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LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Public Accounts Committee

Report on Aero-Medical Contract

REPORT NUMBER 8

MAY 1989

Secretariat

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Legislative Assembly of the
NORTHERN TERRITORY

Public Accounts Committee

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CHAPTER ONE

INTRODUCTION

The contract for the provision of Aerial Medical Flight Services within the Darwin and East Arnhem Regions was due to expire at midnight, 12 August 1986.

On 2 April 1986, the Northern Territory Cabinet approved the calling of tenders for the provision of that service beyond 12 August 1986, for a five year period.

The resultant calling of tenders and awarding of contract was the subject of much public debate and litigation through the courts.

On 12 December 1986, the matter was referred to the Public Accounts Committee following substantial debate in the Legislative Assembly.

The timing of the report was delayed as the Committee's Terms of Reference precluded it from consideration of the matter until all litigation had been finalised.

This report will now address the specific matters referred by the Assembly.

NOTE:

For ease of reference, a chronology of events relating to the aero-medical contract is at Attachment A.

CHAPTER TWO

COMMITTEE MEMBERS

Members of the Public Accounts Committee:

MR MICK PALMER, MLA Chairman

Country Liberal Party

Member for Karama. First elected 1984.

Other Committees: House, Subordinate Legislation and Tabled Papers.

MR NICK DONDAS, MLA

Country Liberal Party

Member for Casuarina. First elected 1974.

Other Committees:- House, Privileges, Publications, Subordinate Legislation and Tabled Papers, Environment.

MR BRIAN EDE, MLA

Australian Labor Party

Member for Stuart. First elected 1983. Deputy Leader of Opposition and Shadow Minister for Education, Industrial Relations, Employment and Training, Primary Production, Constitutional Development.

Other Committees:- Constitutional Development

MR DAN LEO, MLA

Australian Labor Party

Member for Nhulunbuy. First elected 1980.

Shadow Minister for Housing, Mines and Energy, Power and Water Authority.

Other Committees:- House, New Parliament House, Constitutional Development.

MR RICHARD SETTER, MLA

Country Liberal Party

Member for Jingili. First elected 1984.

Other Committees:- Publications, Subordinate Legislation and Tabled Papers, New Parliament House, Constitutional Development.

CHAPTER THREE

TERMS OF REFERENCE

During the sittings of the Legislative Assembly on 12 November 1986, the Leader of the Opposition, Mr Smith, moved that the following matter be referred to the Public Accounts Committee.

"All matters concerning the recent decision of the Northern Territory Government relating to the aero-medical contract, including:-

- (1) the adequacy of the tender documents;
- (2) whether all relevant matters were considered in assessing the tender;
- (3) whether proper procedures were followed in assessing the tenders; and
- (4) whether the Tender Board formed for the purpose was properly constituted;
- (5) this matter shall not be considered by the Committee until such time as all litigation relating to the matter has been completed."

Paragraph 5 above reflects an amendment put by Mr Hanrahan, the then Deputy Chief Minister.

The Committee was formally advised on 28 October 1987 that all litigation relating to the matter had been completed.

CHAPTER FOUR

EXECUTIVE SUMMARY AND CONCLUSIONS

Whilst the findings of the Committee have been largely pre-empted by the Northern Territory Courts and associated media coverage, this inquiry provides a permanent record of a significant and costly exercise in Government contracting in the Northern Territory.

What the Committee found was a relatively simple system of procurement which had the capacity to continue a process followed by other States and the Commonwealth designed to achieve value for money in government purchasing.

The underlying principle that competition for the supply of goods and services to government should achieve the best value in such a way that the government's integrity for fair dealing is beyond reproach was not met in the case of the aero-medical contract.

The system in place at the time provided for "instances where the Government has directed that acceptance of the tender be a matter for Cabinet". This facility was not used although Cabinet required to be consulted on the draft specifications before calling of tenders.

The Committee believes that the Northern Territory Cabinet had every expectation that it would be consulted on the outcome of the Tender Board considerations prior to the awarding of this contract. This expectation was based on a Department of Health undertaking to the Minister for Health that clearly defined consultation with the Treasurer as part of the tender process in the case of the aero-medical contract. (Appendix D refers)

The following Hansard transcript of interview between the Committee and Dr Ella Stack, Deputy Secretary of the Department of Health and Community Services, and former Secretary for Health, specifies the problem as identified in this report:-

"QUESTION: Given that it was common knowledge that the Cabinet was very interested in this process and that it had asked for the tender documents even before it was let, you presumed that there would be another part of government which would advise or direct the General Tender Board to put that to a minister or to the Cabinet and follow up what was detailed in John Quinn's letter to the minister?"

DR STACK: I am afraid that it was presumed that all these would take place in that way. There was no advice from us as a department to the Tender Board to recommend as so stated in Dr John Quinn's memo to the minister."
P.A.C. transcript, 5 May 1989.

The Committee chose not to pursue this matter further due to the time elapsed since the matter was before the Tender Board and the unavailability of certain key individuals.

In relation to its terms of reference, the Committee concludes that:-

- (1) the tender documents were adequate; ... p18 and 19
- (2) all relevant matters, required to be considered by the Tender Board were considered in assessing the tender; ... p19 and 20
- (3) proper procedures were followed in assessing the tenders; and ... p20-43
- (4) the Tender Board formed for the purpose of considering the tenders was properly constituted. ... p43 and 44

CHAPTER FIVE

GOVERNMENT CONTRACTS

*"The principle, that anyone who can perform the supply or service is entitled to participate in government business, reduces opportunities for graft, corruption and dispensing of favours."
(Puri, 1979)*

This principle is fundamental to systems of government procurement throughout Australia. The underlying assumption is that public funds will be expended in a fair and effective manner with optimum efficiency, economy and accountability.

There are several methods of procurement practised by government and these are based, in the main, on the value of the goods or services sought. For example, in the Northern Territory public service there are now defined procedures for purchases:-

- (i) less than \$500;
- (ii) from \$501 and less than \$3000;
- (iii) from \$3001 to \$50000; and
- (iv) over \$50000.

The most common method of identifying the appropriate supplier to government is through public advertising for calling of tenders.

"The basic prerequisites of formal advertising are:

- (1) a complete, adequate, and realistic specification that dictates a common baseline of technical features and contract terms;
- (2) two or more suppliers eager to obtain government business;
- (3) the selection of the successful tenderer mainly on the basis of price; and
- (4) availability of sufficient time with the government to prepare the requisite specifications and drawings and to carry out the administrative work resulting from the invitation of tenders.

Formal advertising is an excellent method of government purchasing when these criteria are met. When any of these essentials cannot be satisfied, it is a completely ineffective method of procurement." (Puri, 1979, Australian Government Contracts)

Relatively little research has been conducted into government contracting procedures with the result that such procedures attract equally scant recognition and discussion in texts on contract law and administrative law. This situation could change with the increased interest stimulated by increasing litigation concerning federal and state/territory government contracts.

Until a critical and comprehensive study of government contract practice within Australia is undertaken, accountability will remain largely internal to the bureaucracy. Few disputes ever reach a formal stage, most being handled administratively, and even fewer result in litigation. This lack of public airing of government contract procedures tends to fuel suspicion, certainly in the minds of unsuccessful tenderers.

The combination of inadequate evaluation of the system together with recent successful litigation has further eroded confidence in government contract procedures.

"Neither the general public nor the legal profession really have any idea whether the system of government contracting works fairly or unfairly, effectively or ineffectively, or whether a better system could be devised."

(Public Torts and Contracts, Aronson, Whitmore)

THE NORTHERN TERRITORY

Supply and tender procedures for procurement of services and goods required by government in the Territory have recently been revised. The timing of these changes, following Skywest's successful Supreme Court challenge to the Government over its aero-medical contracts, suggests that the system was inadequate.

The Treasurer in the Northern Territory is authorised by the Financial Administration and Audit Act and Regulations to issue Directions, which must be followed by departmental accounting officers, and which include procedures to be followed for the procurement of goods and services.

In the interest of accuracy, relevant sections of Treasurer's Directions are quoted in full:-

"20.1 The underlying objective of procurement procedures is that they should be and be seen to be beyond reproach, i.e. that all who wish to participate in Territory Government business are given the opportunity to do so, that the Territory Government maintains a reputation for fair dealing, and that Territory moneys are spent effectively and economically. It is considered that this objective is best achieved by inviting public quotations. Therefore all procurement of supplies in excess of \$3,000 in value shall be arranged in accordance with these Directions and shall be obtained by public quotation unless the supplies are:-

- (i) obtained under an appropriate existing contract or standing offer held by the NT Government or NT Authority; or
- (ii) obtained under an appropriate existing contract or standing offer held by the Commonwealth, a State or another Territory of the Commonwealth (excluding Town or Aboriginal Councils) which has been authorised by the Supply and Tender Board; or
- (iii) the subject of a Certificate of Exemption from public quotations issued by the relevant competent authority; or
- (iv) the subject of a General Exemption issued by the Treasurer; or
- (v) the subject of prequalification of tenderers and all tenderers so prequalified have been invited to submit an offer.

20.2 The Accounting and Property Manual issued by Accountable Officers shall ensure that due regard is given at all times to economy in purchasing. Instructions issued must also provide appropriate controls governing the calling for, recording and evaluation of quotations. The Manual should be consistent with these Directions and all Guidelines and Circulars issued by the Chairman of the Supply and Tender Board.

Requisitions

- 20.3 A requisition which is an authority to acquire supplies shall be completed before a contract is entered into for supplies except where the Treasurer has determined that a requisition is not required (see Treasurer's Directions 9.34 and 9.35). Regulation 8 (3) requires that before a requisition is approved by the Accountable Officer, it shall be endorsed to indicate whether or not there is an appropriate existing contract under which supplies may be obtained.
- 20.4 Requisitions shall be completed to show:
- (a) the description and quantity of the supplies required;
 - (b) whether there is an appropriate existing contract as described in Treasurer's Direction 20.1(i) or 20.1(ii):
 - (i) the contract under which the supplies may be obtained;
 - (ii) the contract price or rate; and
 - (iii) any relevant terms and conditions, e.g. discount, delivery, price variable/firm;
 - (c) the known or estimated amount of the commitment to be entered into in respect of the requisition; and
 - (d) the head of expenditure (including the Charge Code) against which the commitment is to be recorded. The Certifying Officer shall ensure that the correct Charge Code for the expenditure is shown on the requisition.

Orders

- 20.5 Treasury Regulation 13 provides that all supplies ordered by the Territory shall be on an order form that is specified in the Treasurer's Directions. An order form may consist of a:-

- (i) purchase order contained in Appendix A to Treasurer's Direction 1; or
- (ii) letter of acceptance of an offer of supplies; or
- (iii) formal contract; or
- (iv) credit card approved by the Treasurer.

All order forms must be signed by the Accountable Officer or his delegate.

- 20.6 The time for completion, terms of settlement and any discounts should be clearly identified, on the order or in the contract as well as a detailed description of the requirement including quantity. Adequate instruction regarding required delivery date, packing, marking etc should also be specified if required.
- 20.7 Where purchases are being made under an existing contract or standing offer covered by Treasurer's Direction 20.1, the contract or standing offer should be clearly identified.

Sales Tax Exemptions

- 20.8 Goods which are being purchased for Government purposes may be exempt from sales tax under Item 74 in the First Schedule to the Sales Tax (Exemptions and Classifications) Act. An Exemption Certificate must be prepared for all goods purchased where a sales tax exemption is claimed. An Exemption Certificate in the form provided at Appendix A may be attached to or stamped on the order form or other appropriate means by which the contract has been entered into.

Field/Emergency Purchases - under \$500

- 20.9 Accountable Officers should establish procedures in their Accounting and Property Manual, which apply where supplies required do not exceed \$500. These procedures should include a provision for obtaining representative quotations where they may be obtained readily at little administrative cost or inconvenience.

Quotations

- 20.10 At least three representative quotations shall be sought from established traders in the type of supplies required for requirements from \$501 to \$3,000. These quotations may be verbal but a written quotation is to be obtained from the recommended tenderer prior to acceptance of the offer. Where three established traders are not available the Accountable Officer's approval is required to seek either one or two quotations only.
- 20.11 Public quotations shall be called for the procurement of all supplies over \$3,000 except as provided in Treasurer's Direction 20.1.
- 20.12 Requests for calling quotations or public quotations in excess of \$50,000 shall be reviewed by the appropriate tender board prior to calling public quotations.
- 20.13 The Accountable Officer or his delegate may accept a quotation for supplies valued at \$50,000 or less. If the Accountable Officer or his delegate accepts other than the lowest conforming quotation he is required to inform the appropriate tender board.
- 20.14 All quotations over \$50,000 must be referred to an appropriate tender board for their endorsement prior to the delegate entering into the contract. Where no quotation as described above is to be accepted, the recommendation to reject the quotations must be referred to the appropriate tender board prior to tenderers being notified.
- 20.15 The procedures issued by an Accountable Officer shall ensure that a single requirement shall not be divided into a number of separate requisitions/orders so as to bring each purchase within any of the limits prescribed above and in Treasury Regulation 9 except where the Territory assumes the role of principal contractor.

Certificates of Exemption from Public Quotations

- 20.16 Treasury Regulation 12 provides that where the

Treasurer or his delegate is satisfied that it is inexpedient to call public quotations, he may issue a Certificate of Exemption.

- 20.17 The Accountable Officer or his delegate may issue Certificates of Exemption up to and including \$50,000. All such certificates issued will be reported to the appropriate tender board on a regular basis as required.
- 20.18 Certificates of Exemption for requirements over \$50,000 require the approval of the Treasurer prior to supplies being acquired. Before such approval is sought, the request should be endorsed by the Accountable Officer, the relevant Minister and the appropriate tender board.
- 20.19 Where the Treasurer is satisfied that it is inexpedient to use the quotation procedures, he may, under the provision of Regulation 12, determine that a class of supplies be exempt from these procedures. He has so determined in respect of supplies of a class normally provided by the type of suppliers listed in Appendix B to this Section. The Northern Territory Treasury should be advised if a department considers that a further category of supplies should be included in Appendix B.
- 20.20 When obtaining supplies of a class to which an exemption applies - see Appendix B - departments should take particular care to ensure that the procedures used for the selection of suppliers will stand up to public scrutiny.

Late Quotations

- 20.21 All quotations over \$50,000 received late (ie. after the official close off time) shall be referred to the appropriate tender board for a decision on their admissibility.

Establishment of Tender Boards

- 20.22 Treasury Regulation 10A empowers the Treasurer to establish tender boards which are to perform specific functions.
- 20.23 The Treasurer has established the following tender boards.

- (a) *The Supply and Tender Board which resides in Darwin;*
- (b) *Regional Tender Boards at Katherine, Tennant Creek, Alice Springs and Nhulunbuy which operate under guidelines approved by the Supply and Tender Board, Darwin."*

The above process has mandatory application for all Northern Territory Public Service Departments. Prescribed Statutory Authorities, in most cases, follow the Treasurer's Directions at the behest of their respective Ministers. Exceptions include the Territory Insurance Office, N.T. University and the Power and Water Authority, each of which has its own board of assessment with essentially the same procedure.

CHAPTER SIX

THE AERO-MEDICAL CONTRACT

On 2 April 1986, the Northern Territory Cabinet called for the drafting of a Tender Document for the supply of Aerial Medical Services in the Darwin and East Arnhem Region.

Specifications detailing the services required are at Appendix B and cover the following functions:-

- "1. To provide a 24 hour emergency medical evacuation service for patients from remote areas requiring hospitalisation in Gove or Darwin.
2. To provide expert medical transfer of patients requiring specialist care from Gove and Katherine to Royal Darwin Hospital.
3. To provide medical, dental, and allied health visits to rural communities.
4. To provide a 24 hour radio-medical consultation service and to co-ordinate transport and treatment."

The service, at that time and up to midnight on 12 August 1986, was provided by Air North Pty Ltd representing the contractors Northern Territory Aerial Work and Ansett Transport Industries.

Cabinet, in its approval for the calling of tenders, specified that it required to examine the draft document prior to public advertising. Although it did not, as it was entitled to do, require to be consulted prior to the awarding of the contract, there was a clear understanding, based on the advice of the Department of Health, that the Treasurer would be consulted prior to the awarding of any contract.

On 27 May 1986, the Acting Secretary for Health, Dr John Quinn, requested the Under-Treasurer, Dr Richard Madden, to prepare the draft tender documents based on specifications provided. The request added that:-

"The matter needs to be treated with some urgency due to the imminent expiry of the current contract."

Following drafting of the documents and consideration by N.T. Cabinet, the then Minister for Health, Mr Tom Harris, approved the calling of tenders on 3 July 1986.

Tenders were called on 9 July 1986 and at the closing date of 5 August 1986, four tenders had been received:-

Air North

Luck Investments

Royal Flying Doctor Service, and

Skywest

The standard process of assessing each tender against a range of pre-determined specifications was then applied. Of the four tenderers only Skywest was assessed as having fully complied with the specifications.

Following receipt of the departmental assessment and recommendation of 15 October 1986, the General Tender Board met on 23 October 1986 and approved the arranging of a contract with Skywest Airlines. This approval was indicated by a stamp "APPROVED" followed by the signatures of the five Supply and Tender Board members.

Unsuccessful tenderers were notified of the Board's decision by letter on the day of the meeting whilst the successful tenderer, Skywest, was notified that day by telex.

The series of events that followed saw one of the unsuccessful tenderers, Air North, making application to the Court "seeking orders nisi for writs of certiorari, prohibition and mandamus against the members of the Tender Board, and for a writ of prohibition against the Minister for Health and the Northern Territory Government prohibiting them from further dealing with the contract with Skywest for the supply of the aerial medical services. The application was heard late that day, as a matter of urgency, by Nader J., and orders nisi were made returnable at 9 am on Friday, 7 November 1986.

Thereafter, on 3 November 1986, Air North commenced proceedings in the Court (817 of 1986), this time by way of Writ of Summons, against the General Tender Board (First Defendant), the Minister for Health (Second Defendant), and the Northern Territory (Third Defendant). Stated shortly, the Statement of Claim (as subsequently amended) alleged that the General Tender Board which considered the tenders was not a properly constituted Board, and that, in any event, the Board has misinterpreted the specification of the services tendered for, and had not dealt fairly with Air North's tender. Consequentially, it claimed a number of declarations, including a declaration that any purported acceptance of Skywest's tender and any agreement entered into pursuant to that acceptance, was invalid and/or

ultra vires, and orders that the decisions of the Board and the Minister for Health accepting Skywest's tender be quashed, that the Tender Board deal with the tenders according to law, and an injunction restraining the defendants from entering into or further acting upon any contract in relation to the aerial services pursuant to an acceptance of a purported tender by Skywest.

Subsequently, on 7 November, the respondent Skywest applied to be, and was, joined as a defendant (Fourth Defendant) in those proceedings." O'Leary CJ NT Court of Appeal

On 12 November 1986, the matter was referred by the Legislative Assembly to the Public Accounts Committee to consider:-

"All matters concerning the recent decision of the Northern Territory Government relating to the aero-medical contract, including:-

- (1) the adequacy of the tender documents;
- (2) whether all relevant matters were considered in assessing the tender;
- (3) whether proper procedures were followed in assessing the tenders;
- (4) whether the Tender Board formed for the purpose was properly constituted;
- (5) this matter shall not be considered by the Committee until such time as all litigation relating to the matter has been completed."

The Committee has limited its consideration to events up to and including 12 November 1986 and reports specifically on its terms of reference as follows:

(1) the adequacy of the tender documents;

A copy of the Request for Tender is at Appendix B.

