

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
 Industry, Tourism and Resources Portfolio
 Supplementary Budget Estimates 2005-2006, 2 November 2005

QUESTION No.SBI-108

Senator Murray asked:

Has the department/agency revised its procurement guidelines to incorporate the new Commonwealth Procurement Guidelines that took effect from 1 January 2005, particularly with respect to the confidentiality elements contained in those guidelines? If so, when did this occur and can a copy be provided? If not, what is the cause of the delay and when will the revision occur?

ANSWER

<p>Department of Industry, Tourism and Resources</p>	<p>The DITR Procedural Rules that relate to the procurement of goods and services were updated in December 2004 to reflect the revised procurement framework. The Procedural Rules deal with the issue of confidentiality. Specifically, Procedural Rule 2.3.48 states:</p> <p>‘Officials undertaking procurement should consider, on a case-by-case basis, any request by a supplier for material to be treated confidential. Commitments to maintain confidentiality of contractors’ information should only be given where appropriate, having regard to the Department of Finance and Administration publication ‘Guidance on Confidentiality of Contractors’ Commercial Information.’</p>
<p>IP Australia</p>	<p>IP Australia’s procurement policy and procedures were last reviewed in January 2005.</p> <p>Procedural Rule 3.3, section 2.4 (Confidential Information Notification) states:</p> <p>‘As a consequence of section 2.3 (above), potential suppliers also must be made aware of the Commonwealth’s treatment of potential supplier provided information. IP Australia will treat as confidential any information provided by prospective suppliers prior to the award of a contract. Once a contract has been awarded, IP Australia will not keep such information confidential if it was provided by the successful supplier unless:</p> <ul style="list-style-type: none"> • the supplier requests that specific information should be kept confidential and provides specific reasons to justify that request; • the specific information is by its nature confidential; and • IP Australia agrees to that request on applying the confidentiality test and other information contained of the Department of Finance and Administration web site.’ <p>Procedural Rule 3.4, section 7.10 (Confidential Information) states:</p> <p>‘The contract must include a clause that states the Commonwealth’s treatment of potential supplier provided information. IP Australia will treat as confidential any information provided by prospective suppliers prior to the award of a contract. Once a contract has been awarded, IP Australia will not keep such information provided by the successful supplier as confidential, unless certain conditions have been met.’</p>
<p>Geoscience Australia</p>	<p>Geoscience Australia updated its Chief Executive Instruction on Procurement of Goods and Services in late December 2004 to reflect the revised Commonwealth procurement framework. The CEI includes a reference to the requirement to report contracts bi-annually with a consideration of \$100,000 (or more) in accordance with the Senate Order, and includes electronic links to the Commonwealth Procurement Guidelines on the DOFA website.</p>

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National Offshore Petroleum Safety Authority	NOPSA is currently updating its Chief Executive Instruction on procurement to reflect the 'confidentiality' elements of the new Commonwealth Procurement Guidelines. These elements are reflected in the RFT documents framework used by NOPSA.
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QUESTION No.SBI-109

Senator Murray asked:

ANAO audits for the last three years have revealed a consistently low level of compliance across most agencies with DOFA confidentiality criteria (February 2003) for determining whether commercial information should be protected as confidential. The ANAO's latest report on the Order (No.11 2005-2006, September 2005) states that departments and agencies need to give higher priority with this important requirement of the Senate Order.

- (a) What specific measures have been or will be taken to address this problem, give it higher priority and raise compliance levels?
- (b) What guidance and training are provided to staff about the confidentiality criteria and the four tests employed to determine whether information should be protected?
- (c) What internal auditing or checking is performed to test compliance in this area? If none is performed, why not and is the agency considering the adoption of internal controls and checks?

ANSWER

Department of Industry, Tourism and Resources	<ul style="list-style-type: none"> (a) DITR continues to raise staff awareness as to what information should be treated as confidential. DITR intends to develop a guidance checklist on treating information as confidential, which will be accessible to all staff. This is in addition to the ongoing contract management courses and procurement seminars. (b) The information on confidentiality criteria, including the four tests employed to determine if information should be protected or not, is included in the bi-annual guidance provided to divisions collating and validating data for the Senate Order reporting. Links to DOFA guidance are also available on the DITR procurement Intranet site. Additionally, information is contained in the DITR 'model' (i.e. template) Request for Tender (RFT) document and 'model' (i.e. template) long form contract. DITR conducts regular contract management course, which includes information on the confidentiality criteria. (c) DITR has a two-stage validation process. Bi-annually, divisions are required to collate and validate information for the Senate Order reporting. The Senate Order response is then validated by the central Contract Management Unit to ensure compliance with DOFA guidance. The Department currently has an internal audit underway into contract management. Whilst the audit is focused on reviewing the existing contract management practices, it is also intended to identify better practices that can be adopted to streamline and improve the existing contract management practices.
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