form suggests, many Gazette notifications would be required in respect of the terms of one contract. Q. 682

Mr. O'Donovan said that he thought the confusion

about the operation of sub-regulation (2.) arose from the use of the word "contract" in relation to the transaction in which the State is a party.

Q. 682

(Mr. O'Donovan) "If Mr. Harris' description of the way in which the facts occur is correct, then probably as a matter of law there is no State contract. There is simply a standing offer by a supplier to a State to supply the State, its instrumentalities and certain Commonwealth Departments with certain goods over a given period at a price quoted. That offer is susceptible of acceptance by the parties named by the tenderer or by the State in calling tenders when requirements for the goods in question arise. On that footing a contract is made only when an order is placed by the State, its authority, or the Commonwealth Department with the offerer, the tenderer who has made a standing offer to all these people. Each time an offer is accepted there is a new contract. Technically that contract would require to be gazetted in the "Commonwealth Gazette" if the offer were accepted by a Commonwealth Department notwithstanding that the offer had been previously accepted by a State Government Department and that fact had been published in a State gazette. The Commonwealth contract would be a new contract although it would be one made by the acceptance by the Commonwealth of the same offer that the State had accepted."

23. In answer to a further question, Mr. O'Donovan said:-

Q. 683

"I do not know that there is much in the way of public disclosure in relation to Commonwealth contracts simply by reason of a State gazetted its own contracts unless the State gazettal shows that the contract or offer made to the State by the tenderer is susceptible to being accepted by the Commonwealth."

Q. 680

24. Mr. Harris said that his Department agreed that the interpretation of sub-regulation (2.) is doubtful and that it is also doubtful as to whether the requirements laid down in the regulation are practicable of application under modern circumstances.

25. Mr. Harris informed us that he considered that if we proposed any change in the existing arrangements, his Department would have to discuss the matter with the State Governments whose contracts the Commonwealth presently utilizes in order to ascertain their views. He said that the Treasury would not take any unilateral action in such a sphere as the Commonwealth may lose the present valuable facilities. He added that the Treasury would be happy to discuss any suggestion that the Committee puts forward with the State Governments to ascertain their reactions with a view to finding a solution acceptable to the State Governments, the Treasury and Your Committee. Q. 696

CHAPTER 4 - THE REQUIREMENTS OF REGULATION 53 FOR
THE GAZETTING OF DETAILS OF CONTRACTS ARRANGED

20. Evidence presented to Your Committee indicated that a marked lack of uniformity exists among Departments and Authorities in regard to the amount of detail of contracts arranged which regulation 53 requires should be gazetted. Appendix No. 5 is a summary of the practices of Departments and Authorities as shown by their answers to Question (a) (See Para.) Committee 51
12/7/77
of Your Committee's letter of 24th March, 1965 and to questions posed during Public Hearings. The following discussion of the views of Departments and Authorities is based only on those Departments and Authorities which gave evidence before Your Committee in Public Hearing.

(a) Commonwealth Stores Supply and Tender Board

21. This Board regards the five details which it gazettes, (namely, the tender schedule or quotation number, the type of material or service, the name of the successful tenderer, the name only of the State in which the successful tenderer is located and the total value of the contract, (in the case of fixed quantity contracts only) as the minimum amount of detail which can be gazetted. In regard to the publication of an abridgement of the tenderer's address, this practice was adopted as a result of a request from the Government Printer to reduce the amount of space required for the publication of departmental contracts.

22. The Board excludes the total value from period contracts but otherwise, the details gazetted are the same as those gazetted for fixed quantity contracts. Mr. Harris said that most period contracts are not for fixed quantities and that usually an approximate quantity is indicated in the specification. Mr. Paice said that the main reason for omitting the value in a period contract is that it could only be shown as an approximate amount. He added that a fixed quantity contract, on the other hand, is a definite undertaking by the Commonwealth to purchase an exact number of supplies at a price.

29. The Board informed us that the information published is considered sufficient to enable interested parties to ascertain readily the result of tenders or the extent of the Board's purchases which exceed £200 per contract. Mr. Harris said that this view was based on the fact that there are very few complaints about the Board's practice.

Exhibit 77/1
and Q. 40

(b) Department of the Treasury

30. The Treasury gazettes the five details that the Commonwealth Stores Supply and Tender Board gazettes.

Exhibit 77/2

(c) Postmaster-General's Department

31. In the case of fixed quantity contracts, the Postmaster-General's Department gazettes the details that the Commonwealth Stores Supply and Tender Board gazettes. However in the case of period contracts or approximate quantity contracts, the Department gazettes the period covered.

Exhibit 77/3

(d) Department of Supply

32. In contrast to the details gazetted by the above three organizations, the Department of Supply omits the address of the successful tenderer. However, contracts are gazetted under States and where the location of the supplier is different from the State Office requiring the supply, the location of the contractor is gazetted. The Department advised us that although it had no objection to the gazetting of the address, it doubts whether any practical advantage will accrue from doing this. The Department claimed that interested parties are generally able to identify contractors from their names only.

Exhibit 77/4,
Q. 146 and
Committee file
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Q.146 and
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33. In regard to the gazettal of the period involved in period contracts, the Department's view is that all tenderers would know the period from the original specifications and, therefore, there would be little advantage to be gained from gazetting it. In addition to omitting the address and the period covered from the Gazette notices of period contracts, the Department has maintained the practice of omitting an estimate of the total value of period contracts for forty years. The reason for this practice is that the Department is not able to calculate the eventual expenditure. However this deficiency in the Gazette notice is balanced by the Department's readiness to disclose the accepted unit price or prices subsequently to any inquiring unsuccessful tenderer.

(e) Department of Customs and Excise

Exhibit
77/6

34. This Department gazettes the same details as the Commonwealth Stores Supply and Tender Board apart from the tender schedule or quotation number which the Department does not use. In addition, the Department would gazette the duration of a contract if it was relevant.

Exhibit 77/6,
Q's. 216,
220 and 221
and
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35. The Department informed us that a review had shown that 5 out of 23 contracts over £200 in value had not been gazetted in 1963-64. This was the result of assumptions in some instances that where certificates of inexpediency were obtained from the Commonwealth Stores Supply and Tender Board, or where the goods have been supplied by a sole supplier, a notice was not necessary. Mr. Roche told us that he personally found it very difficult to understand how some officers had arrived at such assumptions. He also informed us that his Department was making inquiries to determine which Department has the responsibility to gazette the contract when the Department of the Interior arranges a cleaning contract on behalf of his Department. We were subsequently advised that the responsibility lies with the Department of Customs and Excise.

(f) Department of Trade and Industry

36. This Department does not gazette the address of the successful tenderer but otherwise its details are the same as those gazetted by the Commonwealth Stores Supply and Tender Board. The Department said that it had no reason for not gazetting the address.

Exhibit 77/7
and Q's. 235
to 239 and
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37. In relation to contracts let overseas for the supply of goods and services overseas, the Department had not been gazetting these contracts. However, the new Treasury (Overseas Accounts) Directions which came into operation on 1st July, 1965, exempt overseas contracts from the provisions of regulation 53. In 1963-64, the value of contracts let overseas by the Department was £761,100.

(g) Department of the Interior

38. In general, the various Branches of the Department of the Interior gazette the name of the successful tenderer, a brief description of the work or service, the total value of the contract and its location. The Department would gazette the address of the successful tenderer if it was located in a number of centres. In addition to the preceding four details, some Branches which use tender schedule and quotation numbers gazette this detail. We were informed subsequently that the Department has issued instructions for the uniform gazetting of contracts arranged. The information to be included in the Gazette in future will be the quotation or tender schedule number, the locality and description of the work required, the amount of the contract and then the contractor's name and address. In the case of period contracts, the total value is not gazetted as it would be only an estimate.

Exhibit 77/8,
Q's. 279 to 284
and Committee
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(h) Department of the Army

39. We were informed that if this Department had arranged any contracts during 1963-64 by calling public tenders, the detail published in the Gazette would have been sufficient to identify the Gazette notice with the advertisement for tenders

Exhibit 77/9

Exhibit
77/9

and would include a brief description, location, the name of the successful tenderer and the amount of the contract. The Department added that having regard to Treasury Instruction 13/28 it is realised that this Department has misinterpreted the intention of Treasury Regulation 53 and that contracts let under the selected quotation system should have been published in the Gazette. Appropriate action had been taken to ensure that the requirements of Treasury Instruction 13/28 are met in the future and that all contracts over £200 are published in Gazette notices.

Gazette No.
78 of
1965

40. An examination of Gazette No. 78 of 1965, indicated that the Department of the Army included several details in a Gazette notice not mentioned above, i.e. the address of the successful tenderer, the date of acceptance and the date of completion of the contract.

(i) Department of Civil Aviation

Exhibit 77/10
and Q.345

41. The Department of Civil Aviation notifies the same details in the Gazette as does the Commonwealth Stores Supply and Tender Board. In regard to period contracts, the Department inserts the words "period contract" in lieu of the total value.

(j) Department of Works

Exhibit
77/11

42. The Department of Works gazettes the location, a brief description, the value (except in the case of schedule of rates contracts), and the name and the abridged address of the successful tenderer. The "abridged address" refers to the city or town in which the tenderer is located. The Department considers that location is an essential element of its contracts, particularly in regard to works and services. The Department said that when publicising the invitation to tender, it indicates the locations of projected works as this information is vital to potential tenderers and contractors (on other works) already in the area and thus, it was claimed, it follows that gazettals of acceptance of contracts should follow the same pattern. The Department further considered that a tender schedule or quotation could be stated, but that it is not necessary in relation to its contracts.

43. In regard to period contracts covering the supply of stores or works and services at scheduled rates, it is the Department's general practice to gazette the locality and description of the contract; the words, "Schedule rates" in the column headed "Amount of Contract"; the name of the contractor and an abridged address (as above). Although the Department said that it had not published the period covered by the contract consistently, it considered that this might well be done.

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1965/1/77

(k) Commonwealth Scientific and Industrial Research Organisation

44. This Organization gazettes the location, a brief description, the total cost, the name and address, the date of acceptance and the date of delivery or completion of the contract. Although the Organization uses a system of tender schedule and quotation numbers, it does not include them in the Gazette notices for it considers that sufficient detail is already gazetted to satisfactorily distinguish contracts. The Organization added that "date of acceptance is important in that prices in contracts being fulfilled in oversea countries are frequently subject to price variations; the publication of the date of acceptance ensures that all parties know whether the price variation occurred before or after the date of acceptance of the contract."