The Public Accounts Committee has considered the tender documents relative to the services required by the Department of Health for the supply of aerial-medical flight services to the Darwin and East Arnhem regions of the Northern Territory.

The Committee took cognizance of the fact that Air North was assessed by the Department of Health as having failed to comply with tender specifications and gave particular consideration to each of those points of non-compliance.

Whilst compliance and non-compliance are the terms used to assess competing tenders, the Committee considers such assessments to be an over-simplification. For example, in this case, tender documents called for:-

"3.3.2 Pressurised Aircraft"

3.3.2.1 In excess of 70,000 NM may be flown in this category but is not guaranteed.

3.3.3 All distances are map miles, base to base."

Air North's tender provided for a suitable aircraft which was also to be used for regular airline scheduling and charter work. The degree of availability of such an aircraft had to be assessed and compared with competing tenders which provided suitable dedicated aircraft. The final assessment probably should not have been "does not comply" but the result would have been the same had tenders been ranked in order of compliance.

Had the Department of Health specified that a dedicated pressurised aircraft was to be provided, the argument over degrees of compliance would have been averted but would have also limited the flexibility of the department to choose the most suitable had none of the tenderers been able to offer a dedicated aircraft.

The Committee concludes that the tender documents were adequate for the department to procure the most efficient, economic and effective aerial-medical service for the Darwin and East Arnhem regions of the Northern Territory.

(2) whether all relevant matters were considered in assessing the tender;

The Committee has had to interpret this aspect of its inquiry in the broadest possible sense. To this end, the Committee has examined relevant documentation from the files of the Department of Health which discussed not only compliance with tender document specifications but also other matters that appear relevant to the achievement of optimum efficiency, economy and accountability.

Firstly, in terms of strict compliance with tender documentation specifications, only one tenderer met the full requirements of the department. This was Skywest.

In addition to the compliance criteria, the specifications provided for tenderers to:-

- (i) relate "previous experience", and

- (ii) "provide any other information that is available to allow an accurate assessment of their tender".

Air North, together with the Royal Flying Doctor Service, were the only tenderers to claim previous experience of direct relevance. As neither of these tenderers complied with other aspects of the tender specifications, these claims were not required to be assessed by the Tender Board. The Committee did note however that much criticism of the service previously provided, under contract, by Air North was evident in Department of Health files. As the criticism was detailed in minutes of meetings held with Air North and in correspondence with the company, the Committee is of the view that the overall assessment by the Department that the service was unsatisfactory is justified.

On the matter of "other information", Air North's tender emphasised its status as a Territory company, a factor of obvious importance to the Territory economy. This factor however is not a primary consideration and would only be deferred to when all other factors, between competing tenderers, were equal. The constraints placed on giving preference to local companies under the terms of the National Preference Agreement (APRE) presents a problem for the N.T. Government. The extent of local preference is summed up in a recent addition to standard government tender documents:-

"The use of sub-contractors and suppliers from within the Territory is seen by the Government as an important factor in the economic development of the Northern Territory. Contractors are urged to consider the utilisation of local resources when formulating their offer."

In the opinion of the Committee, all relevant matters were considered in assessing the tender.

(3) whether proper procedures were followed in assessing the tenders

The tendering process in place at the time of the selection of a contractor for the supply of the aerial-medical service has been examined (Appendix C) and is commented on as follows:-

- "(a) Receive requests for tendering action for goods and services required by departments, including a detailed specification of the requirements;"

This is the initial advice to the Tender Board that a contract is to be advertised. In the case of the aerial-medical service,

such an advice was despatched to the then Under-Treasurer, Dr Richard Madden, by the Department of Health on 27 May 1986.

The form of the advice is letter, at Chief Executive Officer level, comprehensively detailing the background, timing and specifications to be met.

The Committee is aware, from departmental files, that considerable effort went into the construction of the specifications following consultation between Darwin, East Arnhem and Katherine users of the aerial-medical service.

"(b) Review the specification to ensure that it:-

(i) fosters public competition and equal opportunity"

The requirements of the department, which were transposed into the formal tender documents at Appendix B, in the opinion of the Committee, reflect the specific perceived needs of the department based on its experience to that date.

The fact that tenders were received from:-

- (i) the company then providing the service;
- (ii) a company formed for the sole purpose of providing the service;
- (iii) a company intending to extend its business to incorporate the service, and
- (iv) a company operating in a complimentary aerial-medical service

is ample evidence that the specifications were prepared and issued in such a way as to attract maximum competition and opportunity.

Non-compliance by three of the four tenderers is not considered, by the Committee, to reflect in any way on the adequacy of the tender documents.

"(ii) delineates the requirement"

The Committee has examined, in detail, the tenders submitted by Skywest and Air North.

Skywest complied fully with tender specifications.

Air North's submission followed the same standard format used by Skywest and failed to comply with a number of specified service requirements.

It was not a failure to "Delineate the requirement" in the tender documentation, as shown by Skywest's ability to meet all requirements, but a failure on the part of Air North to offer the service delineated.

"(iii) is consistent with Government purchasing policies"

Government purchasing policies are reflected in the Treasurer's Directions. These Directions are formally provided for and authorised by the Financial Administration and Audit Act and Regulations.

Tenders and quotations were dealt with by Direction 20.14 which stated:-

20.14 The underlying intention of Regulations 8 to 14 is that the procurement procedures of the Territory Government should be, and be seen to be, beyond reproach: i.e. that all who wish to participate in Territory Government business are given the opportunity to do so, that the Territory maintains a reputation for fair dealing and that Territory moneys are spent effectively and economically. This intention is best achieved by the public invitation of tenders by press or Gazette advertisements and the subsequent publication in the Gazette of details of contracts arranged (Regulation 14). It is not, however, always appropriate to call tenders or publish details of contracts and the Regulations provided for alternative procedures."

Insofar as the specification was prepared, the Committee finds it to be consistent with Government purchasing policies.

"(iv) facilitates the evaluation;"

The Committee believes the standard format followed by the aero-medical tender specification was suitable for the Tender Board's compliance review and comparative analysis requirements.

"(c) Arrange the public invitation and receipt of tenders;"

Tenders were advertised as follows:-

NORTHERN TERRITORY OF AUSTRALIA
GENERAL TENDER BOARD
TENDERS INVITED

Tenders must be lodged in the Tender Box -
Purchasing Branch, Corporate Services
Division (formerly General Tender Board)
4th Floor, AMP (formerly Palmerston)
Building, 38 Cavenagh Street, Darwin at
2.00pm on the dates indicated:-

CLOSING DATE TUESDAY 5 AUGUST 1986
TB:1738/85 Supply and Delivery of
Aerial Medical Flight Services
to the Darwin and East Arnhem
Regions of the Northern
Territory.

All Tender Schedules are available from the
Purchasing Branch, Corporate Services Division,
(formerly General Tender Board) Telephone:
(089) 897530. Telex: NTGTB85116. Tender
Schedules for regional requirements are
available from the relevant Area Office:
Department of Transport and Works: Tennant
Creek 622004: Katherine 720233: Industrial
Estate Nhulunbuy 871288: Jabiru Town Council,
Jabiru 792230: Northern Territory Treasury
Office Alice Springs 524900 Telex: 81171.

The above advertisement, including other public contracts,
appeared in the classified pages of:-

The Australian - 19 July 1986
The N.T. News - 17, 24 and 31 July 1986

"(d) Refer tenders received to the department
requiring the goods and services for
evaluation;"

Tenders were received by the General Tender Board in respect of
the aerial-medical service at 2.00 pm on 5 August 1986 from:-

- . Air North;
- . Royal Flying Doctor Service;
- . Luck Investments;
- . Skywest.

These four tenders were referred to the Department of Health for its assessment and recommendations.

The Public Accounts Committee acknowledges the extent of consideration entered into by the department in completing its assessment of the respective tenders, including a meeting with representatives of Skywest on 23 September 1986.

- "(e) Receive the department's Evaluation Report and Recommendation regarding the tenderer selected for contract award;"

The Evaluation Report and Recommendation was sent to the General Tender Board by the Department of Health on 15 October 1986.

- "(f) Review the department's Evaluation Report to ensure that the evaluation:-
- (i) has been conducted in a manner which has involved full analysis of tenders against the requirements as specified in the Request for Tender document;
 - (ii) is defensible in terms of its logic and the process followed."

Following receipt of the department's report, the Tender Board chairman, on 21 October 1986, verbally requested that the department provide further information supporting its recommendation that "Skywest Airlines fully complies to the specification and is accordingly recommended for acceptance."

The initial report provided a comprehensive analysis of each of the other three tenders and rejected each for non-compliance and other acceptable reasons. The Skywest recommendation was not supported by the same analysis.

The required further details were provided later that day; 21 October 1986.

The Committee is satisfied that the Evaluation Report subsequently met the Board's review requirements at (f) above.

- "(g) Prepare a "Business Paper" to the General Tender Board covering the tendering and evaluation process to facilitate consideration by the Tender Board of the Tender Recommendation;"

The Committee has viewed the Business Paper prepared by the Tender Board secretariat and accepts that details of the

evaluation process and rationale for the departmental recommendations are sufficient "to facilitate consideration by the Tender Board."

The Business Paper contained provision for the decision of the Tender Board and the signatures of the members of that Board.

The decision "APPROVED" the departmental recommendation in favour of Skywest.

"(h) *Following approval by the General Tender Board, prepare appropriate contract documentation, if necessary, negotiating details of terms and conditions with the successful tenderer. In instances where the Government has directed that acceptance of the tender be a matter for Cabinet, following General Tender Board approval of the tendering and evaluation process, the recommendation is referred to Ministers for approval.*"

Prior to preparation of contract documentation it had become an established practice to firstly notify all tenderers, by letter, of the decision of the Tender Board. That practice also included provision where "urgency in getting the contract under way" for notification by telex.

In this case, Skywest was notified by telex on 23 October 1986, and the three unsuccessful tenderers by letter of 23 October 1986.

The Northern Territory Government had not "directed that acceptance of the tender be a matter for Cabinet".

Notwithstanding the technical oversight on the part of Cabinet, there was a clear expectation, based on Department of Health advice, that the Treasurer would be consulted prior to the letting of the contract. "The Treasurer may then wish to consult his Cabinet colleagues before accepting the tender on behalf of the NT Government."

The Department of Health failed to ensure this aspect of the procedure was followed on the aero-medical contract. The department's memorandum of 19 August 1986 to the Minister for Health testifies to a major bureaucratic bungle. (Appendix D).

Actual events following the issue of notices of General Tender Board Decision TB: 1738/85, became the subject of litigation and this report now defers to the transcript of the Court of Appeal,

Reasons for Judgment, on what was found to have followed the Board's decision:-

MR JUSTICE O'LEARY:

"I return now to events following the meeting of the Board on 23 October. Some time after the meeting Mrs Gemmell prepared letters to be sent to the unsuccessful tenderers, advising them of that fact, and a telex to the successful tenderer advising it accordingly. The letter to the unsuccessful tenderers (which, of course, included Air North) was as follows:-

"23 October 1986

Dear Sir

TB:1738/85EX - SUPPLY OF AERIAL MEDICAL FLIGHT SERVICES TO THE DARWIN AND EAST ARNHEM REGIONS OF NORTHERN TERRITORY DATE OF ACCEPTANCE TO 30 SEPTEMBER 1991

Your offer for the above has been considered but on this occasion was unsuccessful.

The name of the successful tenderer was Skywest Airlines Pty Ltd.

Estimated Expenditure: \$1.7 million per annum.

Your interest in tendering is appreciated.

Yours sincerely

J. O'GRADY for Under Treasurer"

The telex to the successful tenderer, Skywest, was in these terms:

"23 OCT 86 11.54

ATTENTION: L MEEKE, MANAGING DIRECTOR

REF: TB 1738/85EX - SUPPLY OF AERIAL MEDICAL FLIGHT SERVICES TO THE DARWIN AND E ARNHEM REGIONS OF NORTHERN TERRITORY

YOUR OFFER AS PER OPTION 'A' DATED 1 AUGUST 1986 FOR THE ABOVEMENTIONED SERVICE IS HEREBY ACCEPTED.

COMMENCEMENT DATE IS 30 DAYS FROM 23 OCTOBER 1986. YOU WILL BE ADVISED WHEN FORMAL DOCUMENTS ARE READY FOR SIGNING. OPERATIONAL CONTACT IS DEPARTMENT OF HEALTH, SISTER-IN-CHARGE AERIAL MEDICAL SERVICE, BARB STOTT, PHONE (089) 203251. WRITTEN CONFIRMATION WILL FOLLOW.

J. O'GRADY FOR UNDER TREASURER."

Having prepared that telex, Mrs Gemmell took it to Mrs O'Grady for her approval before sending it out. She explained that there was an urgency about sending it, that she had checked with the Department of Health and that they had requested that it be sent out urgently; as far as they were aware, there was nothing to stop the telex being sent. At that, Mrs O'Grady approved it, and it was sent out in her name "for Under-Treasurer".

Whether it was before or after the telex was sent is not clear, but it appears that some time later that day Mr Harkin spoke about the aerial medical services tenders with Mr David Stone, the Director of the Capital Resources Division of the Treasury. In the absence that day of the Under-Treasurer, who was abroad, and the Acting Under-Treasurer, who was in Alice Springs, Mr Stone was the senior Treasury officer in Darwin. What exactly was said in that conversation is also not clear (as the learned trial judge commented, Mr Harkin's evidence was vague in some respects), but it seems that Mr Stone had come to Mr Harkin's office and asked what recent action had been taken in relation to the aerial medical services tenders, whereupon Mr Harkin told him that they had been considered by the General Tender Board that morning, and that the recommendation to award the contract to Skywest had been approved. Mr Harkin said in his evidence that following his discussion with Mr Stone, he then spoke with Mrs Gemmell and Mrs O'Grady "to ascertain what precisely had happened since the General Tender Board meeting". He did not say what, in fact, he ascertained, but the significance of this evidence, as I see it, is that both Mr Harkin and Mr Stone must be taken to have known that the Board's decision would be notified to the tenderers in the way it was regularly done at the time.

On receipt of the telex from Mrs O'Grady, the respondent, by its Managing Director, Mr Chris Ring, replied on the same day in these terms:

"23 OCT 86

TO: MR J. O'GRADY
FOR UNDER TREASURER

TB 1738/85EX - SUPPLY OF AERIAL MEDICAL FLIGHT SERVICES
TO THE DARWIN AND EAST ARNHEM REGIONS OF THE NORTHERN
TERRITORY

WE ARE PLEASED TO ACKNOWLEDGE RECEIPT OF YOUR TELEX OF
23 OCTOBER 1986 AND CONFIRM THAT SKYWEST IS LOOKING
FORWARD TO COMMENCING OPERATIONS ON SATURDAY 22
NOVEMBER.

WE ALSO LOOK FORWARD TO YOUR LETTER OF CONFIRMATION IN
DUE COURSE.

OUR GENERAL MANAGER GOVERNMENT CONTRACTS, HUGH DAVIN,
WILL MAKE CONTACT WITH THE DEPARTMENT OF HEALTH
SISTER-IN-CHARGE AERIAL MEDICAL SERVICE, BARB STOTT,
AND ALSO WITH THE MANAGEMENT OF AIR NORTH, TO ARRANGE
AN ORDERLY HAND-OVER OF OPERATIONS.

HUGH DAVIN AND I WILL BE IN DARWIN ON MONDAY 27 OCTOBER
AND WILL BE PLEASED TO MEET WITH YOU THEN SHOULD YOU
FEEL IT APPROPRIATE.

REGARDS CHRIS RING MANAGING DIRECTOR SKYWEST AIRLINES."

Also, on the same day, 23 October, the respondent sent a
telex to the then Minister for Health. It read as follows:

"23 OCT 86

TO: THE HON T. HARRIS, MLA
MINISTER FOR HEALTH
NORTHERN TERRITORY

DEAR MINISTER

THE MANAGEMENT AND STAFF OF SKYWEST AIRLINES ARE VERY
PLEASED TO BE AWARDED THE CONTRACT FOR THE SUPPLY OF
AERIAL MEDICAL FLIGHT SERVICES TO THE DARWIN AND EAST
ARNHEM REGIONS OF THE NORTHERN TERRITORY, AND ARE
LOOKING FORWARD ENTHUSIASTICALLY TO THE COMMENCEMENT OF
OPERATIONS.

I AM VERY CONFIDENT THAT THE CHOICE OF SKYWEST TO
OPERATE THIS VERY IMPORTANT SERVICE WILL BE JUSTIFIED
BY THE PROVISION OF A PROFESSIONAL SERVICE OF HIGH

STANDARD WHICH WILL PROVE TO BE MORE THAN ACCEPTABLE TO ALL CONCERNED.

YOUR SINCERELY CHRIS RING MANAGING DIRECTOR"

To this point, there is nothing to indicate that anything untoward had taken place in the calling of tenders for the contract, in the assessment of them by the Department of Health, in the General Tender Board's consideration of them, or in the notification to the tenderers of the Board's decision. The Board had acted entirely in accordance with Treasury Regulation 10(3); it had carried out its functions independently; the tenders had been processed in accordance with the Treasurer's Directions; and in accordance with Direction 20.17 it had entered into a contract on behalf of the Territory by accepting the respondent's offer and communicating that acceptance to the respondent in accordance with a method adopted by the Board at the time for communicating acceptances of offers.

On the following day, however, 24 October 1986, a new development began when Mr John Hardy, the Managing Director of Air North, sent a telex to the Treasurer, Mr Coulter. It read:

"REFERENCE; TB 1738/85EX - SUPPLY OF AERIAL MEDICAL FLIGHT SERVICES TO THE DARWIN AND EAST ARNHAM REGIONS OF NORTHERN TERRITORY

WE HAVE RECEIVED ADVICE FROM THE GENERAL TENDER BOARD THAT THEY ARE ABOUT TO AWARD TENDER TB:1738/85EX TO SKYWEST AIRLINES PTY LTD AT AN ESTIMATED EXPENDITURE OF \$1.7 MILLION.

WE WOULD OBJECT MOST STRONGLY TO THIS ACTION AND DRAW TO YOUR ATTENTION THE FOLLOWING MATTERS:

1. SKYWEST'S TENDER IS SOME 24% IN EXCESS OF OUR TENDER PRICE - THEY ARE OBVIOUSLY NOT THE LOWEST TENDER.
2. SPECIFIC CARE WAS TAKEN IN THE PREPARATION OF OUR TENDER TO ENSURE THAT THIS TENDER CONFORMED WITH THE SPECIFIED REQUIREMENTS.
3. WE HAVE NEVER BEEN GIVEN THE OPPORTUNITY TO DISCUSS OUR TENDER WITH THE GENERAL TENDER BOARD.

IT HAS ALWAYS BEEN AGREED BETWEEN THE M.B.A. AND OTHER CONTRACTORS' ORGANISATIONS AND THE VARIOUS TENDER

BOARDS THAT A REPUTABLE CONTRACTOR WHOSE BID CONSTITUTED THE LOWEST TENDER WOULD NOT BE PASSED OVER UNLESS THEY HAD BEEN GIVEN THE OPPORTUNITY TO STATE THEIR CASE.

THIS UNILATERAL DECISION BY THE GENERAL TENDER BOARD REFLECTS ON THE COMPETENCE OF THIS COMPANY, A MAJOR NORTHERN TERRITORY COMPANY AND IS COMPLETELY CONTRARY TO YOUR GOVERNMENT'S POLICY TO SUPPORT N.T. COMPANIES.

