



Australian Government
Department of Finance and Deregulation

Dr Ian Watt AO
Secretary

EXECUTIVE MINUTE

on
JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT
REPORT (JCPAA) No. 412

Audit reports reviewed during the 41st Parliament

Response to the recommendation(s)

Recommendation No. 10 paragraph 6.37

The Committee recommends that the Department of Finance and Deregulation be given authority to monitor agencies' compliance with Finance's Guidance on Confidentiality of Contractors' Commercial Information in relation to the Senate Order.

Finance released updated *Guidance on Confidentiality in Procurement* (the Guidance) in July 2007.

A key purpose of the Guidance is to assist agencies to correctly identify and manage confidential information relating to contracts. The Guidance is principles-based, and provides that agencies should make assessments of whether information is confidential on a case-by-case basis. The basis for assessment is the 'Confidentiality Test', which consists of four criteria which must all be met in order to determine that a potential supplier's commercial information is confidential.

The Guidance properly puts the onus on agencies to carefully assess the need for confidentiality in procurement and in contracts on a case-by-case basis. This is consistent with the general obligation, placed on all agency Chief Executives under the *Financial Management and Accountability Act 1997* (FMA Act), to manage the affairs of their agency.

The implementation of Recommendation 10 would, in effect, require Finance to review the assessments conducted by agencies against the Confidentiality Test. Second-guessing agency assessments would not only require a significant investment of resources by Finance, but would be inconsistent with the principles-based character of the Guidance and the responsibility on Chief Executives to manage agency affairs.

While we do not support this particular Recommendation, I will write to the Chief Executives of FMA Act agencies reminding them of their responsibility to carefully assess the need for confidentiality in contracts, and to have proper regard to the Guidelines within their agencies.

Since the hearings held by the Committee in May 2006, to which the JCPAA's Report 412 refers, we have worked towards simplifying reporting processes through AusTender and have clarified with the Senate Standing Committee on Finance and Public Administration the type of information required by the Senate under Senate Order 9.

Improvements in the information available through the AusTender system now provide the ability for agencies to report on all information required by Senate Order 9 and additional information not required by that Senate Order. This will help reduce duplication in reporting by departments and agencies and provides important information for a wide range of stakeholders.

Recommendation No. 15 paragraph 8.43

The Committee recommends that the AGIMO Chief Information Officer Committee and Forum formally disseminate the ANAO's recommendations from Audit Report 23, 2005-06 to appropriate agencies, including seeking updates on progress and implementation.

The Department of Finance and Deregulation agrees with the recommendation to disseminate the ANAO's recommendations from Audit Report 23, 2005-06 to agencies through the Chief Information Officer Committee (CIOC) and the Chief Information Officer Forum (CIOF). AGIMO provided copies to members of the CIOC and the CIOF on 10 November 2008.

The Attorney-General's Department (AGD) is responsible for the IT Security policy for Australian Government agencies. Consistent with this responsibility, AGD has agreed to follow-up on the implementation of the report by incorporating the report's recommendations into future protective security advice.

Other Recommendations

Other recommendations, which were directed or partly directed to Finance, have been redirected to the responsible agencies for response.

AGD has provided a response to recommendations 11 and 12, as it is responsible for these matters, including the *Legal Services Directions 2005*.

AGD and the Department of Defence have agreed to provide a joint response to recommendations 16 and 17, as they are responsible for the *Australian Government Protective Security Manual* and the *Australian Government Information and Communications Technology Security Manual*.


I J Watt