Exhibit 77/12
and Q's. 428 to
431.

(1) Department of Territories (Sydney Tender Board)

45. This tender board gazettes the same details as the Commonwealth Stores Supply and Tender Board apart from the successful tenderer's address. Mr. Sutherland told us that the addition of the address would not improve the Gazette notice. The period covered is inserted in the Gazette notice for period contracts when a definite value during the period cannot be established at the time of publication.

Exhibit 77/13
and Q. 451

(m) Department of Territories (Darwin Tender Board)

46. This tender board gazettes the same details as does the Sydney Tender Board. In appropriate cases, the location of the work or service is also gazetted.

Exhibit 77/13
and Q. 478

(n) Department of Labour and National Service

Exhibit
77/4 and
Gazette
No.
81/1965

47. The Department of Labour and National Service informed us that it gazettes a brief description of the contract, the name and address of the successful tenderer, the location (in the case of office cleaning contracts) and the amount. A check of a recent "Commonwealth Gazette" indicated that the Department had not gazetted the address of the successful tenderer.

48. The Department stated that its attitude towards Treasury Regulation 53 is as follows :-

"(i) All contracts for the supply of goods or services which are available from more than one supplier and which exceed £200 are gazetted.

Exhibit
77/14

"(ii) Where office machines are purchased following the approval of the Commonwealth Stores Supply and Tender Board no gazettal is made.

"(iii) Where the purchase of an item or items amounting to more than £200 is made from a sole supplier, it is not gazetted.

"(iv) Where cleaning contracts are renewed at existing contract conditions, no gazettal is made."

Exhibit
77/14

49. The Department said that it considers that the requirement to gazette contracts is primarily intended to be the means of advising competitors of the contractor of the acceptance of the tender or quotation and that it is accordingly considered that there is nothing to be gained from gazetting contracts entered into with a sole supplier. In regard to contracts for office cleaning, the Department said that it gazettes the contract arranged after public tenders have been called. The Department then renews these contracts only where the contractor has carried out the terms of the contract satisfactorily. The Department informed us that it considered that as the contractor was the lowest satisfactory tenderer originally, the renewal of the contract is regarded as an extension of the contractual period and therefore there is no reason to gazette the details again.

(o) Department of Health

50. The Department of Health includes the tender schedule or quotation number, the location, a brief description, the name of the successful tenderer and the amount of the contract in its Gazette notice. We were informed that there was no particular reason why the address of the successful tenderer was omitted.

Exhibit 77/15
and Q. 551

51. A feature of the Gazette notices of the Department of Health is that the total quantity of the items required is set out. This means that where the items required are of the same type, the unit price can be calculated by dividing the number of units required into the total value of the contract.

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1965/1/77

(p) Repatriation Department

52. The Repatriation Department gazettes the same details as the Department of Health apart from including the quantities required. In regard to gazetting the successful tenderer's address, the Department said that it maintained a flexible attitude, for instance, it would not consider that it was necessary to gazette the address of a major firm but it may gazette the address in the case of a contract for fruit and vegetables.

Exhibit 77/16
and Q's. 573
to 575

53. In the case of period contracts, the Department said that it gazetted both the period covered and an estimate of the value of the stores or services. Mr. Kelly said that the Department endeavours to be as accurate as possible in making the estimates of the quantities of a supply required as the volume often determines the unit prices. The Department in examining the tender costs and before selecting a contractor, calculates the whole cost of that particular tender on the basis of the prices quoted for the estimates of the quantities the Department requires. This estimated cost may then be included in the details gazetted.

Exhibit 77/16
and Q's. 585 to
588.

CHAPTER 5 - THE DISCLOSURE OF DETAILS OF CONTRACTS
ARRANGED SUBSEQUENT TO GAZETAL

54. Treasury Instruction 13/28B permits Departments to exercise discretion when acceding to requests for a disclosure of terms accepted and of contracts entered into by the Commonwealth. As the following discussion and the summary of Commonwealth Departments' and Authorities' views set out in Appendix No. 6 show, there are considerable variations in the practices adopted by Departments and Authorities in exercising this discretion.

(a) Commonwealth Stores Supply and Tender Board

55. The Commonwealth Stores Supply and Tender Board informed us that it would judge each request for the disclosure of details of the successful tender subsequent to gazettal on its merits, but that, generally speaking, all genuine requests from interested parties are given sympathetic treatment. The Board stated that the information published generally meets the requirements of interested parties and that there is no need to publish other contract provisions. It said that individual tender prices have always been regarded as confidential between the tenderer concerned and the Board and that the Board's policy, generally, has been not to disclose the unit price of successful tenderers. It considered that, as a general rule, the public interest is best served by not publishing prices or making them known to unsuccessful tenderers and other interested parties. It is the Board's view that this policy tends to prevent collusion between tenderers and could be of material assistance to a tenderer who may wish to tender below "ring" prices determined by some trade associations. However, the Board added that circumstances may justify a disclosure of further information to that published and unsuccessful tenderers may then be advised that the reasons for failure may have been because of such matters as quality, efficiency of units, conformity of specifications, terms of delivery and, where appropriate, that price considerations rule them out. In some circumstances, the Board said that it may be advantageous to write to the successful tenderer and

enquire whether there is any objection to the unit price being made known to an unsuccessful tenderer, with the Board's approval, unit prices may be disclosed. However, Mr. Faice could not remember any occasion on which the Board had so written to a successful tenderer.

Exhibit 77/1

56. Mr. Harris defined the "public interest" from the point of view of a purchasing officer in the following terms : the ability of the Commonwealth Stores Supply and Tender Board to acquire stores and supplies for the Commonwealth at a standard that it requires and at the cheapest possible price. In the broader context of a Treasury Officer, he said that he appreciated that some other factors could enter into the question, such as the provision of some support to Australian industries in their infancy stages. Defence considerations might also suggest the desirability of establishing a particular industry in Australia for security reasons. He added that some factors could enter into the question from the broad policy point of view and those factors might alter the view that he would take as Chairman of the Commonwealth Stores Supply and Tender Board.

Q. 21

57. Mr. Harris defined an "interested party" as being either an unsuccessful tenderer or, occasionally, trade or industry associations.

Q. 19

58. Mr. Harris told us that he believed that there had been occasions where the fact that it had not been the practice of the Board to publish unit prices had encouraged an individual tenderer to ignore a price fixed by some kind of ring arrangement. He said that the Board had a number of devices which it adopted with the view of upsetting such arrangements, e.g. the Board may place the whole contract with the first suitable tender opened. These devices have resulted, at times, in an individual tenderer submitting a price on a subsequent occasion which was not in accordance with the ring price. He added that it is the Board's belief that an individual tenderer would not do this if the unit prices were made public as a matter of course, as the tenderer would immediately place himself at the mercy of his trade association.

Q's. 47 and 52.

(b) Postmaster-General's Department

59. We were informed that the normal practice adopted by this Department in regard to information made available to interested parties subsequent to gazettal is not to disclose any information other than that published in the "Commonwealth Gazette". However, where special circumstances justify such action, the Department may disclose information regarding general price levels (as distinct from actual tender prices), reasons for non-acceptance, such as price or technical considerations and the actual items concerned. The Department further informed us that it has always regarded the individual tender prices as confidential between the tenderer concerned and the Department. Accordingly, it has been the Department's policy not to disclose unit prices and it is considered by the Department that the public interest is best served by not publishing such prices or making them known to unsuccessful tenderers. It is the opinion of this Department that this policy not only preserves the essential features of the tender system but also tends to encourage individual firms to tender below common prices which may, from time to time be determined by a group.

Exhibit 77/3

60. The Department said that it may give some general indication of the price levels at which it is obtaining supplies to a new manufacturer who may wish to set up to manufacture equipment in Australia because it is considered that it would be in the departmental and national interest to have vital supplies manufactured locally. Mr. Paice described "some general indication" as "in the nature of a price range".

Exhibit 77/3
and Q.108

61. Mr. Paice told us that he interpreted the "public interest" as encompassing :-

- (i) the Commonwealth representing the taxpayer in the expenditure of public moneys;
- (ii) tenderers and contractors to the Post Office; and
- (iii) the public at large.

Q's. 106,
109 and 110

He told us that he considered "interested parties" covered unsuccessful and potential tenderers.

Q's. 106,
109 and
110.

62. We were informed that it has been the Department of Supply's practice over many years to advise any unsuccessful tenderer or bona fide potential tenderer for goods or services, on application, the name of the successful tenderer and the unit price. The Department added that apart from possibly disclosing the successful tenderer's delivery rate to an unsuccessful tenderer, where this was the critical factor in the non-acceptance of the inquirer's tender, it would not disclose any other detail of the accepted tender. If an unsuccessful tenderer requests reasons for the non-acceptance of its tender for reasons other than price, the Department will give the unsuccessful tenderer details of the deficiency of its tender, usually in writing, e.g. delivery rate is unsatisfactory; the product did not conform to the specification required.

Exhibit 77/4
and Committee
File 1965/1/77

63. The Department said that Treasury Instruction 13/28B obliged it to advise unsuccessful tenderers, on application, the name of the successful tenderer and the unit price. Mr. McGill said that "terms accepted" must include "price" and by satisfying this, his Department was doing no more than is provided for in Instruction 13/28B. He added that the issue of this instruction merely gave support to his Department's well established practice. He informed us that in 1929, his Department had indicated to the Public Service Board that it proposed to continue its practice of gazetting unit prices except in the cases of multi-item contracts where the listing of unit prices would have consumed an undue amount of space. He was unable to inform us of the date when the Department discontinued the gazetting of unit prices but he said that although his Department would be opposed to a resumption of this practice, because of the effect on the volume of clerical and typing work, together with the increased size of the "Gazette", it would wish to continue to disclose unit prices subsequently.

Exhibit 77/4
Q's. 152, 155,
156 and
Committee
file 1965/1/77

64. In support of its view that unit prices should be divulged, the Department gave the following reasons :-

- "(i) the spending of public money is involved and all genuinely interested parties have an undoubted right to know the prices the Department is paying for the supplies it purchases;
- (ii) all such parties are entitled to expect that contracts will be awarded on the basis of complete impartiality and confidence in such impartiality is best promoted by disclosure of contract prices; in addition it demonstrates in the most effective way that the Department has nothing to hide and thereby strengthens the confidence of its potential suppliers that everything is open and above board;
- (iii) disclosure is considered to be an additional and effective safeguard against possible malpractice in the use of public funds;
- (iv) it is also likely to be the means of encouraging keener competition."