WE ACCEPT THE RESERVATION CONTAINED WITHIN THE CONDITIONS OF TENDERING THAT THE TENDER BOARD IS UNDER NO OBLIGATION TO AWARD THE TENDER TO THE LOWEST TENDERER OR IN FACT TO ANY TENDERER.

HOWEVER WE WOULD REQUEST THE COURTESY OF AN EXPLANATION OF WHY THE GENERAL TENDER BOARD CONSIDERS THAT THIS COMPANY IS NOT CAPABLE OF FULFILLING THE SPECIFIED REQUIREMENTS AND WOULD REQUEST A REVIEW OF THE TENDER SUBMISSIONS FOR THIS SPECIFICATION.

JOHN HARDY
MANAGING
DIRECTOR AIR
NORTH PTY LTD".

Some time later that day, Mr Harkin rang Mr Davin, the General Manager, Government Division, of Skywest in Perth. According to Mr Davin, Mr Harkin introduced himself as the Director of Corporate Services of the Treasury and advised him that no action was to be taken following the telex of advice of acceptance of Skywest's offer, that contract documents were being compiled, that no action was to be taken until they were signed and that they commenced date had been rescinded to a date to be advised.

That telephone call was followed by a telex from Mr Harkin to Mr Davin. It was not sent "for Under-Treasurer", nor was it sent by him as Chairman of the Tender Board. He sent it as Director, Corporate Services, Northern Territory Treasury. It read:

"I REFER TO YOUR TELEX OF 23 OCTOBER. YOU WILL APPRECIATE THAT THE TELEX OF 23 OCTOBER 1986 SIGNED BY J. O'GRADY DOES NOT CONSTITUTE ACCEPTANCE OF YOUR OFFER. ACCEPTANCE OF TENDERS IS GOVERNED BY THE TERMS OF REQUEST FOR TENDER DOCUMENT TB:1738/85 EX, A COPY OF WHICH WAS DELIVERED TO YOU. UNDER THE TERMS OF THE R.F.T. THERE CAN BE NO ACCEPTANCE UNTIL A LETTER OF ACCEPTANCE, SIGNED BY A PROPERLY AUTHORISED PERSON, IS DELIVERED OR POSTED TO YOU.

THIS IS TO CONFIRM THE POSITION AND TO CAUTION YOU AGAINST ACTING IN ANY WAY TO YOUR PREJUDICE ON THE ASSUMPTION THAT A CONTRACT IS IN EXISTENCE."

To that telex Mr Davin replied as follows:

"WE ARE SOMEWHAT PUZZLED BY YOUR UNDERSTANDING OF OUR APPRECIATION OF J. O'GRADY'S TELEXED ADVICE. TO THE CONTRARY, OUR ADVICE IS THAT A BINDING LEGAL CONTRACT IS IN EXISTENCE.

THE ACCEPTANCE OF THIS COMPANY'S TENDER WAS CLEARLY COMMUNICATED BY THE TELEX OF 23 OCTOBER 1986 AND HAS BEEN WIDELY CONFIRMED IN DISCUSSION WITH VARIOUS DEPARTMENTAL OFFICERS.

IN FACT ARRANGEMENTS HAVE BEEN PUT IN PLACE FOR A MEETING BETWEEN SKYWEST AND THE REGIONAL DIRECTOR AT HIS REQUEST FOR 1300 HOURS ON MONDAY 27 OCTOBER TO FURTHER DISCUSS IMPLEMENTATION PLANS.

HUGH DAVIN
GENERAL MANAGER
GOVERNMENT CONTRACTS"

On 28 October 1986 the Managing Director of Skywest, Mr Ring, sent a telex to the Secretary of Cabinet, with a copy to each of the members of Cabinet. It read:

"TB1738/85EX - SUPPLY OF AERIAL MEDICAL FLIGHT SERVICES TO THE DARWIN AND EAST ARNHEM REGION OF THE NORTHERN TERRITORY

I AM BOUND TO REGISTER WITH YOU MY GRAVE CONCERN AT SUGGESTIONS WHICH HAVE REACHED US FROM VARIOUS SOURCES AND IN PARTICULAR THE CLAIM BY AIR NORTH PERSONNEL THAT THE DECISION TAKEN BY THE NORTHERN TERRITORY TENDER BOARD TO AWARD THE AERIAL MEDICAL CONTRACT TO SKYWEST IS TO BE OVERTURNED IN CABINET TODAY AND THAT THE CONTRACT WITH SKYWEST IS TO BE SOMEHOW REPUDIATED AND RE-AWARDED TO AIR NORTH.

THIS CONCERN HAS BEEN REINFORCED BY:-

1. THE TELEX RECEIVED FROM KEN HARKIN DIRECTOR OF CORPORATE SERVICES ON 24 OCTOBER 1986 PURPORTING TO DENY THE EXISTENCE OF A CONTRACT.
2. THE FACT THAT WE HAVE BEEN UNABLE TO SPEAK WITH EITHER OF THE MINISTERS DIRECTLY ASSOCIATED WITH THE AWARDING OF THIS CONTRACT, NAMELY, THE MINISTER FOR

HEALTH, THE HON. TOM HARRIS, AND THE TREASURER, THE HON. BARRY COULTER.

3. OUR UNDERSTANDING THAT STAFF OF THE NORTHERN TERRITORY TENDER BOARD AND THE NORTHERN TERRITORY DEPARTMENT OF HEALTH HAVE BEEN INSTRUCTED NOT TO DISCUSS ANY OF THE MATTERS RELATING TO THIS CONTRACT WITH SKYWEST. WE HAVE BEEN ATTEMPTING TO ARRANGE A MEETING WITH THE OPERATIONAL STAFF OF THE NORTHERN TERRITORY DEPARTMENT OF HEALTH BUT HAVE HAD NO RESPONSE WHATSOEVER TO OUR REQUEST FOR A MEETING TO DISCUSS THE IMPLEMENTATION OF THE SKYWEST OPERATIONS.

IF OUR CONCERN SHOULD PROVE TO BE SUBSTANTIATED WE WILL OF COURSE HAVE NO ALTERNATIVE BUT TO IMMEDIATELY PURSUE ALL LEGAL RIGHTS AND REMEDIES AVAILABLE TO US IN RESPECT OF THE BINDING CONTRACT PROPERLY AWARDED TO US.

CHRIS RING
MANAGING DIRECTOR"

There was no reply by or on behalf of the Secretary of Cabinet, or of any of the members of Cabinet, to that telex, though, having regard to the serious allegations contained in it, particularly the allegation that the contract to Skywest was to be overturned in Cabinet, to be somehow repudiated and re-awarded to Air North, one would think it certainly called for some reply.

On 30 October, Mr Meeke rang the Minister for Health, Mr Harris, and according to Mr Meeke, this is the conversation that took place:

Mr Meeke said, "Minister, I am ringing to discuss with you your phone call to Hugh Davin (Mr Harris had rung Mr Davin earlier that day). I have become aware that there are some rumblings regarding the awarding of this contract. We didn't entirely expect it to be without rumblings. The purpose of my call really is to determine what the situation is."

Mr Harris said to Mr Meeke "I don't really know what all the fuss is about. We've made a decision. We made that decision in the full light of the circumstances and the repercussions of that decision, and what I would ask of you is that you don't contribute to the innuendo, rumour and gossip that is abounding in Darwin at this stage."

On the following day, in an interview broadcast on the A.B.C. radio programme "After Eight", one Patrick Cusack

asked the Chief Minister, Mr Hatton, "Does Skywest have the legal right to the tender", to which the Chief Minister replied: "That appears to be the position, yes." On the same day in statements made to representatives of the media and reported in that day's edition of the Northern Territory News in an article entitled "Chief Blasts Officials over Air Contract" the Chief Minister said:

"The Health Department has been severely reprimanded for allowing the contract to be let without first consulting the Treasurer, Mr Barry Coulter regarding possible Cabinet consideration."

In response to the interviewer's question "Do you believe Skywest was legally entitled to claim it had won the \$1.7 million tender after receiving the controversial telex from the Government", the Chief Minister replied "On the facts available to me, yes".

The Chief Minister did not explain why he thought the letting out of the contract should be a matter for "possible Cabinet consideration". Nor is it clear to me why he should think there was occasion for reprimanding the Department of Health. It seems to me that the Department of Health was quite entitled to proceed on the basis that the letting out of the contract was solely a matter for the Tender Board carrying out its functions independently under Treasury Regulation 10(3). They could not be expected to think it was a matter for "possible Cabinet consideration".

On the same day, 31 October, Air North made an application to the Court (later numbered 818 of 1986) seeking orders nisi for writs of certiorari, prohibition and mandamus against the members of the Tender Board, and for a writ of prohibition against the Minister for Health and the Northern Territory Government prohibiting them from further dealing with the contract with Skywest for the supply of the aerial medical services. The application was heard late that day, as a matter of urgency, by Nader J., and orders nisi were made returnable at 9am on Friday 7 November 1986.

Thereafter, on 3 November 1986, Air North commenced proceedings in the Court (817 of 1986), this time by way of Writ of Summons, against the General Tender Board (First Defendant), the Minister for Health (Second Defendant), and the Northern Territory (Third Defendant). Stated shortly, the Statement of Claim (as subsequently amended) alleged that the General Tender Board which considered the tenders was not a properly constituted Board, and that, in any event, the Board had misinterpreted the specification of the services tendered for, and had not dealt fairly with Air

North's tender. Consequentially, it claimed a number of declarations, including a declaration that any purported acceptance of Skywest's tender and any agreement entered into pursuant to that acceptance, was invalid and/or ultra vires, and orders that the decisions of the Board and the Minister for Health accepting Skywest's tender be quashed, that the Tender Board deal with the tenders according to law, and an injunction restraining the defendants from entering into or further acting upon any contract in relation to the aerial services pursuant to an acceptance of a purported tender by Skywest.

Subsequently, on 7 November, the respondent Skywest applied to be, and was, joined as a defendant (Fourth Defendant) in those proceedings.

Meanwhile, at some time between 3 and 5 November, Mr Harris, the Minister, telephoned Mr Meeke and had a further conversation with him. According to Mr Meeke, Mr Harris said,

"I hope the contents of this telephone call don't come back to me. I really also hope that you won't enter into the debate and the fuelling of rumours and speculation that is occurring in the Territory at the moment in Darwin surrounding the aerial medical contract. I don't know what all the fuss is about. It seems as though we are just going to have to ride it out. Our position is that we have a contract with Skywest. There are obviously complaints being rendered from other quarters. It looks as though that will now result in litigation and in that regard we are just going to have to see that process through." (Emphasis mine)

Mr Meeke said he asked again what the Government's view was; he said he had been informed by his counsel that the Government would be adopting a defence that there was a legal and binding contract, and was that the case? To that Mr Harris said "yes". Mr Meeke said he then asked whether or not the Crown Law Department had been given instructions to defend the litigation vigorously, and Mr Harris' reply was "Yes".

Mr Meeke also said that he had two subsequent telephone conversations with Mr Harris, one about 12 November and the other on 21 November. In the course of this latter conversation, Mr Meeke said that Mr Harris said:

"As you know, the Government's position is that we have a legal and binding contract with Skywest." (Emphasis mine)

These statements made by the Minister for Health, as well as the statements made by the Chief Minister to which I have referred above, and which are not disputed, were, in fact, reflected in the Defences of the Tender Board, the Minister for Health and the Northern Territory to the Statement of Claim filed in the proceedings. Paragraph 18 of the plaintiff's Statement of Claim read:

"On or about 23 October 1986, the first defendant (the General Tender Board) rejected the plaintiff's tender and purported to accept Skywest's tender".

Paragraph 11 of the First, Second and Third Defendants' Defence read:

"As to the facts alleged in paragraph 18 they admit that on or about 23 October 1986, the plaintiff's tender was rejected and the Skywest tender was accepted."

Furthermore, paragraph 24 of the Statement of Claim alleged:

"24. The First, Second and Third Defendants are threatening to enter into or have entered a contract with the Fourth Defendant Skywest, for the supply of aerial medical services, which contract includes services not called for in the request for tender, which contract is or will be entered into in breach of the aforesaid Treasury Regulations, Treasury Directions and in breach of the Plaintiff's rights."

To this, the First, Second and Third Defendants pleaded in paragraph 14 of their Defence:

"14. That the facts in paragraph 24 are denied except that the Third and Fourth Defendants have entered into an agreement.

On 4 December, the Fourth Defendant, Skywest, filed Notice in the proceedings requiring certain questions and issues to be determined both as between the plaintiff and the First, Second and Third Defendants, and as between itself and the First, Second and Third Defendants. Those questions and issues were stated in the Notice as these -

- "1. Is there a binding agreement between the Fourth and Third Defendants as alleged in paragraph 6 of the Fourth Defendants Defence herein.
2. Does the Third Defendant have the power to avoid or rescind such an agreement.
3. Has the Third Defendant validly exercised any such power to avoid or rescind the said agreement with the Fourth Defendant.
4. Has the Third Defendant committed a breach of such agreement with the Fourth Defendant.
5. Is the Fourth Defendant entitled to an order for specific performance of such agreement against the Third Defendant, or in the alternative damages for breach of such agreement."

Consequentially, it claimed the following relief:

- "1. A declaration that there is a valid and binding agreement between the Fourth and Third Defendants as alleged in paragraph 6 of the Fourth Defendant's Defence herein.
2. A declaration that the Third Defendant has not validly avoided or rescinded such agreement.
3. An order for specific performance of such agreement, or in the alternative, damages to be assessed."

On 5 December, a further development took place. On that day both actions came before Nader J. on an application by counsel for the plaintiff Air North to discontinue the actions against all defendants. The basis of the application was, as expressed by the plaintiff's counsel, that "..... the first, second and third defendants have now conceded that there is, in fact, no contract between the Government and Skywest they had previously asserted that there was a contract, they assert that there was not a contract." The Solicitor-General who appeared for those defendants consented to the application, and explained what had happened in these words:

"..... in the course of working up for trial, additional information was found which disclosed, and was disclosed to both plaintiff and to Skywest. The plaintiff, Air North, then amended its statement of claim, or otherwise by reason of the pleadings, to

raise an issue going to things which were not raised in the first instance. That was the authority of persons constituting the Tender Board, and their capacity to act as a Tender Board, and as to the authority - lawful authority of a person who signed a telex message to Skywest, which it was alleged - is alleged by Skywest, concluded the contract in which in the light of what has been found since, the Territory says on advice, did not amount to a concluded contract Taking into account those new issues as opposed to the procedures prior to that time the Government took advice and as a consequence instructed me that on its pleadings between itself and Air North, will admit that there was no binding contract as between itself and Skywest." (Emphasis mine)

He went on to say:

"..... The Territory proposes calling for retenders of the contract for the provision of aerial medical services, which are the centre of this dispute, and that is what the Government proposes to do The Government, having made that decision, then any finding contrary to the advice received by Government that there is a contract, will not, on my instructions, disturb what the Government proposes to do. It will take its risk of the remedy available to Skywest, should there be found to be a contract, of damages."

Counsel for the fourth defendant, Skywest, opposed the application, indicating that his client wished to pursue its claim that a binding contract had been concluded between itself and the Territory, and that his client would be seeking specific performance of that contract. In the end, the trial judge gave the plaintiff leave to discontinue both actions on the terms set out in the correspondence below.

In fact, the arrangement between Air North and the Government had been reached some days before that date. It was confirmed in an exchange of letters between the Crown Solicitor and the solicitor for Air North which I think I should set out in full.

On 2 December 1986 the solicitor for Air North wrote to the Crown Solicitor in these terms:

"I refer to discussions between Ms Harrison and the writer on Monday 1st December 1986.

I confirm the following arrangements between us:

1. You will write to Air North Pty Ltd and Skywest Airlines Pty Ltd today advising them that there is no concluded contract between the Northern Territory and Skywest Airlines Pty Ltd and that the Northern Territory will call new tenders for the provision of aerial medical flight services to the Department of Health for the Darwin and East Arnhem regions of the Northern Territory.
2. Air North Pty Ltd will discontinue actions 817 and 818 of 1986. The first, second and third defendants in action 817 of 1986 will consent to the discontinuance of that action. The parties represented by the Crown in action 818 of 1986 will consent to the discontinuance of that action.
3. In consideration of the actions of Air North Pty Ltd set out in 2. above;
 - (i) The Northern Territory of Australia, the Honourable Minister for Health and General Tender Board of the Northern Territory of Australia will undertake not to enter into or further act upon any contract in relation to the provision of aerial medical services called for by Request for Tender TB:1738/85EX.
 - (ii) The Northern Territory of Australia, together with all the parties represented by the Crown in both actions will release Air North Pty Ltd generally as to damages and costs of the parties represented by the Crown in both actions;
 - (iii) The Northern Territory of Australia and the Minister for Health will indemnify Air North Pty Ltd in respect of any claim for damages or costs made at any time by Skywest Airlines Pty Ltd against Air North Pty Ltd in actions 817 and 818 of 1986 or arising out of or in any way related to the matters the subject of those actions or any orders made therein and whether made in those actions or in any other way whatsoever.

- (iv) The Northern Territory of Australia will pay the plaintiff's party and party costs to be taxed or agreed;

Yours faithfully,

James Noonan".

On 3 December 1986, the Crown Solicitor wrote to the solicitor for the plaintiff Air North as follows:

"I refer to my letter of 2 December 1986, and our subsequent discussions and to your letter of the same date.

I confirm that by letter dated 2 December 1986 to Messrs Mildren Silvester & Partners, their solicitors, I advised Skywest Airlines Pty Ltd (Skywest) that the Northern Territory of Australia does not consider that there is a contract in existence between Skywest and itself and that accordingly the Territory proposes calling for tenders for the contract for the provision of aerial medical services in the Territory.

I further confirm that in the light of the advice that there is no contract between the Territory and Skywest the first, second and third defendants consented to Notices of Discontinuance being filed by Air North Pty Ltd in Supreme Court Action Nos. 817 and 818 of 1986 on the basis that:-

1. The Northern Territory of Australia will pay the plaintiffs' costs to be taxed or agreed;
2. The Northern Territory of Australia will release Air North Pty Ltd generally as to damages or costs arising out of the actions;
3. The Northern Territory of Australia will indemnify Air North Pty Ltd in respect of any claim for damages or costs by Skywest Airlines Pty Ltd against Air North Pty Ltd arising out of Supreme Court Actions No. 817 and 818 and matters the subject of those actions;
4. The Northern Territory of Australia will undertake not to enter into or further act upon any contract in relation to the provision of aerial medical

services called for by Request for Tender
TB:173885EX.

Yours faithfully,

Meredith Harrison".

Meanwhile, on 2 December, the Crown Solicitor had written to the solicitor for Air North as follows:

"I wish to advise that having considered the evidence which has been produced in the course of discovery in action 817 of 1986 and taken legal advice, the first, second and third defendants have come to the view that there is no contract in existence between the Northern Territory of Australia and Skywest Airlines Pty Ltd.

Accordingly I give you notice that the first, second and third defendants will be making application for leave to amend their defence so as to deny the existence of a contract.

I am instructed to advise you that the Territory will be calling for retenders for the contract for the provision of aerial medical services in the Territory.

Yours faithfully,

Meredith Harrison
for Crown Solicitor."

