

Chapter 3

Fees paid to managing contractors

Background

3.1 In its Interim Report the committee noted that it had not received sufficient evidence to form conclusions about the concerns arising in relation to fees paid to managing contractors and therefore the true costs of buildings under the Primary Schools for the 21st Century (P21) Program. The committee therefore indicated that, in continuing its inquiry, it would further investigate the issues surrounding managing contractors and the fees paid to them by state and territory governments. It also indicated that it would continue to pursue the release of accurate costings data.

Response from contractors

3.2 In June 2010 the committee wrote to over 100 builders and contractors identifiable from public information as having some involvement in P21 program delivery. The committee invited these building professionals to contribute to its inquiry by providing information on the following:

- the tender/selection process undertaken for their company;
- the fees/fee structure agreed with the state education authorities;
- any additional fees agreed, such as a performance incentive fees;
- protocols regarding communication with the school community;
- whether requests for detailed project costings had been received from any schools and how these had been dealt with;
- the average costs per square metre being achieved and how these figures related to costs listed in the current Rawlinson's Construction Handbook/Guide; and
- reporting requirements to state education authorities.

3.3 Disappointingly, the committee received only eight responses to this request, making comparisons difficult and conclusions almost impossible. For the most part, submissions were supportive of the P21 program and contained brief commentary on each of the relevant terms of reference outlined above. The submissions indicate that:

- Contractors were usually engaged through state or territory procurement or building infrastructure agencies, following tender selection processes. In

many cases, tenders were invited from 'prequalified' firms known or accredited by the relevant agency.¹

- A key distinction between jurisdictions was whether managing contractors carried out construction themselves, or subcontracted it to another entity. New South Wales (NSW) and Victoria were noted as jurisdictions which employed a 'number of large construction companies' which were then responsible for subcontracting work within a designated region of the state.² The Australian Capital Territory engaged project managers who also fulfilled the role of construction manager.³ It was often difficult to ascertain which submitters managed projects, which undertook construction, and which did both.
- Consistent with the findings in each BER Implementation Report delivered to date, project management, design and other costs were difficult to compare between contractors and jurisdictions because of different tender and reporting formats. Bovis Lend Lease submitted that its total fee, including any applicable incentive, ran between 9.76 per cent and 10.26 per cent.⁴ Another submitter, Project Coordination, listed its project management fee at less than 3 per cent but estimated indirect costs at 9 per cent and design costs at a further 8 per cent, suggesting that total cost could run to 20 per cent of construction cost.⁵ The only other relevant submitter listed a 10 per cent 'fee structure'.⁶
- Savings on design costs were sometimes achieved through the use of generic designs for school buildings.
- Performance incentives, where they were reported upon, varied from nil to 1.5 per cent.⁷
- Price per square metre was disclosed in only two cases, and ranged from \$1,454 to \$3,200, but were described by other submitters as being meaningless because of the costs of different types of building depending on their purpose.⁸

3.4 Overall, there was little to learn from the contractor's submissions, due in equal part to their number and their content.

1 See, for example, Happy Valley Homes Construction Managers, *Submission 75*, p. 1.

2 See, for example, Project Coordination (Australia) Pty Ltd, *Submission 80*, p. 3.

3 Project Coordination (Australia) Pty Ltd, *Submission 80*, p. 3.

4 Bovis Lend Lease, *Submission 79*, p. 2.

5 Project Coordination (Australia) Pty Ltd, *Submission 80*, p. 4.

6 JR Yates and S Yates, *Submission 78*, p. 1.

7 Bovis Lend Lease, *Submission 79*, p. 2.

8 See, for example, Happy Valley Homes, *Submission 75*, p.1; SITZLER Pty Ltd, *Submission 76*, p. 3; Project Coordination (Australia) Pty Ltd, *Submission 80*, p. 6.

3.5 However, the committee is concerned that the differences in reporting and tender formats make it difficult to compare project management, design and other costs between contractors and jurisdictions. To ensure proper accountability in the future, the committee believes that National Partnership Agreements should require states and territories to report on managing contractor fees by referring to a standardised charging structure.

3.6 The government advised in its response to the committee's Interim Report that it had established a nationally common reporting structure with consistent definitions in January 2011.⁹ This form is located in Appendix 3. The committee notes with approval that this structure includes a detailed definition of 'project management fees'. To ensure that states and territories report properly, and publicly, the committee believes that reporting should be a mandatory clause in future National Partnership Agreements.

Recommendation 5

3.7 The committee recommends that all future National Partnership Agreements explicitly require states and territories to report publicly, using a standardised charging structure, on fees paid to managing contractors.

3.8 The committee is of the view that if the fees paid to managing contractors are recorded in a standardised charging structure, then Parliament and the Australian people will be able to better assess the true costs of building under future programs. Education authorities will also be able to better assess value for money at the tender/selection phase.

Concerns about the collapse of building companies sub-contracted under P21 projects

3.9 The committee notes with concern the collapse of a number of building companies who were subcontracted to deliver BER projects in NSW. Two practical outcomes are that some workers are not being paid and some P21 projects might not be completed. These issues were raised with the Department of Education, Employment and Workplace Relations (DEEWR) during Additional Estimates on 24 February 2011.¹⁰

3.10 The Secretary for DEEWR, Ms Lisa Paul, advised that all the BER projects affected were near completion and that the responsibility for delivering the project (and paying the subcontractors) rested with the managing contractor. The committee was advised that while DEEWR had a limited role to play, it was meeting with the

9 Response tabled in the Senate on 3 March 2011. See *BER Nationally Common Reporting Structure and Definitions*, <http://www.deewr.gov.au/Schooling/BuildingTheEducationRevolution/CommonReporting/Pages/P21Overview.aspx> (accessed 6 March 2011).

10 *Proof Estimates Hansard*, 24 February 2011, pp 97–98.

schools, managing contractors and the NSW Government with a view to obtaining a satisfactory resolution.¹¹ Minister Evans advised the committee:

[M]y view is that we have two priorities. One is that the work is completed and the schools are brought to finalisation. We are very confident, as I understand it, that that has occurred or occurring, so there is no concern about that. I mean, things have to be followed through, but we are confident they will occur. The second, of course, is that the blokes ought to get their wages.¹²

3.11 No formal announcement has been made at the time of writing as to whether any satisfactory outcome for subcontractors has been achieved.

3.12 The committee now turns to consider the sanctions available to the Commonwealth Government in the event that P21 projects do not comply with the BER Guidelines.

11 *Proof Estimates Hansard*, 24 February 2011, pp 97–98.

12 Senator the Hon. Chris Evans, Minister for Tertiary Education, Skills, Jobs and Workplace Relations, *Proof Estimates Hansard*, 24 February 2011, p. 98.