Exhibit 77/4

Q. 166

65. A fifth reason which Mr. McGill supplied was that it may result in potential tenderers not wasting their time in tendering when they learn that they are not equipped to supply the Department.

Q's. 161,
170 and 181

66. Mr. McGill told us that there were two exceptions to the general rule that his Department would disclose unit prices. He said that his Department's view of rings is that if by some means it can encourage someone to tender below the ring price, it would be contrary to the public interest to disclose. If the Department can obtain a tenderer who is capable of meeting its requirements at a lower price than that of the ring, it is in the public interest to dispense with public tenders, issue a certificate of inexpediency and contract directly without gazettal or disclosure of prices. He added that the Department was of the opinion that the adoption of such a procedure was fully justified when it is confronted with unethical dealing by e.g. manufacturers. Mr. McGill indicated that his Department would wish to have this practice covered by any reframing of the regulation which may be considered necessary. The other category of contracts which the

Department of Supply would like to have exempted by any reframing of regulation 53 are the so called "classified" contracts. The representative of the Attorney-General's Department Mr. B. J. O'Donovan said :-

".... insofar as the Attorney-General's Department can properly express any view on policy here, it is our feeling that it would be desirable to have some let out from this requirement in Treasury Regulation 53 (1.) to enable Departments in particular cases not to gazette. We would think that the proper authority to determine that issue would be within the Department concerned rather than within the Treasury, more particularly, I suppose, because of security issues that may arise in relation to defence and other contracts. There may be other classes of contracts dealt with by other Departments which, for good reasons, should not be disclosed to the public generally. To permit this practice to be adopted - and lawfully adopted - we would think that an amendment of sub-regulation (1.) of Regulation 53 would be required."

(d) Department of Customs and Excise

67. This Department informed us that no enquiries have ever been received from an interested party. The Department said that the majority of its contracts are concerned with specialized laboratory equipment or supplies for which there is only one Australian agent or manufacturer. However, if a reasonable request was received, a disclosure of the terms accepted, including unit prices, would be made because it is considered that such disclosure is required by the terms of Instruction 13/28B. Mr. Bloomfield told us that he would first satisfy himself by judicious questioning that the interested party in fact was genuine and then he would supply details of the tender to the inquirer.

Exhibit 77/6
and Q. 229

(e) Department of the Interior

68. The Department of the Interior informed us that, generally, reasonable requests from interested parties for further information subsequent to the official publication of details of contracts arranged are met, but the detailed break-up of

Exhibit 77/8
and Q's. 288
294 and 296

Exhibit 77/8
and Q's. 228,
294 and 296.

the tender amounts and unit prices are not disclosed. The Department added that apart from the requirements of the Treasury Instructions, it is considered that interested persons and the public generally should be informed on the expenditure of public moneys where the amount involved is substantial. Mr. Gillespie told us that the main reason for the policy of non-disclosure of unit prices was that most of the firms contracting with the Department would be opposed to such a disclosure as both tenderers and the Department regard the unit prices as confidential. In addition, the Department considers that it is unnecessary because, if the total price is disclosed, that is sufficient to indicate that the matter has been dealt with fairly.

(f) Department of Civil Aviation

Exhibit 77/10

69. The Department of Civil Aviation informed us that it notifies all unsuccessful tenderers in writing that their offers have been declined and that no other information is supplied unless a specific request for further details is received. If an unsuccessful tenderer does make such a request, it is notified in writing of the specific reasons why its offer did not meet the Department's requirements, i.e. price, technical acceptability, delivery time or prior performance. If the unsuccessful tenderer requests the unit rates or other particulars of the successful tender, these would be supplied to the fullest extent consistent with propriety. If an inquirer was not a tenderer, but can demonstrate a real interest in supplying the Department, subsequently, the inquirer may consistent with propriety, be provided with details of the previous successful tender.

Q. 348

70. Questioned about the meaning of "consistent with propriety," Mr. Pickett said that there are cases in which unit prices in themselves do not mean a great deal so that a basis of comparison has to be found. He illustrated this point by referring to foam compounds for which a certain rate per gallon would be quoted. He said that as each compound is made to a particular specification, which is the property of, and confidential to,

its manufacturer, to give any significance to the unit price would involve disclosing the details of the specification. He said that his Department would not be prepared to do this as it would be a breach of confidence of the supplier. However, if the items are precisely the same, the unit rates are significant and the Department is prepared to disclose them as it considers that it has nothing to hide and that such disclosure promotes public confidence in the Department. Q. 348

71. The only proviso to this rule of disclosure would be a situation in which the Department receives level tenders. Mr. Verney said that collusive tendering could probably be best combatted by continuing to permit Departments to use their discretion in deciding whether to disclose unit prices. Q's. 348, 358 and 359
Mr. Pickett considered that collusive tendering might possibly be combatted by making one specific officer in the Department responsible for approving the non-disclosure of this information.

72. The Department of Civil Aviation mentioned in its submission that it would never disclose the terms of an unsuccessful tender. Mr. Verney said that such requests had been received only on rare occasions and it was possibly because his Department's policy of non-disclosure in such instances was well known that few requests are received. He said that his Department was prompted to raise this question with us because it is not provided for in the Regulations. Q's. 362 and 363
He added that the information is confidential and it is of no interest to the public, apart from the successful tenderer, which could determine the margins between its tender and the unsuccessful tenders and this may operate to the disadvantage of the Department when it calls for tenders in the future.

(g) Department of Works

73. After contracts have been arranged by the Department of Works, this Department follows the following procedure :-

"(i) Copy of Gazette Notice placed on departmental Branch Office notice boards.

Exhibit 77/11

- (ii) Unsuccessful tenderers advised, in writing.
- (iii) Any inquirer is advised of the name and amount of the successful tenderer".

Exhibit 77/11

74. The Department informed us that in most cases where unsuccessful tenderers seek details, they are furnished, except where such information would not be in the best interest, e.g. it is known that where ring prices operate and one tenderer offers a lower rate, it may not be in the Commonwealth's or the tenderer's interest to divulge the prices accepted.

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75. We were informed that the Department would not disclose unit rates in the case of schedule of rates contracts for works and services as they are regarded as confidential, in that a rival tenderer could calculate the method the successful tenderer used to price his tender. In information submitted subsequently to us, the Department said : -

"The rates which are incorporated in such schedules, including Bills of Quantities, are different from those related to supply of a commodity in that they are not representative of the total cost of the work or service but merely refer to one particular part of it. In general, the rates are extended and the total lump sum obtained is, in fact, the tender price, the acceptance of which is published in the "Commonwealth Gazette". The exception to this is the "schedule of rates" contract, which is comparatively rare and which consists of a number of cost components (or unit rates) in respect of various work processes. There is no lump sum for this type of contract, the total cost of which is determined by extending the measured quantities of work done by the rates applicable to the work processes. For example, construction of a roadway which consists of £A per foot of sub-grade, £b per foot of bitumen, £c per foot of underground drainage and £d per foot of kerbing.

"There are numerous contracts for lump sums which incorporate schedules of prices (e.g. Bills of Quantities) related to the whole, or part of the work involved. These prices, or rates, (of which there could be hundreds, and in some cases, thousands) whether in lump sum contracts or not, may disclose the method adopted by a contractor in pricing his job. These methods could mean

the difference between winning or losing a contract. This is the prime reason why rates are not disclosed. It is also mentioned that disclosure of these rates in some cases could be misleading since they may reflect the contractor's approach to the job and not necessarily be an indication of the true worth of that particular process taken on its own".

"An example may assist in clarifying the difference between unit rates in purchasing stores, material and equipment and those related to works and services. A contract for the supply of paint at 34/6 per gallon does not indicate the method of pricing adopted to arrive at the 34/6 nor does it reveal the cost or details of materials and individual processes necessary to produce a gallon of paint for 34/6. On the other hand, schedules of prices associated with works and services include all the materials and processes involved in producing the completed facility and closely studied by experienced people can give an accurate picture of work processes, pricing methods and the like.

"It has long been the practice in the construction industry and is in fact traditional, to regard unit rates as highly confidential. The Master Builders Federation, for example, regards a Bill of Quantities as a very confidential document and the Department ensures that priced Bills are not reproduced and that access to them is restricted to those senior officers whose duties in connection with the project require that they be aware of unit rates."

76. The Department indicated that it would divulge the general levels of prices it was paying for works and materials to a potential tenderer, and then place it on the departmental mailing list.

Q's. 405 and 406.

(h) Commonwealth Scientific and Industrial Research Organisation

77. The detail gazetted by the Organisation has led it to consider that the unsuccessful tenderer can readily identify the particular supply or service and gives some indication of the reasons for its non-success. The Organisation considers that this latter point helps to obviate direct reference to the Organisation to obtain the reasons for non-acceptance. Mr. Viney said that the actual price paid for the unit or units in a fixed quantity contract would be clear from the Gazette notice to anyone having access to the original specification and therefore disclosure of unit prices

Exhibit 77/12
and Q's. 445
to 447

Exhibit 77/12
and Q's. 445 to
447

does not create any problem for the Organization. When a contract is let as a result of proceeding to public tender, the Organization notifies other tenderers simultaneously that they were unsuccessful. This was said to occur before official publication in the Gazette. The only details given is that the tender was unsuccessful. We were informed that requests for information from unsuccessful tenderers often follow these notifications.

Exhibit 77/12
and Q. 444

78. The Organization informed us that it regards only unsuccessful tenderers as interested parties and that the information supplied depends on the details sought by the inquirer. However, it was said that the general practice is to confine the information to the name of the successful contractor, the total cost of the project and, in the case of equipment, its make and model. If requested, the Organization is prepared to give the reason for the non-acceptance of the inquirer's offer, which, apart from price considerations, is generally related to technical requirements and delivery period. Mr. Viney added that the Organization would have no hesitation in informing an unsuccessful tenderer that a rival tenderer had succeeded because of a particular facet of the construction of its supply - this generally satisfies an inquirer.

Exhibit 77/12

79. The Organization told us that it interprets the words "terms accepted" in Instruction 13/28B as being related to date of acceptance and completion and total cost of the contract. It said that terms accepted should not be interpreted in the narrow sense of terms of payment.