The first aspect of this arrangement between Air North and the Government parties to be noted is that it provided for the discontinuance of the proceedings not only as against the Government parties (the first, second and third defendants), but also as against Skywest (the fourth defendant). It therefore sought to remove from the jurisdiction of the court not only the determination of the issues raised between the plaintiff Air North and the Government parties, but also the determination of the issues between the plaintiff Air North and the defendant Skywest. The issues between the plaintiff and the Government parties were the same as the issues between the plaintiff and Skywest. They were: whether the Tender Board was properly constituted, and whether the Tender Board fairly, and

properly, considered the tenders submitted to it. In agreeing with Air North that it would call fresh tenders, the Government conceded both those issues in Air North's favour, and adversely to Skywest. In fact, it gave to Air North the relief sought by it in paragraph 8 of its prayer for relief, namely, that the decision of the Tender Board be quashed, and it took away from Skywest the opportunity to litigate those issues in the proceedings, and to have the court's decision on them.

But the arrangement between the Government parties and Air North that it would call fresh tenders had wider implications than merely quashing or setting aside the decision of the Tender Board. Let me set out what those implications are, as I see them.

The basis of the arrangement between the Government parties and Air North, as explained to the court by the Solicitor-General, was that whereas they had formerly admitted that there was a concluded contract between the Government and Skywest, they now said, on advice that there was no such contract. The reason for that was said to be that additional information had been found that touched on issues that had been raised or were to be raised by Air North as to the constitution of the Tender Board, and as to the authority of Mrs O'Grady to send the telex to Skywest notifying it of the Board's acceptance of its offer.

It was doubtless in accordance with that advice that the Crown Solicitor wrote to the solicitor for Air North on 2 December (supra, p.34) advising him that the Government parties would make an application to the court to amend their defence so as to deny the existence of a contract, i.e. to withdraw their admission that there was a contract. As it turned out, no such application was made, nor did any occasion arise for making such an application. That, of course, was for the reason that Air North and the Government parties determined between themselves the issue of whether or not there was a contract by the Government with Skywest, and, again, they determined that issue in favour of Air North, and adversely to Skywest. Furthermore, by discontinuing the proceedings, they denied Skywest any opportunity of having the court's decision on that question in those proceedings, and, indeed on the question whether the Government parties should be permitted to withdraw their admission that there was a contract.

The result, then, of the agreement between Air North and the Government parties was that if Skywest wished to persist that it had a contract with the Government, it would have to pursue that claim in separate proceedings. They would be

proceedings in which it would not have the benefit of any formal admission on the pleadings that there was a contract, and proceedings which the Government would resist, and which, indeed, it had resisted, with much vigour.

Furthermore, if Skywest succeeded in those proceedings it would still not have the benefit of being awarded the contract in accordance with the Tender Board's decision. It would have damages only, whether or not that be an adequate remedy. The Government would call fresh tenders notwithstanding that the court may find that it did have a concluded agreement with Skywest.

Following the discontinuance of the former proceedings, then, Skywest commenced proceedings in the court by Writ of Summons issued on 10 December 1986 claiming relief as follows:

- "(a) A declaration that there is a valid and binding agreement between the plaintiff and the second defendant (the Northern Territory of Australia) in respect of the provisions of Aerial Medical Flight Services to the Darwin and East Arnhem regions of the Northern Territory of Australia and that the second defendant has not validly avoided or rescinded the said agreement;
- (b) an order for specific performance of the said agreement or in the alternative;
- (c) damages for breach of contract or equitable compensation;
- (d) in the alternative, as against the first (the General Tender Board) third (the members of the Tender Board) and fourth (Mrs O'Grady) defendants, damages for breach of warranty of authority."

That action came on for hearing before Nader J. on 15 December 1986."

The opinion of the Public Accounts Committee as to whether the proper procedures were followed following Tender Board approval, is almost superfluous given the above Appeal Court judgment. For the record, however, the Committee finds that the process followed in awarding the contract to Skywest was correct.

The fact that Cabinet was led to believe the Treasurer would be

consulted prior to the awarding of the aero-medical contract does not detract from the legitimacy of the Skywest contract but points to a serious departmental communication problem regarding procedures to be followed.

"(4) whether the Tender Board formed for the purpose was properly constituted;"

Treasury Regulation 10, issued by the Administration in accordance with the Financial Administration and Audit Act, section 78, provides:-

"10. (1) Subject to this Part, where the amount to be expended in an order for supplies is in excess of \$10,000 the subject of the order shall be submitted to a tender board for the invitation of public tenders.

(2) A tender board referred to in sub-regulation (1) shall be established by the Treasurer and shall consist of at least 3 people.

(3) A tender board established under this regulation shall carry out its functions independently but tenders shall be processed in accordance with the Treasurer's Directions."

The formation of the tender board, or as it was then known, the General Tender Board, to consider tenders for the aerial medical service, comprised the following 'people' appointed by the then Treasurer, the Honourable Barry Coulter:-

Member and Chairman	Chief Executive Officer of the Treasury Department or his delegate	Mr K Harkin
Member and Deputy Chairman	Chairman, Northern Territory Development Corporation or his delegate	Ms M Lyons
Member	Secretary, Department of Transport & Works or his delegate	Mr G Close

Member	Secretary, Department of Health, or his delegate	Mr P Carroll
Member	Secretary, Department of Education or his delegate	Mr G Chandler

The composition of the General Tender Board on 23 October 1986 met the legal prescription of the Financial Administration and Audit Act and Regulation. It "was properly constituted".

MICK PALMER
Chairman

DISSENTING REPORT
SUBMITTED BY THE HONOURABLE BRIAN RICHARD EDE
TO THE PUBLIC ACCOUNTS COMMITTEE
ON ITS INQUIRY INTO THE
AERO-MEDICAL CONTRACT

25 May 1989

COMMENTS BY THE HONOURABLE BRIAN EDE
REGARDING SCOPE OF COMMITTEE INQUIRY

It is my view that the terms of reference provided by the Legislative Assembly:-

1. allowed the Committee to pursue further events which took place between the timing of the initial advice by telex to Skywest of the Board's decision to award the contract in favour of Skywest and the date of referral of this matter to the Public Accounts Committee; and
2. allowed the Committee to pursue the matter of the Government's aero-medical contract beyond the date of referral, 12 November 1986.

25 May 1989

Brian Ede, MLA

APPENDIX A

CHRONOLOGY - AERO MEDICAL CONTRACT

CHRONOLOGY :- AERO MEDICAL CONTRACT

9 JULY 1986 GENERAL TENDER BOARD CALLS TENDERS

23 OCTOBER 1986 G.T.B. MEETS TO CONSIDER FOUR (4) TENDERS:

SKYWEST
AIR NORTH
ROYAL FLYING DOCTOR SERVICE
LUCK INVESTMENTS

23 OCTOBER 1986 G.T.B. "APPROVED" SKYWEST AS CONTRACTOR

23 OCTOBER 1986 LETTERS TO UNSUCCESSFUL TENDERERS

23 OCTOBER 1986 TELEX TO SKYWEST NOTIFYING ACCEPTANCE

23 OCTOBER 1986 SKYWEST TELEX OF ACKNOWLEDGEMENT TO TREASURY

23 OCTOBER 1986 SKYWEST TELEX TO MINISTER FOR HEALTH

24 OCTOBER 1986 AIR NORTH TELEX TO TREASURER OBJECTING TO SKYWEST CONTRACT

24 OCTOBER 1986 DIRECTOR CORPORATE SERVICES (N.T. TREASURY) ADVISES SKYWEST BY TELEPHONE THAT NO ACTION TO BE TAKEN UNTIL CONTRACT HAS BEEN SIGNED. COMMENCEMENT DATE RESCINDED

24 OCTOBER 1986 DIRECTOR CORPORATE SERVICES (TREASURY) TELEXES SKYWEST DENYING EXISTENCE OF CONTRACT

24 OCTOBER 1986 SKYWEST TELEXES TREASURY CONFIRMING EXISTENCE OF CONTRACT BASED ON LEGAL ADVICE AND DISCUSSIONS WITH N.T. HEALTH

28 OCTOBER 1986 SKYWEST TELEX TO SECRETARY OF CABINET AND CABINET MEMBERS DETAILING EVENTS AND CONCERN

30 OCTOBER 1986 SKYWEST TELEPHONES MINISTER FOR HEALTH WHO SEEMS TO REASSURE SKYWEST THAT SKYWEST HAS OR WILL HAVE THE CONTRACT

31 OCTOBER 1986 CHIEF MINISTER, ON A.B.C. RADIO,
CONFIRMS THAT SKYWEST HAS LEGAL RIGHT TO
THE TENDER

31 OCTOBER 1986 AIR NORTH APPLIES TO THE COURT FOR
ORDERS NISI PREVENTING FURTHER
RESOLUTION OF CONTRACT PENDING LEGAL
ACTION

3 NOVEMBER 1986 AIR NORTH COMMENCES PROCEEDINGS IN THE
COURT BY WAY OF WRIT OF SUMMONS AGAINST:

1. GENERAL TENDER BOARD
2. MINISTER FOR HEALTH
3. NORTHERN TERRITORY

3-5 NOVEMBER 1986 MINISTER FOR HEALTH PHONES SKYWEST
CONFIRMING "WE HAVE A CONTRACT WITH
SKYWEST".

7 NOVEMBER 1986 SKYWEST APPLIES TO COURT AND BECOMES
FOURTH DEFENDANT TO AIR NORTH
PROCEEDINGS

12 NOVEMBER 1986 TELEPHONE CONVERSATION BETWEEN MINISTER
FOR HEALTH AND SKYWEST

ACTION FOLLOWING REFERRAL TO P.A.C. ON 12 NOVEMBER 1986

21 NOVEMBER 1986 TELEPHONE CONVERSATION BETWEEN MINISTER
FOR HEALTH AND SKYWEST IN WHICH MINISTER
ALLEGEDLY RECONFIRMS CONTRACT WITH
SKYWEST

1 DECEMBER 1986 DISCUSSIONS BETWEEN COUNSEL FOR AIR
NORTH AND CROWN SOLICITOR

2 DECEMBER 1986 LETTER FROM CROWN SOLICITOR TO AIR NORTH
ADVISING THAT THE G.T.B., MINISTER AND
THE N.T. WOULD CHANGE THEIR DEFENCE TO
CLAIM NO CONTRACT EXISTS WITH SKYWEST

2 DECEMBER 1986 LETTER TO CROWN SOLICITOR FROM AIR NORTH
REQUESTING CONFIRMATION THAT N.T.
GOVERNMENT WILL DENY EXISTENCE OF
CONTRACT WITH SKYWEST AND THAT CERTAIN
SPECIFIED CONDITIONS WOULD BE MET BY
GOVERNMENT, INCLUDING RECALLING TENDERS

3 DECEMBER 1986 CROWN SOLICITOR WRITES TO SOLICITOR FOR AIR NORTH CONFIRMING ADVICE THAT NO CONTRACT WITH SKYWEST EXISTS AND AGREES TO OTHER CONDITIONS

4 DECEMBER 1986 SKYWEST FILES NOTICE, IN COURT PROCEEDINGS, TO HAVE CERTAIN SPECIFIED QUESTIONS ADDRESSED

5 DECEMBER 1986 AIR NORTH APPLIES TO COURT FOR DISCONTINUANCE OF ACTIONS AGAINST:

1. GENERAL TENDER BOARD
2. MINISTER FOR HEALTH
3. NORTHERN TERRITORY,

AS N.T. GOVERNMENT "WILL ADMIT THAT THERE WAS NO BINDING CONTRACT AS BETWEEN ITSELF AND SKYWEST".

ACTION AGAINST SKYWEST DISCONTINUED AS CONSEQUENCE.

END OF CASE

10 DECEMBER 1986 SKYWEST COMMENCES NEW PROCEEDINGS IN COURT AGAINST:

1. GENERAL TENDER BOARD
2. NORTHERN TERRITORY
3. MEMBERS OF THE TENDER BOARD
4. MRS J. O'GRADY (TREASURY)

15 DECEMBER 1986 COURT HEARING COMMENCED

13 JANUARY 1987 COURT FINDS THAT CONTRACT WITH SKYWEST DID EXIST

9, 10, 11 MARCH AND 30 JUNE 1987 COURT OF APPEAL SUPPORTS FINDING THAT CONTRACT DID EXIST WITH SKYWEST

APPENDIX B

TENDER SPECIFICATIONS - SUPPLY OF
AERIAL MEDICAL FLIGHT SERVICES TO THE
DARWIN AND EAST ARNHEM REGIONS OF
NORTHERN TERRITORY: TB:1738/85EX



NORTHERN TERRITORY OF AUSTRALIA

GENERAL TENDER BOARD

4th Floor
AMP Building
38 Cavenagh St
DARWIN 5790
G.P.O. Box 1974
DARWIN, N.T. 5794
Telex No. NTGTB 85116
Telephone (089) 89 7030

ATTACHMENT E

REQUEST FOR TENDER

SCHEDULE: TB:1738/85Ex
THE REQUIREMENT: SUPPLY OF AERIAL MEDICAL FLIGHT SERVICES TO THE DARWIN
AND EAST ARNHAM REGIONS OF NORTHERN TERRITORY
PERIOD DATE OF ACCEPTANCE TO 30 SEPTEMBER 1991
CLOSING DATE: 2:00 P.M., TUESDAY, 5 AUGUST 1986

TENDER LODGING INSTRUCTIONS

Tenders shall be lodged in the Tender Box by the above time and date. Tenders lodged after the above time and date will be deemed late and cannot be considered.

Tenders shall be on this Schedule.

LODGEMENT:

All Schedules should be lodged in a sealed plain envelope endorsed with the Schedule Number, the above closing time and date and the above requirement description, in the lower left hand corner. Any Schedule which is not lodged in this manner will be opened for identification prior to tender closing time and may be deemed informal and rejected. Schedules may be lodged by hand or by post or courier service.

BY HAND

Schedules must be lodged in the Tender Box located in the Purchasing Branch, 4th Floor, A.M.P. Building, 38 Cavenagh Street, Darwin, Northern Territory, 5790 prior to the above closing time and date.

BY POST OR COURIER

Schedules must be addressed to the General Tender Board, G.P.O. Box 1974, Darwin, Northern Territory, 5794, or by Courier Service to 4th Floor, A.M.P. Building, 38 Cavenagh Street, Darwin, Northern Territory, 5790 in sufficient time to ensure delivery prior to the above closing time and date.

BY TELEX

Tenders received in telegraphic or telex form prior to the above closing time and date may be admitted for consideration provided that the telegram or telex includes details of the price, any qualifications, conditions or alternatives applicable to the tender and that the conforming tender confirming details in the telegram or telex is received within two (2) working days of the above closing time and date.

Tenders conveyed orally will not be considered.

LATE TENDERS

Schedules received after the above closing time and date will not be considered unless the tenderer provides explicit and conclusive evidence that the tender was lodged with Australia Post or a commercial courier service in sufficient time and that under normal circumstances, the tender would not have been received late.

"In sufficient time" with respect to :-

Australia Post services (Priority Paid/Special Delivery) is at least two days excluding weekends and public holidays, prior to the time and date specified;

Commercial courier services is within the published times by the courier service for delivery to enable receipt prior to the time and date specified.

Impressions of franking machines will not of themselves provide acceptable evidence of timely posting or despatch. Late tenders cannot be considered.

ENQUIRIES

Contact Officer: Sandi Gemmell
- Purchasing Branch
Technical Officer: Terry Knight
Department of Health

Telex Code: NTGTB 85116

Telephone: (089) 89 7448

Telephone: (089) 80 2914

DOCUMENTS FORMING THE REQUEST FOR TENDER

Pages 1 - 3 Preamble
Pages 4 - 15 Part "A" Specifications
Pages 16 - 26 Part "B" Special Conditions
Pages 27 - 35 Part "C" General Conditions of Tender and Contract
For The Performance of Services
Pages 36 - 45 Part "D" Information/Data To Be Supplied By Tenderer
Page 46 Part "E" Declaration By Tenderer
Page 47 Part "F" Certificate of Flight (Sample)
Page 58 Attachment 1 - Map of Region
Page 49 - 51 Attachment 2 - List of Airstrips within Regions.

The above Request for Tender documents are hereinafter collectively referred to as the Schedule.

ALTERATIONS, ERASURES OR ILLEGIBILITY

Tenders having alterations or erasures therein and tenders in which prices are not legibly stated are liable to rejection.

ERRORS AND OMISSIONS

This Schedule has been collated by mechanical means and tenderers should check to ensure that it includes all pages which are numbered consecutively.

ACCEPTANCE

The lowest or any tender will not necessarily be accepted and no tender shall be deemed to have been accepted unless and until the fact of such acceptance has been notified to the tenderer in writing by or on behalf of the General Tender Board.

DOCUMENTS FORMING THE CONTRACT

The Schedule, any subsequent written amendment and the Letter of Acceptance from the General Tender Board shall comprise the contract.

GENERAL CONDITIONS OF TENDER AND CONTRACT

This tender shall be deemed to have been submitted subject to the Northern Territory of Australia, General Conditions of Tender and Contract for the Performance of Services. (Part "C")

PRELIMINARY DEPOSIT

A preliminary deposit is not required.

SECURITY DEPOSIT

Security deposit may be required after acceptance of tender in accordance with and under the provisions of the General Conditions of Tender and Contract for the Supply of Stores. (Part "C").

RETURN OF TENDER

It is necessary that this Schedule be returned without any of the papers being detached. In the event of the tender being returned incomplete, the tender may be considered to be not in accordance with the conditions of tender and therefore liable to rejection. All tender documents submitted in response to this request for tender shall become the property of the Northern Territory of Australia.

TENDER'S NON-ACCEPTANCE OF CONDITIONS

Where the tenderer is unwilling to accept certain of the conditions of the schedule, this non-acceptance must be clearly stated in the tender. Prominence must be given to the statement; it is not sufficient that the statement should appear as part of an attachment to the tender, nor be included in a general statement of the tenderer's usual operating conditions.

SPECIFICATIONS

1. SCOPE OF CONTRACT

- 1.1 The Department of Health has a requirement for the provision of aerial medical flight services within the Darwin and East Arnhem Regions commencing from the date of acceptance to 30 September 1991.
- 1.2 It is anticipated that the date of acceptance will be as close to the 12 August 1986 as possible.
- 1.3 Tenderers are to indicate in Part 'D' of the Schedule their ability to commence work under this contract in accordance with the time frame indicated.

1.2 SELECTION CRITERIA

- 1.2.1 The following factors will be taken into account in determining the successful tenderer:-
 - 1.2.1.1 Service to be provided;
 - 1.2.1.2 Price to be compared on the basis of the sum of 260,000NM unpressurised, and 70,000NM pressurised flight, less the sum offered for the Departmental assets, adjusted for interest, as necessary;
 - 1.2.1.3 Previous experience;
 - 1.2.1.4 Rise and fall provisions.
- 1.2.2 Tenderers shall provide sufficient information on the above factors together with any other information that is available to allow an accurate assessment of their tender.

2. GENERAL

2.1 COMPANY PROFILE AND FINANCIAL STANDING AND PREVIOUS EXPERIENCE

- 2.1.1 Tenderers should provide full details of their company, including a financial statement along with details of any previous experience in the airline industry.

2.2 ASSESSMENT OF TENDERER'S CAPACITY

Should any doubts exist as to the tenderer's capacity in respect of the specified requirements or with regard to its full awareness of the job requirements, the Board reserves the right to interview any tenderer prior to the contract allocation. Should the tenderers be located outside of Darwin, it will be the tenderer's responsibility to make himself available for interview in Darwin.