(1) Department of Territories (Sydney Tender Board)

Exhibit 77/13

80. We were informed that the Department's Sydney Tender Board makes information available to interested parties according to the nature of the inquiry. If the inquirer was an unsuccessful tenderer, it would be informed of any shortcomings in its offer such as :-

- "(i) poor quality material or non-compliance with a specification or sealed sample;
- (ii) prolonged delivery, which in particular cases is unacceptable;
- (iii) unsatisfactory record of the prospective supplier".

Exhibit 77/13

81. The Department said that the unit prices or the merits of the supplies of the successful contractor are not discussed with inquirers. The tender board added that it interprets Instruction 13/28B as meaning that an unsuccessful tenderer is entitled on request to know of any deficiencies in its offer when price alone has not been the deciding factor. Mr. Sutherland told us that it has been his board's experience that inquiries are normally received only in cases where a lower offer has been unsuccessful.

Exhibit 77/13

(j) Department of Territories (Darwin Tender Board)

82. We were informed that the detail disclosed subsequently by the Darwin Tender Board is similar to that disclosed by its Sydney counterpart. However, the Darwin tender board said that it considers that it would be in the public interest, particularly in Darwin, to disclose unit prices. Mr. Cameron said that in the event of a person wanting to establish a business in Darwin, it would be definitely in the public interest, and to assist in the development of the Northern Territory, to help that person as much as possible.

Exhibit 77/13,
Q's. 482 to
484 and 492
to 496

83. In the case of a person from the southern States who is interested in obtaining contracts with the Northern Territory Administration, Mr. Cameron said that his tender board's practice was to tell them in a roundabout way, the price range, e.g. in the case of paint, the tender board would quote a price, depending on quality of 29s.6d. to 40s. a gallon not the exact price paid under the current contract.

Q. 489

(k) Department of Labour and National Service

84. The Department of Labour and National Service informed us that on the only occasion in recent years where an inquiry was received after the gazettal of the details of contract, the details set out in the Gazette notice were made available.

Exhibit
77/14

(1) Department of Health

85. We were informed by the Department of Health that it considers that it is reasonable to inform any inquirer of the details as published in the Gazette and, if its tender did not comply with the specifications in what way it was lacking. As indicated in Chapter IV, the unit prices in the Department of Health's fixed quantity contracts can be calculated from the Gazette notice as both the number of items required and the total value are published. Mr. Carroll said that his Department, generally, had no objection to the disclosure of unit prices. However, in the case of a contract involving a series of items making up a total purchase, such as a deep ray therapy unit involving 20 items varying in price from £900 to £20, the Department would disclose only the total value, not the price of each item.

Exhibit 77/15,
Q.552 and
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(m) Repatriation Department

86. It is the practice of the Repatriation Department upon written request, to disclose detailed information on contract prices to interested parties whenever it is considered that such disclosures may lead to more competitive tendering. Where it is considered that the information requested may be used against a contractor who has broken a fixed price supply arrangement with other firms or the inquiry is being made for purposes not associated with subsequent tendering for Commonwealth stores requirements, the information is not disclosed. Mr. Kelly emphasized that the incidence of restrictive practices operating in his Department's contracts is very slight.

Exhibit 77/16
and Q's. 577,
578, 582 to
585

CHAPTER 6 - YOUR COMMITTEE'S CONSIDERATION OF THE
OPERATION OF TREASURY REGULATION 53 AND RELATED
INSTRUCTIONS AND ITS RECOMMENDATIONS

87. Your Committee received evidence that the principle of public disclosure of Commonwealth contracts arranged has been retained since 1902 and that this principle was taken from the practices of certain Australian Colonial Governments prior to Federation. Your Committee in its 48th Report relative to Treasury Regulation 52 re-affirmed this principle of public disclosure in recommending that all contracts let of a value in excess of £200 should be notified in the Commonwealth Gazette irrespective of whether an inexpediency certificate was issued, selected quotations sought, and Order-in-Council obtained or public tenders invited. Your Committee has no reason to alter the view it took then. (Paragraph 10.)

PP No. 58 of
1960, Page
15, paragraph
6.

88. Your Committee was advised by the Treasury that the principle of publication of the details of contracts arranged in abstract form has been retained since the regulation was promulgated in 1902. The existing form of Regulation 53 has retained the principle of publication of limited details of contracts arranged by use of the expression, "summary of the provisions of a contract". Your Committee concurs in the view that only limited details should be published. (Paragraphs 1 and 10).

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89. In an endeavour to clarify the details of contracts arranged which Departments should publish, the Treasury issued Circular No. 1937/12 of 12th March, 1937. This circular advised Departments that the Treasury considered that the words then appearing in Regulation 68, "in abstract", implied a limitation of detail to be published and that unit prices should not be given. It requested Departments to adopt

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Appendix
No. 2

the "abstract" method of notifying contracts in the Gazette. However the Circular added that in the opinion of the Department, the Commonwealth cannot readily resist a request by a unsuccessful tenderer for disclosure of the terms accepted and the contract entered into and accordingly, that Departments should accede to reasonable requests for such details when made bona fide by interested parties. Thus by adopting the ordinary grammatical meaning of "abstract" (i.e., "a summary or epitome") Your Committee understands that the inconsistency between Regulation 53, in its various forms, and the relevant Treasury directions made under it has continued since 1937.

90. The Treasury informed us that the circumstances which gave rise to discussions between officers of the Treasury and the Attorney-General's Department and which resulted in the re-drafting of Regulation 53 in 1961 were as follows :-

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"During 1959, a general review of the Treasury Regulations was commenced; included in this review, as a result of the Committee's recommendations in the Forty-Second and Forty-Eighth Reports, were Treasury Regulations 52 and 53; following formal directions to the Parliamentary Draftsman indicating that Treasury Regulation 53 should be amended to take account of the Committee's recommendations, discussions between officers of the two departments continued through 1960 and into 1961, when all the amendments agreed to were promulgated as Statutory Rules 1961 No. 77 on the 15th June, 1961. It was following the discussions that the amendment mentioned in the Treasury memorandum of 29th November, 1965, was made [i.e., the words "summary of the provisions of a contract" in lieu of "abstract"]*; the reason for the amendment is not contained in the instructions to the Parliamentary Draftsman nor elsewhere in the Treasury papers and in the absence of such documentation, it has been assumed that the change was a minor drafting one only, which did not affect the meaning or substance of the regulation".

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91. As a consequence of the amendment to Regulation 53, the Treasury amended its Instructions to take into account the specific recommendations on Regulation 53 contained in Your Committee's 48th Report. However the

Exhibit
77/2 and
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* Brackets inserted by Your Committee.

substance of the Treasury's views on publication of the details of contracts arranged was retained in its instructions between 1937 and 1961. (The existing form of the instructions was retained in the current Treasury Directions, as shown in Appendix No. 5, to enable Your Committee to express its views on the question of publication of the details of Commonwealth contracts arranged before any amendment was undertaken.)

Exhibit 77/2
and Committee
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92. In answer to a question, Mr. Harris had said that the views of the Attorney-General's Department, that the Treasury Instructions were inconsistent with the Regulations, first became known in 1961. We were subsequently advised that the Commonwealth Stores Supply and Tender Board in 1958, after an extensive review of the practices regarding disclosure of unit prices, both in Australia and overseas had been made by the Treasury, decided that, as a general rule, the public interest would best be served by retaining the existing practice of non-disclosure of unit prices. The Board also recognised at that time that, in certain circumstances, it may be advantageous to write to successful tenderers to inquire whether there is any objection to information concerning unit prices being made known to a bona fide unsuccessful tender. In 1961, a Sub-Treasury requested advice from the Treasury as to the interpretation which should be placed on Treasury Instruction 13/28B, as the Sub-Treasury had noted that another Department followed a different interpretation. The Treasury advised the Sub-Treasury of the existing policy, in the terms decided upon by the Commonwealth Stores Supply and Tender Board in 1958 and referred to above. The Treasury then raised the question of interpretation with the Attorney-General's Department and received the opinion that the Instructions were inconsistent with the Regulation.

Q's. 33 and
34 and
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93. From the evidence presented to Your Committee, it is clear that from 1937 to 1961, the question of inconsistency was not raised, although the Instructions had been amended four times and an extensive review of Australian and overseas practices had been undertaken by the Treasury. Your Committee is most concerned that this situation should have existed for such a considerable period. (Paragraph 92).

94. Treasury Regulation 127A states :-

"127A - (1.) The Secretary to the Department of the Treasury may give to persons employed in the service of the Commonwealth or to any other persons who are subject to the provisions of the Act directions, not inconsistent with the Act or any other Act or with any regulations under the Act or any other Act, for or in relation to any of the matters referred to in paragraphs (a) to (f) inclusive, of sub-section (1.) of section 71 of the Act.

(2.) A Chief Officer of a Department may give to officers of, or persons employed in, that Department directions, not inconsistent with the Act or any other Act, with any regulations under the Act or any other Act or with any directions given under the last preceding sub-regulation, for or in relation to any of the matters referred to in paragraphs (a) to (f), inclusive, of sub-section (1.) of section 71 of the Act.

(3.) A contravention of, or failure to comply with, a direction given under either of the last two preceding sub-regulations shall be deemed to be a breach of these Regulations."

95. Treasury Regulation 133 provides that any accounting officer or person subject to the provisions of the Audit Act committing any breach of these Regulations (and therefore, by Regulation 127A - (3.), the directions made under them) may be subject to a penalty not exceeding Five pounds imposed by the Treasurer. Your Committee considers that Regulation 133 places a clear obligation upon the Treasury to ensure that its instructions are not inconsistent with the Regulations, as accounting officers could be placed in an uncertain position as to the correct procedure to be adopted if inconsistency occurs.

96. It is Your Committee's opinion that the inconsistency arose because the drafting of the instructions is not necessarily subject to the scrutiny of the Attorney-General's Department. Your Committee does not doubt that the Treasury considered that its policy of non-disclosure of unit prices was suitable encompassed by both Regulation 53, and its attendant instructions, and that the policy as expressed in the instructions was the policy which the Treasury wished to have expressed in the Regulation. However, Your Committee

considers that it is the Treasury's duty to ascertain the legality of its instructions before they are issued and that some scrutiny of the terms of the instructions should be carried out by the Attorney-General's Department before the instructions are issued. Exhibit 77/2

97. Apart from the inconsistency of the instructions and the Regulation, there were a number of other unsatisfactory features about the Regulation which lead Your Committee to the opinion that proper care has not been exercised by the Treasury in making the regulation. The first such feature is in relation to the lack of uniformity in the practices of the departments. Your Committee agrees with the views expressed by Messrs. Sutherland and Cameron of the Department of Territories that it is generally desirable to have uniformity of practice among Departments on this matter. Your Committee notes with interest that the Treasury, after learning of the divergence of views amongst Departments on this question should say, "Treasury was somewhat reluctant to impose on Departments the views that it had held for so many years". Q's. 35, 471
to 473, 510
and 511.

98. Your Committee considers that one of the most serious deficiencies of the existing regulation and instructions was the lack of a provision to exempt Departments from the necessity to gazette contracts in special circumstances. In regard to classified contracts Mr. McGill said :- Q. 169

"I think it is well understood by everybody who is interested, including the Audit Office, that we have never gazetted any details of classified contracts."

99. Your Committee views this situation with concern and considers that it is entirely unnecessary that Departments should disregard the law in this way. Your Committee considers that there was a clear duty imposed upon the Department of Supply to request the Treasury to make some provision in the regulations to exempt it from the necessity to gazette classified contracts. Your Committee also considers that the Department of Supply should have requested the Treasury to seek to have an exemption provision written into the Regulation to cover the following practice which Mr. McGill said had been adopted on some occasions :- Q. 161

"If we are in a situation where competition is ineffective and we are up against a Commonwealth wide ring, but come to know there is a firm capable of meeting our requirements at a lower price than that of the ring, it is in the public interest to dispense with public tenders and go straight to the firm which is prepared to meet us at a price lower than that of the ring and do business with it without gazettal or disclosure of prices. I think we are entitled to resort to those tactics when we are up against unethical dealing by manufacturers and others."

100. Another unsatisfactory feature of the Regulation was that until the Treasury (Overseas Accounts) Directions were issued during the current year, contracts arranged overseas should, strictly speaking, have been notified in the "Commonwealth Gazette". As pointed out by Mr. Jorgensen and the Audit Observer, Mr. Parker, the commonsense point of view would dictate that these contracts should be excluded from the operation of Regulation 53. Your Committee concurs in the action taken by the Treasury to exempt such overseas contracts from the provisions of Regulation 53. (Paragraphs 14 to 16).

101. A further unsatisfactory feature is the form of sub-regulation (2.) Your Committee was interested to learn that Departments were not gazetting the contracts of the two States which do not have a provision for gazettal when the sub-regulation provided that Commonwealth Departments should gazette the State contracts when the State Government does not gazette them. As far as Your Committee can determine, neither the Postmaster-General's Department nor the Treasury had attempted before this year to ascertain whether the two State Governments did in fact gazette their contracts arranged. As this sub-regulation has been retained in substantially the same form since 1916, there would be little point in pursuing the reasons for the lack of a prior examination of this sub-regulation by the Treasury. It was Mr. O'Donovan's opinion that notwithstanding the fact that a State Government has gazetted the details of a contract which is also available for use by the Commonwealth, the Commonwealth

Department concerned, would, technically, have to gazette details of the contract made on every occasion that the Commonwealth Department accepts the suppliers offer to supply the Commonwealth. Your Committee considers that the Treasury should take early action to review sub-regulation (2.) in conjunction with the appropriate authorities in order that this form of contracting is retained whilst simultaneously retaining the general principle of the fullest possible public disclosure of Commonwealth contracts arranged. (Paragraphs 17 to 25.

Q. 685 and
Committee file
1965/1/77

102. Your Committee considers that due to the inadequacies of the existing Regulation and its instructions and due to the variety of practices adopted by Departments, there is a necessity for Regulation 53 to be reframed. As a basis for such a reframing, Your Committee has set out its views, in the following paragraphs and Recommendations.

103. In regard to the details of contracts arranged which should be gazetted, Your Committee considers that the following details in the case of fixed quantity contracts most readily indicate the contract concerned, the successful tenderer and the value of the contract :-

- (i) the tender schedule or quotation number;
- (ii) a brief description of the supply required;
- (iii) the total value of contract;
- (iv) the name of the successful tenderer;
- (v) the State and City in which the successful tenderer is located. (Paragraphs 27, 30, 31, 38 and 41)

104. In the case of period contracts, Your Committee considers that the period involved is an essential part of the description of the contract. Accordingly, the period involved should be included in the Gazette notice. (Paragraphs 31, 34, 41, 43, 45, 46 and 53).

Your Committee does not accept the view that an estimate of the value in approximate quantity contracts would be of little merit. Publication of an estimate of the value would give potential tenderers an indication of the extent of the Commonwealth's purchases in a particular area. Your Committee received evidence that Departments include an estimate of the quantities required in the specification. Accordingly, the estimate of the value of the contract should be based on the estimate of the quantity required. Those Departments which at present publish the words "Schedule rates" would have to discontinue this practice if a system of publishing estimates of the total value is adopted. (Paragraphs 28, 33, 38, 45, 46, 47 and 53)

106. The Department of Works indicated to Your Committee that it considers that publication of the location of the performance of the works or services it requires is most important. Your Committee considers that this detail should be included in the Gazette notice as part of the description of the contract. (Paragraph 42)

107. Your Committee considers that it follows logically from the adoption of uniformity in the amount of detail to be gazetted, that a uniform presentation of "contracts arranged", should be adopted in the Gazette itself. This would involve developing a common form for use by all Departments and Authorities. Your Committee considers that the Government Printer's work would be assisted if a uniform method of presentation is devised. Appendix No. 7 is a page from a recent Commonwealth Gazette. The presentation of the Department of Trade and Industry's contracts is so obviously superior to the presentation used by the Postmaster-General's Department that Your Committee is unable to understand why a uniform method of presentation has not been adopted in the past.

108. Your Committee agrees with the views, that in a competitive market, disclosure of the unit prices of a contract considerably assists competitive contracting and promotes public confidence in departmental tendering by removing any suspicion of patronage on the part of contracts officers. Your Committee is of the opinion that there are substantial administrative reasons for excluding unit prices from the Gazette notices. In some contracts, if the Regulation contained a requirement to gazette the unit prices, a large volume of detail would be required to fulfil the provisions of the Regulations. Your Committee considers that a limited amount of detail only is required in the Gazette, in order to satisfactorily identify the contract, the successful tenderer and the total value of the contract. However, in order that Q. 664 the principle of the fullest possible disclosure of contracts should be maintained, Your Committee considers that an unsuccessful tenderer should be permitted to obtain further details of the successful tender and the reasons for the non-acceptance of its tender. Your Committee further considers that public servants are protected from any suggestion of patronage by subsequent disclosure of the successful tenderer's unit prices. In regard to the question of whether unit prices are confidential, the representative of the Secretary to the Attorney-General's Department stated :-

'There is no general rule of law that tenders submitted to any person calling for tenders are to be treated as confidential. There may be particular customs applicable in particular trades in this regard, but I do not know of any specific example. A person who submits a tender may do so on condition that it is maintained confidentially by the person to whom it is submitted. In that case I believe the sanction for failure to observe the confidence is a business sanction and not a legal sanction. If the person to whom the tender is given does not maintain the confidence reposed in him by the tenderer then that tenderer may not tender again.'

109. In view of the above opinion of the Attorney-General's Department, Your Committee considers that there is no major objection to the disclosure of unit prices in a competitive market.

110. However, Your Committee considers that when Departments are faced with forms of non-competitive tendering such as collusive tendering, the public interest, (as defined by Mr. Harris in his capacity of a purchasing officer, i.e. Chairman of the Commonwealth Stores Supply and Tender Board), is not being served. In such cases, the general principle of public disclosure of the terms accepted of contracts arranged may hinder a Department in its attempts to purchase the best quality supplies at the cheapest price as a potential tenderer may be deterred from making a lower offer than that offered by organizations tendering collusively for fear of being "disciplined" by its rivals. Your Committee received confidential evidence from a number of Departments which left no doubt that some trade associations discipline members or non-members which are prepared to contract at lower prices to the Commonwealth than are members of the trade association. In such instances of non-competitive tendering, Your Committee considers that a means of exempting Departments from the necessity to gazette the contract arranged, or disclose additional details subsequently, should be written into the Regulations to assist Departments in their endeavours to obtain more competitive contracting. (Paragraphs 56, 58 and 66)

111. Your Committee does not accept the view that it would be advantageous to have a policy of writing to successful tenderers to enquire whether they have any objection to information concerning unit prices being made known to an unsuccessful tenderer. Your Committee considers that the principle of public disclosure of contracts arranged by the Commonwealth would be generally known among its

suppliers and potential suppliers. Your Committee points out that the total value of contracts arranged over £200 in 1963-64 by those Departments which do not disclose unit prices subsequently is approximately equivalent to the total value of contracts arranged over £200 in 1963-64 by those Departments which are prepared to disclose unit prices (See Appendices 4 and 6). Your Committee understands that the main objection to the disclosure of unit prices subsequently is that it would hinder Departments in their endeavours to combat collusive tendering. Your Committee considers that a provision for exempting Departments from the necessity to gazette, as expressed in Paragraph 110 is a more satisfactory way of meeting the problem of collusive tendering than the suggestion of writing to the successful tenderer. (Paragraphs 12, 13 and 15)

112. In regard to the disclosure of other information Your Committee considers that it is reasonable to inform an unsuccessful tenderer of the reasons for the non-acceptance of its tender. However, such disclosure should be in terms of the insufficiency of the unsuccessful tender rather than in terms of the merits of the successful tender. (Paragraphs 55, 59, 62, 69, 78 and 80 to 82)

113. The Department of Supply informed Your Committee that it does not gazette or disclose the details of "classified" contracts. Your Committee considers that a means of exempting Departments from the necessity to gazette "classified" contracts should be written into the Regulations. (Paragraphs 16, 98 and 99)

114. Your Committee concurs with the view expressed by the Department of Works that the rates in its schedule of rates contracts for works and services should not be disclosed. (Paragraph 75)

RECOMMENDATIONS OF YOUR COMMITTEE

115. Your Committee makes the following recommendations :-

(i) that Treasury Regulation 53 and its attendant instructions should be reframed without delay. (Paragraphs 89 to 102).