2.3 INSPECTION OF PREMISES AND EQUIPMENT

2.3.1 Inspection of the premises and equipment can be arranged during the tender period. Tenderers who wish to carry out an inspection should contact Technical Officer on telephone (089) 802914.

2.3.2 Tenderers should carefully assess the service required under the contract and ensure that the prices offered will enable the standard of service called for to be maintained consistently throughout the contract.

2.4 ORDERING OFFICER

2.4.1 The Regional Director, Department of Health, Darwin and East Arnhem respectively, or their nominated representatives shall be deemed to be the Ordering Officer pursuant to the provisions of the contract.

2.4.2 For the purposes of this contract, the word 'direction' includes an agreement, approval, authorisation, certificate, decision, demand, determination, direction, explanation, instruction, notice, notification, order, permission, rejection, request or requirement which the Ordering Officer may make, give or issue pursuant to the provisions of the contract.

2.4.3 Any direction which may be or is given to the contractor by the Ordering Officer pursuant to the provisions of the contract, may unless the contract expressly provides otherwise, be given either orally or in writing. When any such direction is in the first instance given orally, the Ordering Officer shall as soon as practicable after it is so given confirm it in writing addressed to and issued or given to or served upon the contractor.

2.5 PERIOD OF CONTRACT

2.5.1 The period of the contract shall be from date of acceptance to 30 September 1991.

2.5.2 The contractor will commence his duties under this contract on a date to be determined by the Ordering Officer.

2.6 ESTIMATED REQUIREMENTS

2.6.1 Estimated requirements are shown on the schedule. Although every endeavour has been made to form an accurate estimate of requirements during the period of the contract, the Northern Territory of Australia does not bind itself to the requirement stated, but reserves the right to vary the requirements during that time.

2.7 PRICE STRUCTURE REQUIRED

2.7.1 The tendered price is to be submitted on the basis of a price per nautical mile which includes all charges, e.g. management costs, bank charges, clerical costs, wages, cost of spare parts, maintenance, fuel and oil, housing, air navigation charges, etc.

2.7.2 Prices are required on a map nautical mile base to base as follows:

2.7.2.1 Rate per nautical mile flown in non pressurised aircraft where the sum of pressurised and non pressurised miles flown is between 240,000 and 300,000 nautical miles per annum.

2.7.2.2 Rate per nautical mile flown in non pressurised aircraft for each nautical mile in excess of 300,000 nautical miles flown in pressurised and non pressurised aircraft.

2.7.2.3 Rate per nautical mile flown in pressurised aircraft when pressurisation is requested by the Department.

2.7.3 Miles flown in order to train air crew, test aircraft, and divert for purposes other than those requested by the Ordering Officer will not be paid for by the Department of Health.

2.7.4 Prices will be renegotiated should flight distances reduce below 240,000 NM per annum. The mileage will be the total flown each year by both pressurised and non pressurised aircraft.

2.7.5 The contractor will provide and maintain all aircraft and pay all salaries, allowances, housing, etc. for employees engaged by him in the provision of this service.

2.7.6 The Department of Health will use its best endeavours to arrange accommodation for pilots and engineers based in the East Arnhem Region for the purposes of this contract. The Department will not be responsible for payment of costs associated with the accommodation.

2.7.7 The contractor will be expected to derive his profit from the cost of the service specified in this schedule. The Northern Territory of Australia will not provide any cash subsidies to the contractor.

2.7.8 Tendered prices must specify clearly any discounts that will be granted, e.g. for early payment.

2.7.9 Radio licence charges associated with the UHF radios of the Department of Health shall be the responsibility of that Department.

2.8 PAYMENT FOR WORK

- 2.8.1 The contractor shall keep accurate records of all flights undertaken and shall submit a detailed statement, every 4 weeks in arrears, of flights undertaken on each day of that period where his/her services were engaged and payment at the agreed rate will be made within thirty (30) days of receipt of that statement by the Ordering Officer.
- 2.8.2 Payments to the contractor of part or of all money due will in no way prejudice claims by the Northern Territory of Australia in respect of the performance of the service except those due entirely to negligence of officers of the Northern Territory of Australia.

2.9 VALIDITY

- 2.9.1 Prices quoted must remain valid for a period of not less than ninety (90) days.

2.10 ADDITIONAL INFORMATION

- 2.10.1 The tenderer may be called upon to supply information additional to that shown on his tender in respect of the service to be provided.
- 2.10.2 The tenderer shall within the time specified, comply with any such requests.
- 2.10.3 All proposals information and responses to enquiries must be submitted in writing and may be incorporated into and made part of any contract between the Northern Territory of Australia and the contractor.

2.11 RESPONSE TO TECHNICAL SPECIFICATIONS

- 2.11.1 The tenderer shall examine the clauses of the specification and if there is insufficient space to detail the service offered (in Part "D"), tenderers shall state in the same order that the specifications appear, whether the information requested is in accordance with the Specifications.
- 2.11.2 Where no such indication is given it will be deemed that the offered service does not in fact comply to the requirement of the clause either in part or in total.

3. TECHNICAL SPECIFICATIONS

3.1 AREA OF OPERATIONS

3.1.1 The Darwin and East Arnhem Region

3.1.1.1 The regions are bounded as per the map in Attachment 1.

3.1.2 Darwin Region

The Darwin Region is to be serviced by a sufficient number of medically equipped aircraft to allow the requirements of the tender to be met.

3.1.2.1 In practice it is suggested that at least two operational aircraft should be available at all times.

3.1.3 East Arnhem Region

3.1.3.1 The East Arnhem Region is to be serviced in such a manner that one operational aircraft will be available within the Region at all times, unless the Ordering Officer, Department of Health, East Arnhem Region, specifically despatches the aircraft beyond the Regional boundaries.

3.1.3.2 It is not necessary for the same aircraft to be stationed in the Region at all times but any alternative aircraft must be equipped in a fashion which complies with the specifications of the tender.

3.1.3.3 Should the Ordering Officer request the services of two or more aircraft simultaneously, the contractor will have first option on the supply of the additional flights. It would not be expected that the additional flights be conducted in medically dedicated and equipped aircraft.

3.1.4 Other Work

3.1.4.1 In addition to the above, the Gove (East Arnhem Region) and Katherine Hospitals have requirements for inter-hospital transports from time to time, flying patients for treatment at the Royal Darwin Hospital, as well as other flights beyond regional boundaries.

3.1.4.2 The contractor will offer a suitable aircraft for this purpose. It is expected that a suitably equipped pressurised turbine engine aircraft capable of flight to 30,000 feet will be generally available when requested for both inter hospital transfers to Darwin, and other flights.

3.2 AIRCRAFT

3.2.1 Types

3.2.1.1 The tenderer will specify the types of aircraft that he intends to operate. Aircraft will have two engines and be fully equipped to allow night flights in instrument meteorological conditions to charter category. Radio communications will include at least two outpost radio frequencies (high frequency, SSB) to enable the contractor to maintain reasonable communications with VJY and at least one Department of Health frequency must also be fitted.

3.2.1.2 The contractor will also equip his aircraft at his own expense with an ultrahigh frequency transceiver operating on one FM frequency (Department of Health) and one FM frequency (St John). Transmissions will be in the single frequency simplex mode. This transceiver will be operable from the sisters station in the cabin by the Sister on board with the pilots permission. The Sister will also be able to communicate with the pilot from her position beside the stretcher.

3.2.1.3 Aircraft will be equipped with remote area survival rations, a distress beacon, and life vests for each occupant for over-water flights. Weather radar will be carried.

3.2.1.4 Two stretcher positions are desirable and tenderers are to state if any aircraft will carry a greater or lesser number of stretchers.

3.2.1.5 Aircraft are to be licensed in either aerial work or charter categories. Tenderers are to state which, and must describe the manner in which maintenance services will be performed to comply with Department of Aviation regulations. If licensed in the aerial work category, aircraft must be equipped and maintained to at least charter category standards.

3.2.1.6 Airstrips to which flights are conducted in the East Arnhem Region are not necessarily well maintained and many are less than 800 m long. Tenderers must assure the Department that the aircraft stationed in that Region can handle these strips with the required payload. A list of airstrips is at Attachment 2.

3.2.2 Size

3.2.2.1 Aircraft shall be of sufficient size to perform the task as described. Routine flights should be able to carry three staff and three patients one of whom is on a stretcher. Unscheduled flights should be able to carry two staff and two stretcher patients. Interhospital transfer flights between Gove and Darwin, and between Katherine and Darwin, should be able to carry two staff and one stretcher patient as a minimum.

3.2.3 Range

3.2.3.1 The average sector distance averaged over 3 years has been 110 km. The aircraft range shall be sufficient to perform the tasks without refuelling at places other than Darwin and Gove, in normal circumstances.

3.3 UTILISATION

3.3.1 Non Pressurised Aircraft

3.3.1.1 According to aircraft types used, utilisation in terms of hours flown will vary. To date, four Nomad N24A aircraft have performed 95% of the tasks including interhospital transfers.

3.3.1.2 These Nomads have averaged a block speed of 120 knots (Range: 100 knots to 130 knots) in Darwin, and 114 knots (range: 95 - 125 knots) in Gove, and flew 3127 hours during 1984/85.

3.3.1.3 The Darwin Region flew 1568 hours and the East Arnhem Region flew 1154 hours including interhospital transfer flights. The Darwin Region additionally performed 334 hours of interhospital transfer flights to Tindal and another 71 hours were flown for test, ferry and training purposes. A total 6363 passengers were carried.

3.3.1.4 It is anticipated that the work will be reduced over the period of the contract. The present (approx) 3000 hours is comprised of approx 60% unscheduled flights and 40% scheduled clinic flights.

3.3.1.5 The number of clinic flights is likely to reduce steadily during the contract period. In the East Arnhem Region, the (approx) 130,000 NM flown may decrease to 100,000 NM. In the Darwin Region, the (approx) 230,000 NM flown may decrease to 160,000 NM.

3.3.1.6 The Department's statistics for flights to date may be inspected by tenderers, telephone Technical Officer on 802914 for information.

3.3.2 Pressurised Aircraft

3.3.2.1 In excess of 70,000 NM may be flown in this category but is not guaranteed.

3.3.3 All distances are map miles, base to base.

3.4 MEDICAL EQUIPMENT TO BE CARRIED

3.4.1 The fitment of the following minimum medical equipment will be required, and it is to be secured in accordance with Department of Aviation requirements.

3.4.2 Equipment shall include:

- 3.4.2.1 A medical cabinet. The contents will be supplied and maintained by the Department of Health.
- 3.4.2.2 Oxygen - a minimum supply of oxygen will be 4 hours per patient at 6 litres/minute and either built into the aircraft or be secured with an approved restraint. Oxygen and oxygen equipment will be supplied at contractor's expense.
- 3.4.2.3 Power - outlets will be supplied for 12VDC and 24VDC in the cabin area. To be supplied at the contractor's expense.
- 3.4.2.4 Airconditioning - is required in-flight. To be supplied at the contractor's expense.
- 3.4.2.5 Humidicrib - to be supplied by the Department. Fittings for securing a humidicrib are to be supplied at the contractor's expense.
- 3.4.2.6 Stretchers. Stretchers will be carried. One will be fitted; a second stretcher should be available for quick fitment to floor tracks. Stretchers and patients are to have easy exit and entry from the cabin using a cabin door opening of at least 1130 mm H x 1200 mm W (minimum dimensions). Stretcher supply and fitment will be at the contractor's expense. Quantities of stretchers are included in the stock of aviation related items to be purchased.

3.5 CREW STANDARDS

- 3.5.1 The crews shall have a minimum of 3000 hours experience, with a minimum of 500 hours in command of twin engined aircraft weighing up to 5700 kg.
- 3.5.2 Pilots to be in command must have at least 25 hours experience on the type of aircraft being flown for daylight operations and 100 hours experience on type for night operations.
- 3.5.3 Pilots will hold a class I instrument rating with a minimum of 3 renewals. The contractor will warrant that route checks are conducted to a gravel airstrip with each pilot at no more than 4 monthly intervals by a check and training captain and that a check and training schedule is in place and approved by the Department of Aviation. Each pilot will undergo at least 2 checks each year.

- 3.5.4 The Department will require that pilots assist in non flying duties such as assistance with patient loading, and have an understanding and co-operative approach to the work. The Department reserves the right to instruct the contractor to withdraw a pilot who can be shown to be unsuitable in these areas.

3.6 CYCLONE PROVISIONS

- 3.6.1 At the declaration of a cyclone warning for Darwin or Gove, or for any port to which a flight has been planned during a declared cyclone warning phase, the provisions of the contract will be deferred if the chief pilot advises the responsible Ordering Officer of any necessary changes to the schedule and/or changes in aircraft availability.
- 3.6.2 No charge for evacuation of the aircraft will be entertained by the Department of Health.

3.7 AVAILABILITY OF AIRCRAFT HANGARS

- 3.7.1 The Department owns one hangar complex on Darwin Airport and another on Gove Airport. Certain areas are utilised in each of these for Departmental purposes being the patients and sisters waiting rooms.
- 3.7.2 With the exception of these areas and three car parking spaces at each hangar, the contractor will have free and unfettered use of the hangars for the duration of his tenure of the contract. The Department of Health reserves reasonable right of access by mutual agreement.
- 3.7.3 No assurance is offered concerning the availability of the hangars after expiry of the contract period, nor is the Department able to give any undertaking that the Department of Aviation will permit the Darwin hangar to remain for the period of the contract, nor that Nabalco will permit the Gove hangar to remain for the period of the contract.
- 3.7.4 In the event that a hangar fails to fulfill its function, the Department will not be liable for any consequent loss by the contractor.
- 3.7.5 It is expected that the tender prices will reflect the value of the structures to the tenderers.

3.8 MAINTENANCE OF HANGARS

3.8.1 The Department will be responsible for maintaining the fabric of the structures, but not for maintaining any substructures erected by the contractor.

3.8.2 The contractor shall ensure all drains, pipes and waste outlets shall be free of obstructions and the contractor will be responsible for any repairs to the same where the contractor or his employees is responsible for such blockages or damage.

3.9 ALTERATIONS TO HANGARS

3.9.1 The contractor will not make any building alterations or renovations without the prior approval of the Ordering Officer.

3.10 RENT OF HANGARS

3.10.1 The hangars will be supplied rent free.

3.11 WATER AND SEWERAGE, ELECTRICITY, ETC. CHARGES

3.11.1 The contractor will be responsible for and pay the costs of electricity, water and sewerage, including those associated with the Department's occupancy, and the maintenance of fire fighting equipment.

3.12 TELEPHONE

3.12.1 The contractor will be responsible for all charges associated with the telephones installed in the hangars (except those designated for Department of Health use only).

3.13 HANGARS TO BE KEPT CLEAN AND TIDY

3.13.1 The contractor will be required to keep the hangars in a clean and tidy condition.

3.14 INSURANCE OF HANGARS AND CONTENTS

3.14.1 The Department of Health will carry its own insurance on the structures.

3.14.2 The contractor will be responsible for insuring the contents of the structures.

3.15 LEASE OF HANGAR SPACE

3.15.1 The contractor can sublet or lease any part of the hangar to which he is entitled, for purposes associated with aviation, subject to prior approval of the Ordering Officer.

3.16 SUPPLY OF FUEL AND OILS

3.16.1 The contractor will be responsible for the supply of all fuel and oils, including supply away from home base.

4. PURCHASE OF DEPARTMENTAL ASSETS

4.1 The Department owns four Nomad N24A ambulance aircraft together with a stock of consumable and rotatable spares, documentation including drawings, diagrams and records, specialised tooling and ground support equipment including towmotors, jacks, stands and racks.

4.2 The contractor will be required to assume ownership of all items of an aviation nature belonging to the Department of Health, but is under no obligation to use any of them for the purpose of the contract.

4.3 The items may be inspected by arrangement at Gove and Darwin Hangars at any mutually convenient time up to the closure of tenders.

4.4 No particular items are warranted to be available at the date of handover.

4.5 The sum offered for the items will not in itself be a factor in determining the successful tenderer.

4.6 Tenderers are to offer payment for the items as follows:

4.6.1 the price per mile for the first 200,000 miles flown in each of the five years is to be reduced by an amount which will allow the payment offered to be recouped by the Department over the 5-year tender period; or

4.6.2 The price per mile for the first 200,000 miles flown in the first full 12-month period of operation of the contract will be reduced by an amount which will allow the payment offered to be recouped by the Department in that year.

For purposes of tender evaluation only, tenderers offering alternative 4.6.2 will be given a price advantage equivalent to an interest charge at the prime rate reducing for the final 4 years of the contract.

4.6.3 Tenderers may offer an alternative method of payment in addition to 4.6.1 and 4.6.2.

4.7 STOCKTAKE OF DEPARTMENTAL ASSETS

4.7.1 There will be a complete stocktake of all items to commence on the day of handover, conducted by the present contractor, and witnessed by the Department.

4.7.2 Should items be missing at that time which were available at the time of inspection, the Department will not replace them.

4.7.3 The Department will not expect payment for them provided that the tenderer has itemised the price he offers for them, and has provided Departmentally witnessed evidence that the item was available at the time of inspection.

4.7.4 In the event that the contractor defaults in the performance of the contract, penalty clauses will be invoked and the monies outstanding in respect of the items purchased will be owing to the Department.

4.8.5 Return of the items to the Department will not be accepted for any reason, and no warranties are offered by the Government, save that all warranties available to the Government at the time of handover will be passed on to the contractor.

SPECIAL CONDITIONS

1. STANDARD PRICE VARIATION CLAUSES

- 1.1 The tenderer is required to stipulate in the tender whether the tendered price is to be firm* over the whole of the contract or is to be subject to alteration in accordance with this clause. Where the price is subject to alteration, the tenderer is to indicate whether adjustment by a formula which conforms with Northern Territory of Australia's guidelines, or adjustment for changes in actual prices of approved elements of the contract price is preferred.

2. ACTUAL PRICE CHANGES

- 2.1 Tendered prices shall be subject to alteration by amount equal to the increase or decrease in the costs of the contract resulting from:-
- 2.1.1 variations which are approved subsequent to the date of tender by the appropriate Commonwealth or State Authority in respect of rates of pay, rates of payroll tax and/or conditions of employment; and/or,
- 2.1.2 variations subsequent to the date of tender in the ruling market rates of workers' compensation insurance; and/or,
- 2.1.3 variations subsequent to the date of tender in the ruling market prices of materials and component parts, provided that where the price of such material and/or component parts is controlled by an appropriate Statutory Authority, only such variation as is authorised by that Authority will be recognised; and/or,
- 2.1.4 variation in the cost of sub-contracted work determined in accordance with the provisions of paragraphs 2.1.1, 2.1.2 and 2.1.3 of this clause; and/or,
- 2.1.5 variations in the prices of imported items resulting from variations between the rates of exchange ruling at date of tender and the rates of exchange which apply at the time when the overseas principal's account is settled. The tenderer is required to nominate:-
- 2.1.5.1 the currencies and their associated bank selling rates used for conversion of overseas cost elements of the tendered price;
- 2.1.5.2 name of the bank whose rates were used; and/or,

* A firm price contract is one in which the price and all other conditions remain unchanged during the course of the contract.

- 2.1.6 variations in the overseas price of the contract item or in rates of marine insurance, if applicable, and freight between the date of tender and date of delivery; and/or,
- 2.1.7 variations in the net price of the tenderer's supplier/s of the commodity tendered for between date of tender and date of delivery.

2.2 ADDITIONAL INFORMATION RELATING TO ACTUAL PRICE CHANGE METHOD

- 2.2.1 sub-clause 2.1.1 above shall not apply to variations in costs incurred in Australia which are attributable to variations of or in respect of rates of pay and/or conditions of employment that are not in accordance with the requirements of the current wage fixation principles of the appropriate Commonwealth or State industrial authority;
- 2.2.2 sub-clause 2.1.1 above shall not apply to increases in the cost of a contract resulting from employees' incremental increases within a wage/salary range;
- 2.2.3 variations to which sub-clauses 2.1.1 and 2.1.2 above relate include variations in the rates of sick pay, holiday pay, payroll tax, long service leave, workers' compensation insurance and any other labour on-costs arising from statutory requirements in respect of rates of pay and/or conditions of employment or decision by the appropriate Commonwealth or State Industrial Authority in respect of rates of pay and/or conditions of employment and apply to both award and non-award personnel.
- 2.2.4 variations under 2.1.3 above may include those for prices of materials necessarily used in the production of the goods to be supplied under a contract (although not necessarily forming part of such goods);
- 2.2.5 indirect expenses other than those included in sub-clauses 2.1.1, 2.1.2, and 2.1.3 (and further explained in notes 2.2.1, 2.2.2, 2.2.3 and 2.2.4 above) are not subject to price variation and applications in respect of these will not be considered;
- 2.2.6 increases in costs only will be allowed. ie: profit will not be allowable on the amount of such increase.

3. ADJUSTMENT BY FORMULA

- 3.1 A formula which will derive a price variation adjustment commensurate with that which would be determined under the actual price change method outlined above may be acceptable to the Northern Territory of Australia. The formula proposed by the tender should have the following characteristics:-
 - 3.1.1 a proportion of the contract price (termed "index factors") are specified for application to nominated indices. Each such index factor must approximate the actual proportion of the tendered price which that factor constitutes;

- 3.1.2 the weighting accorded to volatile elements of the contract price (eg: copper) must approximate the proportion of the contract price which that element represents;
- 3.1.3 indices nominated must be appropriate, objective, consistent over time, published regularly and readily available. In respect of material purchased in Australia, suitable indices may be found from publications by the Australian Bureau of Statistics. However, the Australian Bureau of Statistics Consumer Price Index is not acceptable for this purpose. For labour costs incurred in Australia, appropriate awards and relevant labour classifications for predominant labour categories engaged on the contract are suitable indices. In respect of labour indices, it is to be noted that:-
- 3.1.3.1 only incurred award rate variations are eligible for contract price variation;
- 3.1.3.2 the index must not be composed of elements which are attributable to increases in over-award payments made outside the wage fixation principles of the relevant Commonwealth or State Industrial Authorities;
- 3.1.4 cut-off times beyond which each index does not operate must be specified. Each cut-off time must accurately reflect cessation of the related input into the manufacturing process and hence, into the price of the contract. For repetitive manufacturing cycles, cut-off times must be linked to each production/delivery cycle;
- 3.1.5 activation of price variation adjustments must be provided for Possibilities include:-
- 3.1.5.1 adjustments determined regularly at stated intervals (following receipt of an application from the contractor); or,
- 3.1.5.2 adjustments determined whenever a variation occurs in one or more of the formula indices (following receipt of an application from the contractor); or,
- 3.1.5.3 as required by the contractor and/or Northern Territory of Australia.
- 3.2 TENDERERS SHOULD NOTE (Regarding Formula Usage)
- 3.2.1 exchange rate variations will be calculated by the "actuals" method outlined in sub-paragraph 2.1.5 above;
- 3.2.2 the base index number for each index will be the published index number for the month in which the tender date falls. Where an appropriate award is used as the suitable labour index, the labour base date will be the tender date.

4. THE ATTENTION OF TENDERERS IS DRAWN TO THE FOLLOWING EXPLANATORY NOTES WHICH RELATE BOTH TO FORMULA ACTUAL INCREASE METHODS OF ADJUSTMENT

- 4.1 Unless otherwise specified by the tenderer, the tendered price will be regarded as firm for the whole of the contract. It is acceptable for the tenderer to specify that in respect of imported content, the exchange rate will be variation on that the remainder of the tendered price will be firm.
- 4.2 If a particular price basis is specified elsewhere in the Request for Tender, tenderers shall tender on that price basis, but may in addition tender on an alternative price basis.
- 4.3 Firm prices are preferred in respect of all contracts due for completion within twelve (12) months of the date tenders close. For tenders for contracts of such duration, the onus is on the tenderer proposing a price subject to variation to advance sufficient reason as to why their tender should not be at a disadvantage against competitive firm price tenders.
- 4.4 The maximum adjustment to price which will be allowed under contracts arranged subject to price variation is that payable if service is made within the time specified in the contract, unless authority to charge otherwise is sought, in writing, prior to the date for completion of service and granted in writing by the Northern Territory of Australia.
- 4.5 Applications for price variation should be made in writing to the Purchasing Branch and should state the price variation and/or resultant updated price sought and effective date (if applicable) of such variation. Applications for price variations are subject to verification by the Northern Territory of Australia. All documents, records and other information necessary to substantiate any application for price variation must accompany the application.
- 4.6 All claims for payment shall be submitted to the nominated Paying Authority at the current contract price, pending determination of any application for price variation.
- 4.7 All applications for price variations must be sought within one (1) month after the occurrence of the event giving rise to the claim. Failure to comply with this request will result in any subsequent approval for price increase being made retrospective for one (1) month only prior to the actual date of the application for increases.
- 4.8 Note: - The price tendered shall be deemed to include the amounts of increases in wages and salaries to be paid pursuant to any award determination made prior to the date of tender.

5. INSPECTION

- 5.1 Acceptance of any service shall be subject to its being in accordance with this specification and to the satisfaction of the Ordering Officer or his representative (Clause 13 of the General Conditions refers).

6. CONTACT

- 6.1 The contractor will be required to be available for 24 hours contact, 7 days/week in Darwin and Nhulunbuy and will advise the Ordering Officer of the names and telephone numbers of these contacts.

7. CONTRACTOR'S REPRESENTATIVE

- 7.1 The contractor shall have a Northern Territory based representative who is required to make contractor's operational decisions under the contract.
- 7.2 The representative shall work in liaison with Ordering Officer Darwin or East Arnhem (as applicable) who shall be responsible for day-to-day flight programming.
- 7.3 The representative shall have sufficient command of the English language to read, converse and receive instruction in the English language.

8. CONTRACTOR TO BE RESPONSIBLE FOR ENGAGEMENT OF EMPLOYEES

- 8.1 The contractor will be responsible for the employment and payment of all staff engaged in the operation of this service.
- 8.2 The contractor shall employ and ensure that his sub-contractors employ in connection with the service under the contract only such persons as are careful, skilled and experienced in their respective trades and callings.
- 8.3 The Northern Territory of Australia accepts no liability for any monies due to staff employed by the contractor.

9. CONTRACTOR TO BE RESPONSIBLE FOR HIS EMPLOYEES

9.1 The contractor shall be responsible for the good and proper conduct of the persons engaged by him and employed in the performance of the contract.

10. SCREENING OF CONTRACTOR AND/OR EMPLOYEES

10.1 The Ordering Officer, with the prior approval of the General Tender Board, may at any time during the currency of the contract, by notice in writing, direct that person/s who in the opinion of the Ordering Officer, misconducts himself or is incompetent or negligent in the performance of his duties, shall not be used for the purposes of the contract and the contractor shall comply with that direction immediately.

10.2 The Northern Territory of Australia shall not be liable to the contractor or to any person claiming through the contractor for any claim for damage or otherwise arising out of the withholding of and/or withdrawal of approval.

11. INFORMATION NOT TO BE DISCLOSED

11.1 The contractor and every person employed by him in or in connection with the performance of the service shall not either, directly or indirectly, make a record of, or divulge or communicate to any person, any information concerning the medical condition of any person, nor information concerning the business or affairs of the Northern Territory of Australia acquired or obtained by him in the course of performing the service or any part of thereof.

11.2 If the contractor fails to comply with paragraph 11.1 of this Condition, the Northern Territory of Australia may exercise all or any of the powers conferred upon it by the General Conditions of Tender and Contract for the Performance of Services (Part "C"). If any person employed by the contractor in or in connection with the performance of the service fails to comply with paragraph 11.1 of this Condition the contractor shall, immediately after he becomes aware of such failure, terminate the employment of that person for the purposes of the contract.

12. DAMAGES

12.1 All fittings or fixtures damaged or other damage to the hangar or other property owned by the Department of Health caused by the contractor, or his staff, shall be reported to the Ordering Officer forthwith and be repaired/replaced and made good to the satisfaction of the Ordering Officer at the contractor's expense.

13. SECURITY

- 13.1 The contractor shall, upon completion of each days operations, ensure that all doors, windows and openings through which access from outside might be gained are locked or otherwise secured unless some properly authorised servant or agent of the contractor or the Ordering Officer is present at the premises and proper arrangements are made with such servants or agents for the locking of the said doors, windows and openings.

14. CUSTODY OF KEYS

- 14.1 The Ordering Officer will supply keys to the contractor for the purposes of entering/locking the premises. The contractor shall not except with the consent of the Ordering Officer, make duplicates of keys, part with the possession of the said keys and shall take all reasonable and necessary precautions to prevent the loss or theft of the said keys. The cost of replacing keys lost or stolen, including the cost of replacement or re-keying of master locks shall be at the contractor's expense. The contractor shall observe all directions given by the Ordering Officer with regard to the use and custody of the said keys and shall, whenever required to do so, hand the keys to the Ordering Officer.

15. SAFETY

- 15.1 The contractor shall ensure compliance with all relevant safety legislation applicable to the operation of the service.
- 15.2 The pilot of the aircraft shall have complete discretion regarding safety concerning:
- 15.2.1 Load to be carried and its distribution
- 15.2.2 Whether a flight should be undertaken or continued or diverted
- 15.2.3 Whether a landing should be made
- 15.2.4 The route, altitude and speed of flight
- and the Northern Territory of Australia will accept all decisions of the pilot in relation to these matters.

16. FIRE PRECAUTIONS

- 16.1 The contractor shall ensure that all reasonable precautions are taken in relation to fire safety and all relevant Fire Safety Legislation is complied with.

17. COMPLIANCE OF NT ACTS, ORDINANCES, REGULATIONS

- 17.1 The contractor shall observe and comply with the provisions of all relevant acts, ordinances, regulations, by-laws and rules and all requirements of any authority as shall be in force in the place where the services as specified are provided and as may relate to the services as provided.

18. SUB-CONTRACTORS

- 18.1 If it is proposed that any work is to be performed by the sub-contract the names of the proposed sub-contractors and details of the work proposed to be undertaken shall be set out in Part "D".
- 18.2 The tenderer shall take steps or adopt procedures to ensure that prospective sub-contractors whose principal place of business is in the Territory are given an opportunity to tender for the work proposed to be sub-contracted.
- 18.3 Sub-contractors shall be approved in writing by the General Tender Board before being allotted any part of the work.
- 18.4 The contractor shall ensure in contracts between the contractor and all sub-contractors that all relevant conditions of the contract between the contractor and the Northern Territory of Australia shall be performed and observed by the sub-contractors. If there is any doubt as to the relevancy of any conditions, the contractor shall make written application to the General Tender Board for a direction.

19. PERFORMANCE DURING DEFAULT

- 19.1 If the contractor shall neglect or fail to perform any of the contractor's obligations under any resultant contract and such neglect or failure shall continue for a period of twenty four (24) hours after notice has been given to the contractor by the Northern Territory of Australia either orally or in writing to make good such neglect or failure, the Northern Territory of Australia may make such arrangements as in its opinion are necessary to remedy the neglect or failure of the contractor and such arrangements may include the engagement of other contractors and the hiring, engagement and employing of labour, appliances, materials and equipment and all demands and expenses sustained or incurred by the Northern Territory of Australia in making good the neglect or failure of the contractor shall be payable to the Northern Territory of Australia by the contractor as liquidated damages or at the option of the Northern Territory of Australia be deducted from any moneys of the contractor held by the Northern Territory of Australia or any account whatsoever or from any monies payable by the Northern Territory of Australia to the contractor.

20. INSURANCE

20.1 Property Damage and Public Risk

20.1.1 The contractor shall be solely liable for and keep himself insured against all actions, proceedings, claims and demands of any kind whatsoever which any person may have or claim to have in respect of death or bodily injury or damage to property arising out of or in any way incidental to the performance of the contract.

20.1.2 The insurance policy in respect of death or bodily injury and damage to property shall be for a sum not less than \$2,000,000.

20.2 Carrier's Liability

20.2.1 Each person travelling under this contract must be covered with not less than \$1,000,000 for death or personal injury.

20.3 Indemnity and General Liability

20.3.1 The contractor shall indemnify and keep indemnified and shall waive all rights of subrogation and indemnity against the Northern Territory of Australia, its officers, servants and agents against all actions, proceedings, claims and demands of every nature or thing whatever which any person may have or claim to have in respect of or arising out of or in any way incidental to the performance of the contract.

20.3.2 The contractor shall be liable to the Northern Territory of Australia for all damage to property owned by or in the control of the Northern Territory of Australia caused by the contractor or the contractor's servants or agents during the course of the contract.

20.4 Workers' Compensation

20.4.1 The contractor shall insure and keep insured its employees under the provisions of the Workers' Compensation laws in force in the Northern Territory of Australia and shall waive all rights of subrogation and indemnity against the Northern Territory of Australia and its officers, servants and agents given by such law to the contractor (and the contractor shall ensure that its insurer likewise waives its rights) in respect of claims by employees of the contractor for injury (including injury resulting in death) arising from work performed under the contract.

20.4.2 Insurance effected by the contractor pursuant to the last preceding paragraph of this Clause shall be extended to cover all liabilities of the Northern Territory of Australia at Common Law and under any applicable statute or other legislative provision.

20.4.3 The contractor shall be solely responsible to meet all payments, costs and expenses arising out of any claims and proceedings for damage,

loss, death or injury of or to the contractor and the contractor's officers, servants, agents, sub-contractors, invitees and licencees which may be sustained in the performance of work pursuant to the contract and the contractor shall indemnify the Northern Territory of Australia its servants and agents against any claims and proceedings made in respect of such damage, loss, death or injury.

20.5 Lodgement of Policies

- 20.5.1 The contractor shall, upon contract acceptance, lodge the policies with the Board. These policies will be returned to the contractor after perusal and if so directed in writing by the Board, the contractor shall promptly arrange for such policies to be endorsed in such form as may be required by the Board. These policies shall be kept in force during the currency of the contract.

21. AWARD DETERMINATIONS

- 21.1 The contractor shall comply with the provisions of any award, order or determination made under the authority of any Statutes of the Commonwealth or the Northern Territory of Australia, applicable to the persons employed by the contractor under the contract.
- 21.2 Where no such provisions are applicable, employment conditions shall not be less favourable than those which have been fixed for work of a similar nature under the authority of any Statute of the Commonwealth or the Northern Territory of Australia.

22. APPLICABLE LAW

- 22.1 The contract shall be construed and take effect in accordance with the laws in force for the time being in the Northern Territory.

23. ARBITRATION

- 23.1 If a dispute shall arise between the contractor and the Northern Territory of Australia upon any matter relating to the contract, such dispute shall be forthwith referred for determination by an arbitrator agreed upon by both parties. If the parties are unable to agree upon an arbitrator, the matter shall then be referred for determination according to the laws regarding arbitration of the Northern Territory of Australia.

24. TERMINATION OF CONTRACT (Due to Default)

24.1 If the contractor or any assignee approved subject to the provisions of Clause 16 of General Conditions of Tender and Contract for the Performance of Services (Part "C");

24.1.1 commits any act of bankruptcy or executes an assignment of his estate for the benefit of his creditors or makes an arrangement of composition with his creditors or being a company, goes into liquidation whether voluntary or compulsorily except for the purposes of amalgamation or reconstruction; or

24.1.2 in the opinion of the Board, fails to observe and perform in a proper manner any of the obligations of the contractor under the contract and does not make good such failure within twenty four (24) hours of being required by the Northern Territory of Australia to do so,

the Board may forthwith terminate the contract by notice in writing to the contractor.

24.2 If the contractor so conducts himself as to be in the opinion of the Board, unfit to carry out or be entrusted with the service, the Board may forthwith terminate the contract by notice in writing to the contractor.

24.3 Termination of the contract in any of the aforesaid cases, shall be without prejudice to any claim of the Northern Territory of Australia against the contractor and his approved assignees arising out of the contract.

NORTHERN TERRITORY OF AUSTRALIA

GENERAL TENDER BOARD

GENERAL CONDITIONS OF TENDER AND CONTRACT FOR PERFORMANCE OF SERVICES (GTB2)

1. DEFINITION OF TERMS

In these General Conditions of Tender and Contract, in the Contract in the Tender, and in any Schedule or specification incorporated with and forming part of the Contract, unless the contrary intention appears:-

- 1.1 "Northern Territory" means the Northern Territory of Australia.
- 1.2 "Minister" means a Minister of the Government of the Northern Territory of Australia.
- 1.3 "Board" means the General Tender Board of the Government of the Northern Territory of Australia.
- 1.4 "Secretary of the Board" means the Secretary for the time being of the Board or the officer for the time being performing the duties of the Secretary of the Board as the case may be.
- 1.5 "Ordering Officer" means the officer or officers who may from time to time be appointed or authorised by the Board to order stores and services tendered, offered or performed by the contractor for acceptance and to carry out any duties in connection with the contract appertaining to the position of Ordering Officer, or for any or more of those purposes, and includes any person for the time being acting for or on behalf of the Ordering Officer. The word "the" before "Ordering Officer" in any of the Conditions of Contract does not indicate that the same Ordering Officer exercises, in relation to a contract, all of the functions of an Ordering Officer.
- 1.6 "Period Contract" means a contract for such number of services as may be ordered during the specified period and not for any definite number or quantity of services.
- 1.7 "Contractor" means any person or persons or corporation contracting for the performance of a service, and includes the executors or administrators of such person or persons and the successors and permitted assigns of any such corporation.
- 1.8 "Contract Price" means the price which the contractor has agreed to accept for the performance of the services.

1.9 "Schedule" means the Schedule specifying tenders for the services and includes the specification and the special Conditions of Tender or Contract (if any) contained therein or appended thereto.

1.10. "Services" means and includes the performance of work, the repairs to equipment, hire of plant, equipment, vehicles, stores or materials as stated in the Schedule, and such other services as may be defined as the performance of an act, as opposed to the supply of stores, as required by the contract.

2. CONDITIONS OF TENDER

2.1 Every tender shall comply with each of the following conditions, viz:-

2.1.1 The tender shall be enclosed in an envelope sealed and marked with the tender number and the closing date and shall be deposited in the Tender Box at the place specified in the Tender Form by or before the time specified as the latest for receiving tenders, or posted through Her Majesty's Mails to reach the Secretary, General Tender Board at the address specified or the Schedule, by or before the time specified as the latest for receiving tenders.

2.1.2 The tender shall be signed by the tenderer except where the tenderer is a company and in that case the tender shall be sealed by the tenderer or alternatively signed by the manager or a director of the company. All signatures or seals shall be witnessed.

2.1.3 If so required by the Schedule a preliminary deposit, as provided in these Conditions shall be enclosed with the tender.

2.1.4 The form of tender used by the tenderer must not be mutilated.

2.2 Any tender not complying with all the above Conditions is liable to be considered informal and to be rejected.

3. PRELIMINARY DEPOSIT

3.1 The amount of preliminary deposit required with a tender is the amount stated in the Schedule. Any such deposit must be in a "NOT NEGOTIABLE" form only, and must be made out in favour of the Receiver of Territory Monies specified in the Schedule.