(ii) that in the reframing process, Regulation 53 should specify clearly which details of contracts arranged shall be included in the Gazette. (Paragraphs 103 to 106).

(iii) that a uniform method of presentation of "Contracts Arranged" should be adopted in the Gazette. (Paragraph 107 and Appendix No. 7)

(iv) that the reframed Regulation should provide that the disclosure of unit prices should be confined to disclosure subsequent to gazettal. (Paragraphs 108 to 101)

(v) that in reframing Regulation 53, a provision for subsequent disclosure of details other than unit prices should be provided and that this provision should be framed in such a way as to permit Departments to inform an unsuccessful tenderer of the reasons for the non-acceptance of its tender in terms of the insufficiency of its tender, but not in terms of the merits of the successful tender. (Paragraph 112)

(vi) that the Regulation, when reframed, should include a provision to exempt Departments from the requirement to gazette or disclose details subsequently, when it is in the public interest that such details should not be revealed. (Paragraphs 110 and 113)

(vii) that the Department of Works should be consulted by the Treasury regarding the form in which the Department of Works should be exempted from the necessity to disclose subsequently, details of rates in schedule of rates contracts for works and services (Paragraph 114)

(viii) that the Department of the Treasury when proposing any amendments to either its Regulations or Instructions, should first ascertain from the Attorney-General's Department whether such amendments will result in inconsistency between the regulations and the instructions.

For and on behalf of the Committee

David N. Reid

DAVID N. REID,
Secretary,
Joint Committee of Public Accounts,
Parliament House,
CANBERRA. A.C.T.

Richard Cleaver
RICHARD CLEAVER
CHAIRMAN

by Wedgwood.

2nd December, 1965.

APPENDIX NO. 1

INDEX TO EXHIBITS

- Exhibit No. 1 - Letter dated 27th April, 1965 from Commonwealth Stores Supply and Tender Board.
- Exhibit No. 2 - Letter dated 28th April, 1965 from the Department of the Treasury.
- Exhibit No. 3 - Letter dated 27th April, 1965 from the Postmaster-General's Department.
- Exhibit No. 4 - Attachment to letter dated 22nd April, 1965 from the Department of Supply.
- Exhibit No. 5 - Letter dated 30th April, 1965 from the Department of Housing.
- Exhibit No. 6 - Letter dated 27th April, 1965 from the Department of Customs and Excise.
- Exhibit No. 7 - Letter dated 30th April, 1965 from the Department of Trade and Industry.
- Exhibit No. 8 - Letter dated 30th April, 1965 from the Department of the Interior.
- Exhibit No. 9 - Letter dated 3rd May, 1965 from the Department of the Army.
- Exhibit No. 10 - Letter dated 26th April, 1965 from the Department of Civil Aviation.
- Exhibit No. 11 - Letters dated 15th April, 1965 and 19th May, 1965 from the Department of Works.
- Exhibit No. 12 - Attachment to letter dated 26th April, 1965 from the Commonwealth Scientific and Industrial Research Organization.
- Exhibit No. 13 - ~~Attachment to letter~~ Attachment to letter dated 30th April, 1965 and attachment to letter dated 3rd July, 1965 from the Department of Territories.
- Exhibit No. 14 - Attachment to letter dated 27th April, 1965 from the Department of Labour and National Service.
- Exhibit No. 15 - Attachment to letter dated 23rd April, 1965 from the Department of Health.
- Exhibit No. 16 - Letter dated April, 1965 from the Repatriation Department.

THE FORMS OF TREASURY REGULATION 53, 1902-1961

TREASURY REGULATION 53

As originally made to take effect from 1st January, 1902 -
Commonwealth Gazette No. 5 of 31st January, 1902.

"53. All such contracts and all Orders in Council authorizing such expenditure shall be published in abstract in the Commonwealth Gazette as early as practicable."

Re-numbered from 53 to 62 by Statutory
Rules 1906, No. 19

TREASURY REGULATION 62

As amended by Statutory Rules 1916, No. 302

"62. All such contracts and all Orders in Council authorizing such expenditure shall be published in abstract in the Commonwealth Gazette as early as practicable. Where the contract for supplies has been entered into by a State Government and such contract has been published in a State Government Gazette, or by the Administration of the Northern Territory and published in the 'Northern Territory Times and Gazette', Commonwealth Departments may purchase under such contract without publication in the Commonwealth Gazette."

Re-numbered from 62 to 68 by Statutory
Rules 1919, No. 159 (A minor
punctuation amendment was made also)

TREASURY REGULATION 68

As amended by Statutory Rules 1927, No. 158

"68. All such contracts and all Orders in Council authorizing such expenditure shall be published in abstract in the Commonwealth Gazette as early as practicable. Where the contract for supplies has been entered into by a State Government and such contract has been published in a State Government Gazette, or by the Administration of North Australia and published in Gazette of North Australia, Commonwealth Departments may purchase under such contract without publication in the Commonwealth Gazette."

TREASURY REGULATION 68

As amended by Statutory Rules 1932, No. 111

"68. All such contracts and all Orders in Council authorizing such expenditure shall be published in abstract in the Commonwealth Gazette as early as practicable. Where the contract for supplies has been entered into by a State Government and such contract has been published in a State Government Gazette, or by the Administration of the Northern Territory and published in the Gazette of the Northern Territory, Commonwealth Departments may purchase under such contract without publication in the Commonwealth Gazette."

TREASURY REGULATION 53

As amended by Statutory Rules, 1942, No. 523

"53. - (1.) All contracts referred to in sub-regulation (1.) of the last preceding regulation, and all Orders in Council authorizing expenditure under sub-regulation (2.) of that regulation, shall be published in abstract in the Commonwealth of Australia Gazette as early as practicable.

(2.) Where the contract for supplies has been entered into by a State Government and the contract had been published in a State Government Gazette, or by the Administration of the Northern Territory, and published in the Government Gazette of the Northern Territory, it shall not be necessary for the contract to be published in the Commonwealth of Australia Gazette."

TREASURY REGULATION 53

As amended by Statutory Rules 1961, No. 77

"53. - (1.) Subject to the next succeeding sub-regulation, a summary of the provisions of a contract for supplies the cost of which exceeds Two hundred pounds shall be published in the Gazette as soon as practicable after the contract is made.

(1A.) The last preceding sub-regulation does not apply to a contract for supplies obtained from or rendered by a State Government Printing Office or for supplies that can only be obtained from or rendered by a State Government Department, an authority of a State or a municipal or other local governing body.

(2.) Where the contract for supplies has been entered into by a State Government and the contract has been published in a State Government Gazette, or by the Administration of the Northern Territory and published in the Government Gazette of the Northern Territory, it shall not be necessary for the contract to be published in the Commonwealth of Australia Gazette."

FORMS OF TREASURY INSTRUCTIONS 13/28,
13/28A and 13/28B, 1937-1965

COMMONWEALTH OF AUSTRALIA

Department of the Treasury,
CANBERRA. A.C.T.
12th March, 1937.

Trsy. Circ.1937/12
(1246/35/3436)

Treasury Regulation 68 - Gazettal of Contracts

The question of the interpretation of that part of Treasury Regulation 68 which directs that -

"all such contracts and all Orders in Council
shall be published in abstract in the Commonwealth
Gazette"

has arisen in relation to the words "in abstract".

2. In most Departments the words referred to are interpreted as meaning that full details of the contracts should not be given and that, in particular, unit prices should not be published. In one or two Departments unit prices are published in some cases, but not in all.

3. The Treasury is of opinion that the words "in abstract" imply a limitation of the detail to be published and that unit prices should not be given. It is therefore requested that all Departments adopt the "abstract" method of notifying tenders in the Gazette.

4. In the opinion of the Department, however, the Commonwealth cannot very well resist a request by an unsuccessful tenderer for disclosure of the terms accepted and the contract entered into. I shall be glad, therefore, if you will kindly accede to reasonable requests for such details when made bona fide by interested parties.

Assistant Secretary

EXTRACT

TREASURY INSTRUCTIONS - 1942 PUBLICATION

225. 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. Regulation 53 then provides for due publicity for contracts. 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.

230. The words "in abstract" used in Treasury Regulation 68 imply that detail shall be limited in publication and that unit prices should not be given in the Gazette. All Departments shall, therefore, adopt the "abstract" method of notifying tenders in the Gazette.

231. Departments, however, shall accede to all reasonable requests for a disclosure of terms accepted and a contract entered into when made bona fide by interested parties.

EXTRACT

TREASURY INSTRUCTIONS - 1957 PUBLICATION

13/28. 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. Regulation 53 then provides for due publicity for contracts. 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.

13/35. The words "in abstract" used in regulation 53 imply that detail shall be limited in publication and that unit prices should not be given in the Gazette. All Departments shall, therefore, adopt the "abstract" method of notifying tenders in the Gazette.

13/36. Departments, however, shall accede to all reasonable requests for a disclosure of terms accepted and a contract entered into when made bona fide by interested parties.

N.B. Current instructions 13/28, 13/28A and 13/28B, approved 16th June, 1961, included in earlier Treasury document.

EXTRACT

TREASURY INSTRUCTIONS -

ISSUE NO. 61 OF 16TH JUNE, 1961

13/28. If the amount of a contract exceeds £200, regulation 53 provides that a summary of its provisions shall be published in the Gazette as early as practicable. This provision relates to all contracts and includes those arranged, not only as the result of selected quotations and public invitation of tenders, but also following the issue of a certificate of inexpediency and under the approval of the Governor-General in Council. It is not necessary, however, to publish details of contracts entered into in respect of supplies obtained from a State Government Printing Office or those referred to in paragraph (c) of regulation 52(2.). Orders by Departments on the Commonwealth Government Printing Office, Commonwealth factories, workshops, &c. are not "contracts" within the meaning of regulations 52 and 53.

13/28A. The words "summary of the provisions of a contract" in regulation 53 imply that detail shall be limited in publication and that unit prices should not be given in the Gazette.

13/28B. Departments shall, however, accede to all reasonable requests for a disclosure of terms accepted and of contracts entered into when made bona fide by interested parties.