3.2 Preliminary deposits will be returned to unsuccessful tenderers as soon as possible after the successful tenderer has been determined.

4. TENDERS MAY BE SUBMITTED OR ACCEPTED FOR WHOLE OR PORTION

Tenderers may tender for any item or items, or part or parts thereof shown in the Schedule and the Board reserves the right to accept separate tenders for each or any item or items or parts which have been tendered for.

5. ACCEPTANCE

The lowest or any tender need not necessarily be accepted and no tender shall be deemed to have been accepted unless and until the fact of such acceptance has been notified to the tenderer in writing by or on behalf of the Board.

6. DATE OF NOTIFICATION OF ACCEPTANCE

The date on which the notification of acceptance is delivered by hand or sent by prepaid post addressed to the last known address of the tenderer shall be deemed to be the date of the notification of the acceptance of the tender.

7. PROCEEDING ON DEFAULT BY TENDERER

Should the tenderer:-

- 7.1 withdraw his tender;
- 7.2 fail to execute a formal agreement within fourteen (14) days after being required by the Board to do so; or
- 7.3 fail to lodge the security required by Condition 8 hereof within the said fourteen (14) days, then in any of these events the Board may :-
 - 7.3.1 revoke any acceptance of the tender; and
 - 7.3.2 declare any preliminary deposit forfeited to the Northern Territory of Australia and thereupon such deposit shall become the property of the Northern Territory of Australia absolutely.

CONDITIONS OF CONTRACT

8. Security on Contract

8.1 Unless otherwise stated in the Schedule security for the due performance of the contract will be required as specified hereunder:-

- 8.1.1 On a contract the total contract price or the estimated total contract price of which does not exceed \$4,000. The sum of \$4 or a sum equal to 5 percent of the total contract price or of the estimated total contract price whichever sum is the greater or such sum as may be determined by the Secretary of the Board.

- 8.1.2 On a contract the total contract price or the estimated total contract but does not exceed \$10,000 The sum of \$200 or a sum equal to 4 percent of the total contract price or of the estimated total contract price whichever sum is the greater or such sum as may be determined by the Secretary of the Board.
- 8.1.3 On a contract the total contract price or the estimated total contract of which exceed \$10,000 but does not exceed \$20,000. The sum of \$400 or a sum equal to 3 percent of the total contract price or contract price or of the estimated total contract price whichever sum is the greater or such sum as may be determined by the Secretary of the Board.
- 8.1.4 On a contract the total contract price or the estimated total contract of which exceeds \$20,000 The sum of \$600 or a sum equal to 2½ percent of the total contract price or of the estimated total contract price whichever sum is the greater or such sum as may be determined by the Secretary of the Board.
- 8.2 For the purposes of this condition the total contract price shall mean the total value at contract prices of the services to be performed under contract, and the estimated total contract price shall mean the total value at contract prices of the estimated total number or quantity of the services to be ordered under the contract. Provided, however, that in the case of a period contract, unless such contract is for a period of less than two months, the estimated total contract prices shall, for purpose of calculating the security money, mean the total value at contract prices of the estimated number or quantity of the services to be ordered under the contract during a period of two (2) months. No estimate is to be deemed a guarantee that the estimated quantity will be ordered.
- 8.3 Such security shall, at the option of the contractor, be in the form either of the Northern Territory of Australia Inscribed Stock, Commonwealth Treasury Bonds, or Inscribed Stock (with a duly executed transfer attached), Banker's Cheque, Bank Draft, Bank Undertaking (in a form prescribed by the Board), Bank Fixed Deposit Receipt or Savings Bank Pass Book in favour of an lodged with the Receiver of Territory Monies stipulated in the letter of acceptance.
- 8.4 The contractor shall be entitled to receive any interest that may become payable upon the Northern Territory of Australia Inscribed Stock, Commonwealth Treasury Bonds, or Inscribed Stock, Bank Fixed Deposit, or Savings Bank Pass Book deposited as aforesaid a such interest becomes payable. The Northern Territory of Australia shall not be held liable or answerable in any way for any loss consequent upon any decreasing value of any security or for any loss of interest arising by reasons of any fixed deposit not being renewed or through any other cause whatsoever.

9. QUALITY

The service shall be performed in accordance with the qualities specified in the Schedule, and shall conform in all respects to the Specification or other particulars (as the case may be) contained in or appended to or referred to in the Schedule.

10. CONTRACT PRICE

The contractor shall be entitled to payment at the contract price only and such contract price shall include such other out of pocket expenses as provided for in the contract.

11. RATES OF WAGES TO BE PAID

The contractor shall ensure that all persons employed on the contract are paid at rates which are not less than those fixed by any relevant award, determination, judgement, or order of any competent Court, Wages Board, Commission or other Industrial Tribunal or by any other Industrial Agreement in force under any law of the Commonwealth or State or Territory of the Commonwealth, and are employed under the conditions prescribed in any such award, determination, judgement or order or agreement.

12. WORKERS' COMPENSATION INSURANCE

The contractor shall insure all his employees in accordance with the Workers' Compensation Act and keep indemnified the Northern Territory against any actions, suits, claims, demands, costs or expenses whatsoever arising out of or in connection with the performance of his duties including any claims demands, costs or expenses which may be brought by such assistance as he may employ.

13. TIME FOR PERFORMANCE

The contractor shall perform the service ordered at the place and time stated in the official order. The Ordering Officer may refuse performance of the service otherwise than at the time specified in the official order.

14. EXAMINATION AND REJECTION

- 14.1 Services rendered may be inspected by the Ordering Officer at any time during performance. Any service which the Ordering Officer shall then indicate to the contractor as not being in conformity with the contract standard shall not be paid for by the Northern Territory.

- 14.2 The provisions of Conditions 15 and 16 shall not apply to such cases of rejection when in the opinion of the Ordering Officer it is impracticable to apply such provisions.

15. MAKING GOOD REJECTED SERVICES

Rejected services shall be made good by and at the expense of the contractor within a reasonable period to be designated by the Ordering Officer after notice in writing shall have been given to him by the Ordering Officer at the rejection. If not made good, the Ordering Officer may cause the services to be made good by other means and charge the contractor with all expenses incurred and such expenses shall be recoverable under the contract. A certificate by the Ordering Officer stating the amount of the expenses shall be conclusive evidence of the matter stated.

16. RE-EXAMINATION

In the event of a rejection of services whereby the contractor may consider himself aggrieved, re-examination of the services by an officer or officers not exceeding three (3) in number and not including any Ordering Officer who exercised any function in relation to the services shall be allowed upon application being made to the Secretary, General Tender Board, but such application must be made before the rejected services has been made good in accordance with Condition 15. The contractor or his duly authorised representative may attend the re-examination to state his objections to the rejection. The decision of the officer or officers making the re-examination shall be final and binding.

17. ASSIGNING OR SUB-LETTING

Should the contractor assign or sub-let the contract or any part thereof without the consent in writing of the Board being first obtained, or should the contractor become bankrupt or make an assignment of his estate for the benefit of creditors, or make an arrangement or composition with his creditors, or being a company go into liquidation or any petition is present or proceedings taken or instituted in any Court for the winding up of the contractor compulsorily or subject to the supervision of the Court either voluntarily or otherwise howsoever then and in every such case the Board shall be at liberty to determine the contract but without prejudice to any right to liquidate damages that may have accrued to the Northern Territory under any of these Conditions.

18. DEFAULT OF CONTRACTOR

If the contractor fails to carry out the services in accordance with the contract standard where and when ordered, the Ordering Officer may forthwith cancel the order for the service in question and make other arrangements for the performance of the service and any extra expense over and above the contract price, together with any loss sustained by the Northern Territory through the failure of the contractor, shall be chargeable against the contractor and shall be recoverable under the contract. In addition, the Board may exercise the powers conferred upon it by Condition 19.

19. FAILURE OF CONTRACTOR TO RENDER SATISFACTORY SERVICE

19.1 If the contractor :-

19.1.1 fails to perform the service in conformity with the contract standard; or

19.1.2 fails in any other way to carry out the contract to the satisfaction of the Board;

the Board may :-

19.1.2.1 by notice in writing to the contractor, require the contractor to forfeit and pay to the Northern Territory as liquidated damages, and not as penalty, a sum not exceeding forty dollars (\$40.00) as often as such act, failure or attempt may occur, and such sum or sums shall be recoverable under the contract; and

19.1.2.2 by notice in writing to the contractor forthwith cancel the contract and declare the whole or any portion of the security lodged by the contractor forfeited to the Northern Territory and thereupon the amount so declared to be forfeited shall become the property of the Northern Territory absolutely. In addition, the contractor shall be liable for any damage, losses, or expenses the Northern Territory may sustain or incur in consequence of any failure, act or attempt of the contractor or in consequence of the cancellation of the contract or any part thereof as aforesaid, and such damage, losses, and expenses shall be recoverable under the contract.

19.2 The expiration of the specified period of a prior contract or the completion of performance of the service stores prior to the issue of notice in writing as mentioned in this Condition shall not affect the right of the Board to exercise any of its powers under this Condition.

19.3 The exercise by the Board of any power conferred by either Clause 19.1.2.1 or Clause 19.1.1.2 of this Condition in respect of any failure, act or attempt of the Contractor will not compel the Board to exercise the same power in respect of any subsequent similar failure, act or attempt of the contractor, but in respect of any such subsequent similar failure, act or attempt the Board may, if it thinks fit, exercise any or all of the powers conferred by Clause 19.1.2.1 or Clause 19.1.2.2.

19.4 A certificate by the Secretary of the Board stating the amount of any damages, losses, or expenses sustained or incurred by the Northern Territory in consequence of any failure, act or attempt mentioned in Condition 18, or in this Condition, or in consequence of the cancellation of the contract, shall be conclusive evidence of the matter stated.

20. DAMAGES RECOVERABLE

All damages, losses, costs and expenses incurred by the Northern Territory under the contract, and chargeable against the contractor or stated in these Conditions to be recoverable under the contract, together with any sum payable by the contractor as liquidated damages, may be deducted from any money that may then be due or may thereafter become due to the contractor or may have been deposited by him as security and if the money then due or thereafter becoming due to the contractor under the contract or deposited by him as security is not sufficient for that purpose, the balance remaining unpaid shall be a debt by the contractor to the Northern Territory, and may be set off against any other monies which may be or become due to the contractor by the Northern Territory or may be recovered from the contractor in any Court of competent jurisdiction.

21. SERVICE OF NOTICES

Any notice, consent, approval or other communication to be given or served by the Minister or the Board on or to the contractor under these Conditions shall be deemed to have been duly given or served by or on behalf of the Minister or the Board if signed by or on behalf of the Secretary of the Board and sent by hand or by prepaid registered post addressed to the contractor at his usual or last known address.

22. Where any special conditions of tender or contract in a Schedule are inconsistent with these General Conditions of Tender and Contract, the former shall to the extent of the inconsistency prevail.

23. In these Conditions words importing the masculine gender shall include the feminine gender and the neuter gender and words in the singular shall include the plural and words in the plural shall include the singular.

24. CONDITIONS NOT TO BE VARIED etc.

None of the Conditions of the Contract shall be varied, waived, discharged, or released either at law or in equity except by the express consent of the Board; testified in writing under the hand of the Secretary of the Board.

INFORMATION DATA TO BE PROVIDED BY TENDERER

COMPLETION OF SCHEDULE

ALL THE INFORMATION IN PART "D" MUST BE PROVIDED OR TENDER MAY BE EXCLUDED FROM CONSIDERATION

- | 1. | <u>TENDERED RATE</u> | <u>PRICE PER NAUTICAL MILE</u> |
|-----|--|--------------------------------|
| 1.1 | For aerial work in non pressurised aircraft when total flying is between 240,000 to 300,000 nautical miles | \$ _____ |
| 1.2 | For aerial work in non pressurised aircraft when total flying exceeds 300,000 nautical miles per annum | \$ _____ |
| 1.3 | For aerial work using a pressurised aircraft | \$ _____ |
| 2. | <u>GOODS TO BE PURCHASED</u> | |
| | Total sum offered for aviation items (Lump Sum Payment) | \$ _____ |
| | <u>or</u> | |
| | Payment to be made over the first 200,000 NM | \$ _____ |
| | <u>or</u> | |
| | Payment to be made over the first 200,000 NM in each of five years (total 1,000,000 NM) | \$ _____ |

Tenderers are to attach costed list of major items if they so desire. This to be verified by the Department of Health representative

3. ALTERNATIVE OFFER

- 3.1 Any alternative offer must be stated as such.

4. PRICE BASIS

4.1 The tenderer is required to indicate in the space provided hereunder whether his price/s is/are to be firm (except for exchange variations if for imported supplies) for the whole of the contract or subject to variation on one of the basis provided for in Part "B" hereto headed "Standard Price Variation Clauses".

Note: All clauses referred to in Price Basis are Part "B" clauses unless otherwise specified.

4.2 The tendered price/s is/are to be :-

Delete which is inapplicable

4.2.1 Firm for the whole of the contract

Yes / No

4.2.2 Variable in accordance with Actual Price Changes in accordance with Special Condition 2.1 (Insert applicable clauses)

Yes / No

4.2.3 Subject to adjustment by formula as per the Special Condition Clause 3.1

Yes / No

4.3 FULL DETAILS OF PROPOSED FORMULA

4.4	<u>Formula Symbols</u>	<u>Index Factors</u>	<u>% of Price</u>	<u>Index</u>
		Special Conditions Clause 3.1.2		Special Conditions Clause 3.1.4
		Labour Pilots		
		Labour Other		
		Fuels, Oil Lubricants, etc		
		Maintenance Costs (Spares)		
		Management and		
		Administration Costs		

5. SETTLEMENT DISCOUNT (If applicable)

5.1 In addition, I/we agree to allow the following discount for prompt payment: _____% for payment within thirty (30) days for the performance of service and date of rendition of the account.

5.2 Tenderers may offer settlement discounts for payment within periods less than thirty (30) days but thirty (30) days settlement discounts only will be taken into account in assessing tenders.

5.3 "Date of Rendition" shall mean the date upon which the correct amount accompanied by all necessary documents is received by the Chief Examiner of Accounts of the Ordering Departments as specified on the official order or date on which the relevant service is performed, which every date is the later.

5.4 "Date of Payment" shall mean that payment of the account will be deemed to have been made as at the date on which the cheque is drawn by the Government.

6. CONTACT

6.1 Tenderers should also indicate whether they are able to be contacted on a 24-hour base/s seven days a week (Refer Special Condition 6):

DARWIN

NHULUNBUY

7. TIME REQUIRED TO COMMENCE WORK (Refer Specifications Clause 1.3)

7.1 Time required from notification of acceptance to take over performance of the contract using, if necessary, current equipment.

7.2 Time required from notification of acceptance to perform contract in accordance with the specifications and provisions contained in your tender.

11. INSURANCE

In accordance with Part "B" Special Conditions, provide the following information: -

11.1 PROPERTY DAMAGE AND PUBLIC RISK

Insurer (Company) _____
Policy Number _____
Extent of Cover _____
Date of Expiry/Renewal _____

11.2 CARRIER LIABILITY

Insurer (Company) _____
Policy Number _____
Extent of Cover _____
Date of Expiry/Renewal _____

11.3 GENERAL LIABILITY AND INDEMNITY

Insurer (Company) _____
Policy Number _____
Extent of Cover _____
Date of Expiry/Renewal _____

11.4 WORKERS' COMPENSATION

Insurer (Company) _____
Policy Number _____
Extent of Cover _____
Date of Expiry/Renewal _____

12. DETAILS OF TENDERER'S PROPOSED SUB-CONTRACTS
See Special Conditions

<u>Name and Address of Proposed Sub-Contractors</u>	<u>Details of Work/Services Proposed to be Sub-Let</u>	<u>Estimated Value \$</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

13. LIST OF MAJOR AVIATION ITEMS TO BE PURCHASED (OPTIONAL)

VERIFICATION BY DEPARTMENT OF HEALTH REPRESENTATIVE

That the items listed above were available at time of inspection.

Signature
Technical Representative

Date

DECLARATION BY TENDERER

Full Name of Person _____

or

Full Names of Partnership _____

or

Full Registered Company Name _____

Full Trading Name (if applicable) _____

Address of Tenderer

Postal Address of Tenderer

Telex Code _____

Person To Contact (If other than above)

Telegraphic Code _____

Telephone Business _____

Telephone After Hours _____

AUTHORITY TO SIGN TENDER

The tender shall be signed by the tenderer except where the tenderer is a company and in that case the tender shall be sealed by the tenderer or alternatively signed by the manager or a director of the company. All signatures or seals shall be witnessed.

The members of a partnership are to sign separately unless properly executed partnership agreement or power of attorney provides the member signing with the authority to sign on behalf of the partners.

I/We being duly authorised to sign, hereby tender my/our offer to the Northern Territory of Australia at the prices and upon and subject to the conditions as set forth herein.

Signature

Official Position Held (eg: Director)

Name (Block Capitals)

Date _____

Signature of Witness

Address of Witness

Name of Witness (Block Capitals)

SAMPLE CERTIFICATION OF FLIGHT

CONTRACTOR: PILOT'S NAME

AIRCRAFT REGISTRATION:

<u>DATE</u>	<u>TRIP</u>	<u>MAP NAUTICAL MILES TRAVELLED (BASE TO BASE)</u>
.....
.....
.....
.....
.....
.....
.....
.....

AUTHORISATION NO.:

PASSENGERS' NAMES:

.....

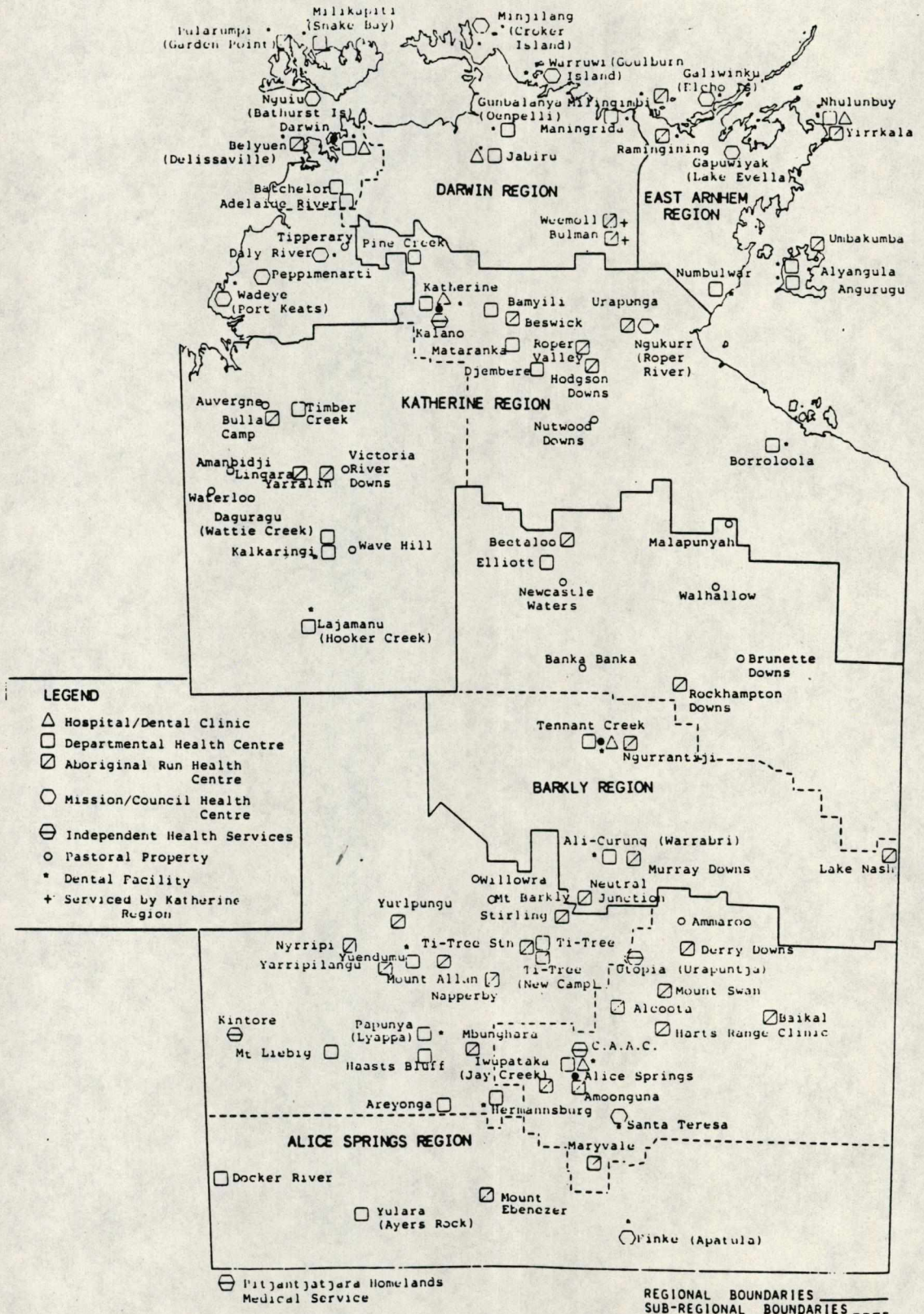
.....

.....

.....

.....

<u>CONTRACTOR'S USE ONLY</u>	<u>COMMENTS</u>
MAP NAUTICAL MILES
TRAVELLED BASE TO BASE:
RATE: \$..... PER NM
TOTAL COST OF FLIGHT: \$



OUTSTATION AIRSTRIPS, EAST ARNHEM REGION

There are approximately 100 airstrips in the Region. Fifteen outstation airstrips were utilised by the Service during the past 2 years. These are:

Baniyala
Dhalinguy
Gan Gan
Garthalala
Gurrumurru
Wandaway
Bickerton Island
Howard Island
Malayanganak
Mata Mata
Mirrnatja
Naluyindi
Doindji
Raymangirr
Cape Wessell

Major Airstrips

Lake Evella, Numbulwar, Milingimbi and Groote Eylandt are currently visited weekly. Elcho Island and Ramingining are visited each two weeks.

Further information can be obtained from the Regional Director of Health, East Arnhem Region, Telephone 870 221.

AERODROMES USED BY AERIAL MEDICAL SERVICE, DARWIN REGION

Licenced Aerodromes: Bathurst Island
Croker Island
Daly River Mission
Delissaville
Garden Point
Goulburn Island
Jabiru
Maningrida
Minjilang
Oenpelli
Snake Bay
Tindal

Authorised Landing Areas: (used in the last three years)

Batchelor
Cape Don
Cooinda
Channel Point
Douglas Daly
Danger Point
Goodparla
Grose Island
Labelle Downs
Mudginberri
Munmarlary
Murganella
Narbalek
Palumpa
Peppimenarti
Pickataramoor
Point Stuart
Smith Point
Tipperary
Wangi
Wildman River
Woodycarpildyl

Other Authorised Landing Areas also Listed are: (not used in the last 3 years)

Annabaroo
Ban Ban Spring
Baroalba
Cannon Hill
Gamardi
Gimbat (Fisher)
Jimarda
Pandella
Spirit Hills
Welltree
Woodipilli

APPENDIX C

NOTES OF TENDERING PROCESS (NT TREASURY)



NORTHERN TERRITORY OF AUSTRALIA

NORTHERN TERRITORY TREASURY
GENERAL TENDER BOARD

4th Floor
AMP Building
36 Cavenagh St.
DARWIN 5700
G.P.O. Box 1974
DARWIN NT 5704
Telex No. NTGTE 0
Telephone (089) 85

NOTES ON TENDERING PROCESS

Treasury Regulation 10(1) states that where an amount to be expended in an order for supplies and/or services required by the Northern Territory Government is in excess of \$10,000, the subject of the order shall be submitted to a tender board for the invitation of public tenders.

The Northern Territory Government's Administrative Arrangements require that all non capital works related requirements for goods and services be submitted to the General Tender Board which has been established by the Treasurer pursuant to Treasury Regulation 10(2).

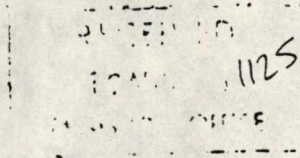
The General Tender board is administratively supported by the Purchasing Office of the Northern Territory Treasury. The procedures carried out by the Purchasing Office in the normal tendering process are as follows:

- (a) Receive requests for tendering action for goods and services required by departments, including a detailed specification of the requirements;
- (b) Review the specification to ensure that it -
 - (i) fosters public competition and equal opportunity
 - (ii) delineates the requirement
 - (iii) is consistent with Government purchasing policies
 - (iv) facilitates the evaluation;
- (c) Arrange the public invitation and receipt of tenders;

- (d) Refer tenders received to the department requiring the goods and services for evaluation;
- (e) Receive the department's Evaluation Report and Recommendation regarding the tenderer selected for contract award;
- (f) Review the department's Evaluation Report to ensure that the evaluation -
 - (i) has been conducted in a manner which has involved full analysis of tenders against the requirements as specified in the Request for Tender document
 - (ii) is defensible in terms of its logic and the process followed.
- (g) Prepare a "Business Paper" to the General Tender Board covering the tendering and evaluation process to facilitate consideration by the Tender Board of the Tender Recommendation;
- (h) Following approval by the General Tender Board, prepare appropriate contract documentation, if necessary, negotiating details of terms and conditions with the successful tenderer. In instances where the Government has directed that acceptance of the tender be a matter for Cabinet, following General Tender Board approval of the tendering and evaluation process, the recommendation is referred to Ministers for approval.

APPENDIX D

DEPARTMENT OF HEALTH MEMORANDUM TO
MINISTER OF 19 AUGUST 1986

TERRITORY DEPARTMENT OF HEALTH
MEMORANDUM

J10651

TO: MINISTER
FROM: A/SECRETARY
SUBJECT: AERIAL MEDICAL CONTRACT

File No. 86/239 /51.

DATE /9 AUGUST 1986

RECOMMENDATION:

It is recommended that you note the proposed procedures for handling the new aerial medical service contract.

If you wish to vary these in any way, could you please advise the Department as soon as possible.

BACKGROUND:

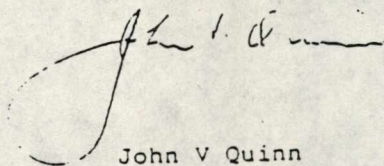
The tenders for the new aerial medical service contract closed on 5 August 1986. The Tender Board has asked the Department of Health to prepare the preliminary evaluation. It is expected that the departmental assessment will be complete by 29 August 1986.

At this point, it is proposed to brief you verbally on the tenders.

The documents and recommendations will then be returned to the Tender Board, who will consider comments from the Department of Health in relation to other departmental considerations, eg those of Transport and Works.

.../2

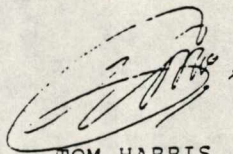
The Tender Board will then recommend to the Treasurer that the government accept the preferred tenderer. The Treasurer may then wish to consult his Cabinet colleagues before accepting the tender on behalf of the NT Government.



John V Quinn
A/SECRETARY FOR HEALTH

NOTED

Voted noted 19/8/86.



TOM HARRIS

20/8/86



APPENDIX E

NATIONAL PREFERENCE AGREEMENT

NATIONAL PREFERENCE AGREEMENT

PREAMBLE

The Commonwealth of Australia and the States of New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania and the Northern Territory:

- . recognise that the application of State preference in the procurement arrangements of the States is detrimental to the efficiency and competitiveness of Australian industry
- . agree that, except as stated otherwise in the Agreement, all forms of discrimination directly based on the State of origin of goods and related services will be eliminated from the procurement arrangements of participating States
- . recognise the desirability of achieving a common offsets policy which will not be discriminatory on the basis of the State of origin of the offer or bid
- . are committed to the achievement of the objectives set out in the Memorandum of Understanding
- . agree on the terms of the following agreement, to be known as the National Preference Agreement.

REMOVAL OF STATE PREFERENCE

- 1(a) It is agreed, except as stated otherwise in this Agreement, that in all Government procurement of goods and related services, all parties will ensure the abolition of monetary and absolute preference arrangements and procurement practices which discriminate between or against the parties on the basis of State of origin. Examples of discriminatory procurement practices are listed in Annex No. 1.
- (b) On the date of implementation of the Agreement, all forms of State preference, other than decentralised industry preferences subject to clause 1(c) (iii) and those specified in Annex No. 2 (Exemptions) will cease.
- (c) It is agreed that:
- (i) Where any of the parties wish to exercise any of the policies listed below, they will be

exercised equally in favour of suppliers of goods and related services from other parties to the Agreement:

- . Ministerial discretion
 - . Post tender negotiation or price renegotiation
 - . Advance technology procurement policy.
- (iii) Decentralised industry preference schemes applied by participating parties will not discriminate against bidders, suppliers and tenderers located in other participating parties.

2. It is agreed that besides price, Government procurement will still have regard to considerations such as quality, quantity, delivery and servicing capabilities, using life-cycle or similar costing techniques where appropriate.

TRANSITIONAL ARRANGEMENTS

- 3(a) Removal of preference will apply to tenders or bids which are advertised or called for after the date of implementation of the Agreement but not to those which have been advertised or called for before that date.
- (b) Existing contractual arrangements with specified manufacturers or suppliers of goods and related services, as set out in Part A of Annex No. 2 will be exempt from the application of the Agreement for the currency of these arrangements; where contractual arrangements do not currently have a finite duration or are scheduled to terminate after 1 July 1991, these should be terminated with effect from 1 July 1991.
- (c) Any extension of contractual arrangements beyond 1 July 1991 will require the agreement of a majority of members of the Australian Industry and Technology Council. Proposed extensions must be notified not later than July 1990 and must constitute a breach of contract.

EXEMPTIONS

- 4(a) Certain bodies and types of procurement, as specified in Part B of Annex No. 2, are exempt from the application of the Agreement.

- (b) Parties may seek exemptions to the Agreement in respect of specific purchasing from time to time. Such exemptions will be permitted only with the unanimous agreement of AITC.

PREFERENCE MARGINS FOR AUSTRALIAN MADE GOODS AND RELATED SERVICES

5. It is agreed that participating parties will apply the following rates of preference in their procurement of goods and related services
- (a) on content of overseas origin, except New Zealand:
- Commonwealth, New South Wales, Victoria, Queensland and South Australia: 20 per cent
- Western Australia and Tasmania: 10 per cent.
- (b) On New Zealand content, rates as applied by the individual parties at the date of signing of the agreement (details in Annex No. 3).
- (c) On content from any State to which the sanctions applied:
- Commonwealth to withdraw Commonwealth preference
 - States to apply a 10 per cent penalty margin.

APPLICATION OF PREFERENCE

Note: the following arrangements will apply from the commencement of the Agreement. Discussions will be entered into with a view to developing a uniform approach.

6. The States will adopt the following procedures:
- (a) Preference is applied in the form of a surcharge on the imported content of the tenders;
- (b) A uniform method of calculating imported content will be adopted by the participating parties. This method shall be as follows:

The imported content shall be the estimated duty paid value inclusive of the value of any services (eg overseas freight and insurance, software in computer tenders, consultancy or engineering effort), or any charges of overseas origin, together with Customs clearing charges.

The Commonwealth will retain its existing procedures which provide, inter alia

- (c) Preference is applied in the form of a discount on the Australian and/or New Zealand content of the tenders.
- (d) Australian and/or New Zealand content is to be calculated by deducting from the duty-paid tender price the duty paid value of imported components from third countries, selling, distribution and installation expenses and profit margins.

MONITORING

- 7(a) It is agreed that monitoring of compliance with the Agreement and the objectives set out in the Memorandum of Understanding will be undertaken by the State Preference and Industry Restructuring Advisory Committee (SPIRAC) and that the parties will co-operate in this process. SPIRAC will report each 6 months to AITC on the implementation of the Agreement and the achievement of the objectives contained in the Memorandum of Understanding.
- (b) Details of monitoring procedures are contained in Annex No. 4.

SANCTIONS

- 8. It is agreed that:
 - (a) Following consideration of an alleged breach of the Agreement SPIRAC may report to appropriate Ministers. If the issue is not resolved by these Ministers SPIRAC may report to AITC recommending whether action should be taken in respect of the alleged breach. A decision may be taken by AITC on whether a breach of the Agreement has occurred and on the appropriate action.
 - (b) (i) Where AITC has determined that a particular State has breached the Agreement, AITC will consider whether a sanction should be imposed on that State

The sanction may include exclusion from the Agreement for a specified period.
 - (ii) Exclusion of a State from the Agreement may result in loss of the benefit of Commonwealth purchasing preference for goods and related services originating in the excluded State

and in the application of preference as set out in Article 5(c) against such products by other States party to the Agreement.

(iii) Exclusion from the Agreement in respect of a breach will not remove the obligation of the excluded State to comply with the requirements of the Agreement during the period of exclusion.

(c) Failure by a State to participate in or withdrawal of a State from the Agreement may result in loss of the benefit of Commonwealth purchasing preference for products manufactured in the excluded State and in the application of preference as set out in Article 5(c) against such products by other States party to the Agreement.

DURATION AND REVIEW OF AGREEMENT

9. The Agreement will be reviewed at five-yearly intervals unless otherwise decided by AITC.

DEFINITIONS

- (i) The term "goods and related services" includes goods alone or goods and services conjointly. ADP software is defined as "goods" for this purpose. "Related services" include architectural, design engineering, project design, project management and related consultancy services provided in conjunction with the supply of goods or construction activities.
- (ii) The term "procurement" includes purchase, hire, lease, rental and exchange.
- (iii) "Government procurement" means procurement by Departments, Statutory Authorities and other bodies owned, operated or controlled by the parties except where specifically exempted under the Agreement. "Government procurement" includes procurement of electricity generation and distribution equipment by local government, but excludes all other procurement by local government and procurement by autonomous public bodies (e.g. Marine Boards in Tasmania).
- (iv) The term "State" to include self-governing Australian territories and the A.C.T.

- (v) The term "Designated Body" may include an agency or office responsible to the party, or a position located within such agency or office.

- (vi) Reference to the removal of discrimination in Clause 1(a) and elsewhere in the Agreement is intended to mean that, with respect to all procedures and practices relating to government procurement covered by the Agreement, the parties shall provide to the products and suppliers of the other parties equal opportunity and treatment no less favourable than that accorded to their own domestic products and suppliers.

APPENDIX F

PUBLIC ACCOUNTS COMMITTEE TERMS OF REFERENCE

118

Legislative Assembly of the Northern Territory

PUBLIC ACCOUNTS COMMITTEE

Telephone (089) 46 1411
Telex AA85154
Fax 81 2528
Telegrams Comparlas

G.P.O. BOX 3721
DARWIN, N.T. 5794

TERMS OF REFERENCE

STANDING ORDER 21A PUBLIC ACCOUNTS COMMITTEE

- (1) A Standing Committee of Public Accounts to consist of five Members shall be appointed at the commencement of each Assembly.
- (2) The duties of the Committee shall be -
 - (a) to examine the accounts of the receipts and expenditure of the Northern Territory and each statement and report transmitted to the Legislative Assembly by the Auditor-General, pursuant to the Financial Administration and Audit Act;
 - (b) to report to the Legislative Assembly with such comments as it thinks fit, any item or matters in or arising in connection with those accounts, statements or reports, or in connection with the receipt or disbursement of the moneys to which they relate, to which the Committee is of the opinion that the attention of Parliament should be drawn;
 - (c) to report to the Legislative Assembly any alteration which the Committee thinks desirable in the form of the public accounts or in the method of keeping them or in the method of receipt, control, issue or payment of public moneys;
 - (d) to inquire into and report to the Legislative Assembly on any question in connection with the public accounts of the Territory -
 - (i) which is referred to it by a resolution of the Assembly; or
 - (ii) which is referred to it by the Administrator or a Minister; and
 - (e) to examine the reports of the Auditor-General laid before the Legislative Assembly with the accounts of a

Public Authority of the Northern Territory (including any documents annexed or appended to those reports).

- (3) The Committee shall examine only those accounts of receipts and expenditure of the Northern Territory and reports of the Auditor-General for financial years commencing after 30 June 1986: provided that this shall not prevent the consideration by the Committee of matters included in reports of the Auditor-General for the year ending 30 June 1986 which have or may have a continuing effect on the form of the public accounts; the method of receipt, control, issue or payment of public moneys.
- (4) Prior to determining whether to undertake an inquiry into any matter which may have arisen in connection with the public accounts of the Territory, pursuant to paragraphs (2) (a) and (e), with the concurrence of the Committee, the Chairman is empowered to write to the Chief Executive Officer of the relevant Department or Public Authority for a report on the matter.
- (5) The Committee shall take care not to inquire into any matters which are being examined by a Select Committee of the Assembly especially appointed to inquire into such matters and any question arising in connection therewith may be referred to the Assembly for determination.
- (6) The Committee shall elect a Government Member as Chairman.
- (7) The Chairman of the Committee may, from time to time, appoint a Member of the Committee to be the Deputy Chairman of the Committee and the Member so appointed shall act as Chairman of the Committee at any time when there is no Chairman or when the Chairman is not present at a meeting of the Committee.
- (8) In the event of an equality of voting, the Chairman, or the Deputy Chairman when acting as Chairman, shall have a casting vote.
- (9) The Committee shall have power to appoint sub-committees and to refer to any such sub-committee any matter which the Committee is empowered to examine.
- (10) Three Members of the Committee shall constitute a quorum of the Committee and two Members of a sub-committee shall constitute a quorum of the sub-committee.
- (11) The Committee or any sub-committee shall have power to send for persons, papers and records, to adjourn from place to

place, to meet and transact business in public or private session and to sit during any adjournment of the Assembly.

- (12) The Committee shall be empowered to print from day to day such papers and evidence as may be ordered by it and, unless otherwise ordered by the Committee, a daily Hansard shall be published of such proceedings of the Committee as take place in public.
- (13) The Committee may proceed to the despatch of business notwithstanding that all Members have not been appointed and notwithstanding any vacancy.
- (14) The Committee shall report annually and shall have leave to report from time to time and to report its proceedings and evidence taken; and any Member of the Committee shall have power to add a protest or dissent to any Report.
- (15) Unless otherwise ordered by the Committee, all documents received by the Committee during its inquiry shall remain in the custody of the Assembly: provided that, on the application of a department or person, any document, if not likely to be further required, may, in the Speaker's discretion, be returned to the Department or person from whom it was obtained.
- (16) The Committee shall be provided with all necessary staff, facilities and resources and shall be empowered, with the approval of the Speaker, to appoint persons with specialist knowledge for the purposes of the Committee.
- (17) The foregoing provisions of this Resolution, so far as they are inconsistent with the Standing Orders, have effect notwithstanding anything contained in the Standing Orders; and