TREASURY DIRECTIONS 31/33, 31/34, 31/35 & 31/36

In 1965 the Department of the Treasury re-issued the "Treasury Instructions" as the "Treasury Directions". The Directions relevant to this inquiry are as follows :-

Notification of Contracts Arranged

33. If the amount of a contract exceeds £200, regulation 53 provides that a summary of its provisions shall be published in the Gazette as early as practicable. Gazette summaries should be published under a common heading "Contracts Arranged" and cover all contracts whether arranged as the result of selected quotations, public invitation of tenders, the issue of a certificate of inexpediency or approval of the Governor-General in Council. It is not necessary however, to publish details of contracts entered into in respect of supplies obtained from a State Government Printing Office or those referred to in regulation 52(2)(d). Orders by Departments on the Commonwealth Government Printing Office, Commonwealth factories, workshops, etc., are not "contracts" within the meaning of regulations 52 and 53.

34. Where the Commonwealth Stores Supply and Tender Board has given approval to a Department to arrange the contract it is the responsibility of the Department to arrange notification in the Gazette.

35. The words "summary of the provisions of a contract" in regulation 53 imply that details should be limited in publication and that unit prices should not be given in the Gazette.

36. Departments shall, however, accede to all reasonable requests for a disclosure of terms accepted and of contracts entered into when made bona fide by interested parties.

NUMBER AND TOTAL VALUE OF CONTRACTS OVER £200 ARRANGED
BY SELECTED COMMONWEALTH DEPARTMENTS AND AUTHORITIES,
1963-1964

Department or Authority	No. of Contracts Arranged	Total Value of Contracts Arranged £
Commonwealth Stores Supply and Tender Board	700	7,200,000*
Department of the Treasury	42	54,325
Postmaster-General's Department	3,800	60,000,000*
Department of Supply		
(a) fixed quantity contracts	9,058	47,707,860
(b) period contracts	2,121	10,582,140*
	<hr/> 11,179	<hr/> 58,290,000*
Department of the Interior	299	905,592
Department of Housing		
(a) War Service Homes	756	2,248,636*
(b) Other departmental	2	1,769
	<hr/> 758	<hr/> 2,250,405*
Department of Customs and Excise	23	17,222
Department of the Army	11	6,868
Department of Trade and Industry		
(a) Contracts let within Australia	114	206,700
(b) Contracts let in United Kingdom	158	376,647
(c) Contracts let elsewhere	254	384,453
	<hr/> 526	<hr/> 967,800
Department of Civil Aviation	705	1,008,263
Department of Works		
(a)(i) Tenders	1,455	44,382,691
(ii) Schedule of Rates	115	—
(b)(i) Orders	6,233	7,400,361
(ii) Schedule of Rates	155	—
	<hr/>	<hr/> 51,783,052
Department of Territories		
(a) Sydney Tender Board	1,346	2,068,000
(b) Darwin Tender Board	413	1,725,300
Department of Immigration	27	33,100

* Approximate total value

Department or Authority	No. of Contracts Arranged	Total Value of Contracts Arranged
Department of Air	-	-
Attorney-General's Department	-	-
Auditor-General	-	-
Commonwealth Railways	1,152	5,671,883
Commonwealth Scientific and Industrial Research Organization	1,784	1,605,883
Department of Defence	-	-
Department of External Affairs	97	42,076
Department of Health	180	346,711
Joint House Department	-	-
Department of Labour and National Service	60	23,820
Department of National Development	113	109,262
Department of the Navy	-	-
Department of Primary Industry	14	32,350
Prime Minister's Department	24	11,930
Public Service Board	-	-
Repatriation Department	1,401	1,773,125
Department of Shipping and Transport	51	27,877
Department of Social Services	6	6,794
TOTALS	<u>27,789</u>	<u>£196,011,638*</u>

* Approximate total value

APPENDIX NO. 5

ANALYSIS OF ANSWERS SUPPLIED TO QUESTION 2 - DETAILS OF CONTRACTS GAZETTED

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Departments gazetting :- (i) tender schedule or quotation numbers; (ii) brief description of goods or services; (iii) name of successful tenderer; (iv) address of successful tenderer; (v) total value of contract.	Department gazetting five details but not all of those appearing in Column 1	Departments gazetting four details	Departments gazetting the period in period contracts	Other replies.	Departments not gazetting some contracts.
Civil Aviation Immigration (1) National Development C.S.S. & T.B. Treasury Postmaster-General's Interior (2)	Health (3) Works (4) Interior (4) Army (4)(5) Labour and National Service (11) Repatriation (3)	Supply (6)(7) Territories (6) Customs and Excise (8) Trade and Industry (6) Social Services (13)	Postmaster-General's Customs and Excise Civil Aviation (9) Works (10) Territories Repatriation (12) Shipping and Transport	Housing (14) C.S.I.R.O. (15) Defence (16) Navy (16) Air (16) (16) Public Service Board Auditor-General (16) External Affairs (17) Commonwealth Railways (18) Prime Minister's (19) Primary Industry (20) Joint House (20) Shipping and Transport (20) Attorney-General's (20)	Social Services (21) Prime Minister's (22) Customs and Excise (23) Labour and National Service (24) Army (25) Immigration (25)

ANALYSIS OF QUESTION 3 - INFORMATION MADE AVAILABLE TO INTERESTED PARTIES

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Departments giving a definition of interested party.	Departments supplying reasons to unsuccessful tenderers for non-acceptance of their tender	Departments who release, (a) release, (b) would release, unit price details to interested parties	Departments stating that unit prices (c) should not be, (d) are not divulged	Other departmental views	Departments not involved in letting contracts
Civil Aviation C.S.I.R.O. Housing Joint House (4) National Development Repatiation Shipping & Transport C.S.S. & T.B. (7) P.M.G.'s (7) Supply (7) Interior (7) Territories (7) Health (7)	Civil Aviation C.S.I.R.O. Housing Health Immigration (3) C.S.S. & T.B. Territories (Sydney) Supply (7) Interior (7)	(b) Attorney-General's (b) Civil Aviation (b) Customs & Excise (b) Primary Industry (a) Repatriation (a) Social Services (a) Supply (6) (b) Works (7) (b) Health (7)	(c) C.S.I.R.O. (d) Interior (d) P.M.G.'s (d) Territories (Sydney) (c) Treasury (2) (d) C.S.S. & T.B. (2) (d) Territories (Darwin)	External Affairs (1) Labour and National Service (5) National Development (1) Prime Minister's (3) Shipping and Transport (5) Social Services (5) Works (6)	Air Auditor-General Defence Navy Public Service Board

- (1) Department used either of the expressions "reasonable information" or "information" but did not supply an interpretation of the meaning of the expression.
- (2) Releases subsequent information if successful tenderer consents.
- (3) Department's practice not certain.
- (4) Department would possibly seek Treasury's opinion before subsequent disclosure.
- (5) Department discloses to a subsequent inquirer only those details which were gazetted.
- (6) Would not disclose unit prices in schedule of rates contracts.
- (7) View expressed in Public Hearing.

- (1) Gazettes official file number
- (2) Some branches of the Department use schedule and quotation numbers. (Q.'s. 283 and 284)
- (3) Omits tenderer's address but inserts location.
- (4) Omits tender or quotation number but inserts location.
- (5) A Statement of what Army would do if it had let any public tenders.
- (6) Omits address of successful tenderer.
- (7) Will gazette the State in which the tenderer is located. If it differs from that of the responsible Supply office.
- (8) Does not use schedule or quotation numbers.
- (9) Inserts the words "Period contract" in the Gazette notice for period contracts.
- (10) Does not follow policy consistently but considers that it is desirable to gazette this detail.
- (11) Does not use tender or quotation numbers but gazettes location.
- (12) Also gazettes an estimate of the value.
- (13) Does not use schedule or quotation numbers, omits the address but gazettes the location.
- (14) Does not use schedule or quotation numbers. Gazettes the location the date of acceptance and the date completion is due, in addition to the name and address of the successful tenderer, a brief description of and the amount of the successful tender.
- (15) Gazettes location, brief description, total cost, name and address of successful tenderer, date of acceptance and date of anticipated delivery or completion; uses schedule and quotation numbers but omits them.
- (16) No contracts let over £200 in value so had no occasion to make Gazettals.
- (17) Gazettes a brief description and the value of the order.
- (18) Outside the terms of the inquiry.
- (19) Gazettes the name of the supplier, the service being rendered and the cost per thousand, in the case of the only contract gazetted.
- (20) Gazettes the name of the contractor, a summary description and the total value.
- (21) Omitted to publish contracts relating to office machines and cleaning of premises.
- (22) Due to an administrative error, 4 out 5 contracts were not gazetted.
- (23) Did not realize that goods obtained after issue of certificate of expediency or from a sole supplier had to be gazetted.
- (24) Department does not gazette; office cleaning contracts which are renewed at the existing conditions, purchases from sole suppliers, or office machines purchased after approval is obtained from C.S.S. & T.B.
- (25) Thought that Regulation 53 only required gazetting of contracts arranged by calling public tenders.

DEPARTMENT OF CUSTOMS AND EXCISE, VICTORIA.

It is hereby notified that J. W. Styles & Son Pty. Ltd., of 280 J. Spencer-street, Melbourne, was the successful tenderer for the position of auctioneer for conducting sales by auction as ordered by the Collector of Customs for Victoria during the twelve monthly period commencing first October, 1965, and ending 30th September, 1966.

The rate of remuneration for conducting the sales will be on a sliding scale, viz:—

5 per cent of the first £5,000 realized,
3½ per cent of the next £5,000 realized,
2½ per cent of the next £5,000 realized,
1½ per cent of the next £5,000 realized,
1 per cent of the remainder.

and is payable on

(a) the gross proceeds of the sales of seized or forfeited goods,
(b) the gross proceeds, exclusive of the amount of duty, priming and sales tax, of sales of other goods.

DEPARTMENT OF TRADE AND INDUSTRY.
CONTRACTS ARRANGED.

Order No.	Description.	Amount.			Supplier.
		£	s.	d.	
831	Setting, make-up, tabulation of types for Industry Features, brochures and booking sheets for advertisements	260	0	0	Monotrade Pty. Ltd., Melbourne
1177	Purchase of two 16-mm. colour films for use at Trade Commissioner posts overseas	211	16	0	Kingscroft Productions, Crows Nest, N.S.W.
1220 & 1221	Consultation, research and supply of articles and photo-stories monthly for departmental feed to overseas posts for period 1st July, 1965 to 30th June, 1966	5,400	0	0	Eric White Associates (Vic.) Pty. Ltd., Melbourne
1223	Printing of brochures, application forms, &c., for the Australian Pavilion at the New Zealand Easter Show, 1966	269	0	0	W. J. Cryer & Co. Ltd., Dulwich Hill, N.S.W.
1235	Forwarding charges and freight on display cases to Japan for Selbu Store Promotion, 1965	218	3	2	Youngs Transport, Melbourne
1254	Purchase of 16,000 copies "Australian Pictorial Diary 1966" for distribution to Trade Commissioner posts overseas	800	0	0	Melbourne Junior Chamber of Commerce, Melbourne
1276	Space booking for one full page colour advertisement for "Far Eastern Economic Review" and purchase of 2,000 copies for distribution overseas	441	5	0	John Jackson & Associates, North Sydney
1348	Authors corrections for Departmental publication "Grape Buyers Guide" with supply and posting of Errata Slips	215	0	0	Tooronga Press, Malvern
1382	Purchase of 1,050 "Australian Exporter" July, 1965 to June, 1966 for distribution to Trade Commissioner Posts overseas	2,500	0	0	Lawsons Publications Pty. Ltd., Sydney
1383	Purchase of 1,000 each of four quarterly editions of "El Commerciale Australiano" for distribution in South America	2,000	0	0	Highlite Printing Co. Pty. Ltd., Surry Hills, N.S.W.
1399	Reimbursement of costs of Joint Promotion of Dairy Foods in overseas markets for months of July and August, 1965	1,374	15	4	Australian Dairy Produce Board, Melbourne
1400	Supply of 625 copies of "Vogue Australia" for distribution to Trade Commissioner posts overseas	700	0	0	Vogue Australia (Conde Nast Publications Pty. Ltd.), Sydney
1467	Purchase of sets of 8-mm. films for use overseas at Departmental Fairs and Exhibitions	249	13	4	Commercial Film Distributors Pty. Ltd., Sydney
1471	Photography—Supply 10-in. x 8-in. black and white prints for Departmental Photographic Library	390	12	0	Pastoral Review Pty. Ltd., Melbourne
1476	Production, photography, artwork, &c., for Departmental advertising campaigns in all areas	436	11	1	J. W. Thompson Pty. Ltd., Melbourne
1477	Services as agents for the organisation, management and supervision of the official Australian Pavilion at the Singapore Machine Tool and Metal Industries Fair, December, 1965	1,000	0	0	Australian Export Promotion Pty. Ltd., Sydney
	Additional supply of overseas television footage (film) from South East Asia areas for use in "Export Action" films. (Additional to Executive Council Approval No. 62, £2,800)	255	10	0	Crawford Productions Pty. Ltd., Melbourne

* Executive Council Approval No. 43 of 18.9.65.

POSTMASTER-GENERAL'S DEPARTMENT.
CONTRACTS ARRANGED.

C8849.—Switchboards, cord type—
Transmission Products Pty. Ltd., New South Wales. £59,256.
Telephone & Electrical Industries Pty. Ltd., New South Wales. £1,377.
C9099.—12-channel open-wire carrier equipment—
Siemens Halske Siemens Schuckert (A/asia) Pty. Ltd., Victoria. £3,268.
Standard Telephones & Cables Pty. Ltd., New South Wales. £6,280.
C9188.—Time clocks for broadcasting equipment control—
Siemens Halske Siemens Schuckert (A/asia) Pty. Ltd., Victoria. £1,138.
C9193.—Electronic digital computing equipment—Honeywell Pty. Ltd., New South Wales. £27,105.
C9247.—Cable jointing paper—Percy Boyden (N.S.W.) Pty. Ltd., New South Wales. £881.
C9373.—Wire copper and cadmium copper—Metal Manufacturers Ltd., New South Wales. £594.
C9374.—Wire copper and cadmium copper—Olympic Cables Pty. Ltd., Victoria. £374.
C9433.—Switchboards, cord type—Erlinson Telephones Ltd., New South Wales. £5,159 plus exchange.
C9573.—Bells and buzzers—Lorimer Contacts Pty. Ltd., Victoria. £3,253.
C9592.—Galvanised iron wire—The Australian Wire Rope Works Pty. Ltd., New South Wales. £817.

C9602.—Compressed gas equipment—H. Hecht & Co. Pty. Ltd., Victoria. £4,914.
C9729.—Coaxial cable jointing material—Rowlands Metal Pressings, Victoria. £3,063.
C9763.—Lanterns, outdoor—Art Craft Engineering Pty. Ltd., Victoria. £5,806.
C9765.—Protective apparatus—
G.W. Engineering Pty. Ltd., New South Wales. £6,453.
Transmission Products Pty. Ltd., New South Wales. £45,058.
Precision Electronics Pty. Ltd., New South Wales. £5,262.
Telephone and Electrical Industries Pty. Ltd., New South Wales. £3,528.
A.E.I. Engineering Pty. Ltd., Victoria. £224 plus exchange.
C9766.—Stapling machines and staples—
Able Staples Pty. Ltd., Victoria. £6,223.
Celco Manufacturing Pty. Ltd., New South Wales. £4,320.
Gerrard Wire Tying Machines Co. Pty. Ltd., Victoria. £1,400.
C9770.—Manhole guards, warning signs and steel barriers—
Rejon Wrought Iron, Victoria. £1,305.
Villawood Structural Welding, New South Wales. £7,182.
J. & F. Steel Pty. Ltd., Victoria. £5,209.
C9821.—Distributing frames and terminal equipment—Transmission Products Pty. Ltd., New South Wales. £296.
C9844.—Motor cycles and motor scooters—
Mayfair Motors Pty. Ltd., Victoria. £703.
General Accessories, Victoria. £4,699.
Stan the Scooter Man, Victoria. £3,215.
Baggio Motors, South Australia. £2,910.

COMMONWEALTH OF AUSTRALIA.

APPENDIX. No 8

ATTORNEY-GENERAL'S DEPARTMENT,
CANBERRA, A.C.T.

IN REPLY, PLEASE QUOTE NO. 63/2305

Your reference :- 1965/1

13 May, 1965.

The Secretary,
Joint Committee of Public Accounts,
Parliament House,
CANBERRA. A.C.T.

Treasury Regulations, r.53 : Treasury
Instructions 13/28A and 13/28B.

I refer to your memorandum dated 10 May, 1965, requesting advice in relation to regulation 53 of the Treasury Regulations and the related Treasury Instructions numbered 13/28A and 13/28B.

2. In effect, the questions upon which the Committee wishes to be advised and the short answers I would give to them are as follows:-

- (a) Q. Does the fact that regulation 53 of the Treasury Regulations requires publication of 'a summary of the provisions of a contract' for supplies give rise to an implication that unit prices for supplies that are the subject of a contract shall not be published?
- A. No.
- (b) Q. Are Treasury Instructions 13/28A and 13/28B or either of them invalid?
- A. Instruction 13/28A is invalid in so far as it directs, in effect, that unit prices should not be published in the Gazette. Instruction 13/28B is probably valid.
- (c) Q. If Instruction 13/28B is valid, does it impose an obligation on Departments to obtain the consent of successful tenderers before releasing to interested parties details of contracts in addition to those details that are gazetted?
- A. No.

Question (a):

3. Sub-regulation (1.) of regulation 53 is as follows:-

'53.-(1.) Subject to the next succeeding sub-regulation, a summary of the provisions of a contract for supplies the cost of which exceeds Two hundred pounds shall be published in the Gazette as soon as practicable after the contract is made.'

For present purposes, sub-regulation (1A.) and (2.) are irrelevant and may be ignored.

4. It seems clear that the answer to this question depends entirely upon the meaning to be attributed to the words 'a summary of the provisions of a contract' in regulation 53(1.).

5. These words are to be construed according to their ordinary grammatical meaning. The Shorter Oxford English Dictionary defines 'summary' to mean -

'A statement containing or comprising the chief points or the sum and substance of a matter.'

6. The question therefore arises whether a publication of matter relating to a contract which omits any reference to unit prices or to material from which unit prices may be deduced amounts to publication of a statement containing the chief points or the sum and substance of the provisions of the contract. In my view it does not. The publication of such a statement in the Gazette would not, in my view, satisfy the requirements of regulation 53.

Question (b):

7. Treasury Instructions 13/28A and 13/28B are as follows.-

13/28A 'The words "summary of the provision of a contract" in regulation 53 imply that details shall be limited in publication and that unit prices should not be given in the Gazette.'

13/28B 'Departments shall, however, accede to reasonable requests for a disclosure of terms accepted and of contracts entered into when made bona fide by interested persons'.

8. Treasury Instructions are made by the Secretary to the Treasury in pursuance of powers conferred upon him by sub-regulation (1.) of regulation 127A of the Treasury Regulations, which provides:-

'127A.-(1.) The Secretary to the Department of the Treasury may give to persons employed in the service of the Commonwealth or to any other persons who are subject to the provisions of the Act directions, not inconsistent with the Act or any other Act or with any regulations under the Act or any other Act, for or in relation to any of the matters referred to in paragraphs (a) to (f), inclusive, of sub-section (1.) of section 71 of the Act.'

9. Having regard to the answer I have given to question (a), it follows that I am of opinion that Treasury Instruction 13/28A is in part inconsistent with Treasury Regulation 53. As the power conferred by regulation 127A is specifically a power to give directions 'not inconsistent with the (Audit) Act or any other Act or with any regulations under the (Audit) Act or any other Act', I think that so much of Treasury Instruction 13/28A as deals with the publication of unit prices is invalid.

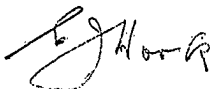
10. As to Treasury Instruction 13/28B, the legal position is not entirely clear. Perhaps, for present purposes, it would be sufficient to say that that instruction seems to

me to read as though it was not intended to have any operation independently of the purported restriction on publication of unit prices in the Gazette provided for in Treasury Instruction 13/28A.

11. As a matter of law, however, I am inclined to the view that Instruction 13/28B is valid in so far, of course, as it is not inconsistent with any provision of a Commonwealth Act or Regulation that is applicable to a particular case.

Question (c):

12. Even on the assumption that Treasury Instruction 13/28B is valid, it does not in terms place an obligation upon Departments to obtain the consent of successful tenderers before releasing to interested parties details of contracts in addition to those gazetted. In my view, such an obligation cannot be read into the Instruction by implication.



(E.J. HOOK)
Secretary.