

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio

Supplementary Budget Estimates, 2 November to 3 November 2005

Question: SBT 66

Topic: ABS – Senate Order

Hansard Page: Written

Senator Murray asked:

1. What guidance is provided to staff with responsibilities for contract negotiations specifically about the requirements of the Senate Order? If relevant guidance is not provided, please explain why this is the case.
2. 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?
3. 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.
 - What specific measures have been or will be taken to address this problem, give it higher priority and raise compliance levels?
 - What guidance and training are provided to staff about the confidentiality criteria and the four tests employed to determine whether information should be protected?

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?

4. What problems, if any, has the agency and/or relevant staff experienced in complying with the Senate Order? What is the nature and cause of any problems? What measures have been, or could be, adopted to address these concerns?

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Treasury Portfolio

Supplementary Budget Estimates, 2 November to 3 November 2005

Answer:

1. The ABS has developed a comprehensive electronic Procurement Toolkit on its intranet to provide guidance to ABS staff on all aspects of procurement and related matters. The Toolkit includes specific reference to the Senate Order and Confidentiality Provisions, together with reference to general accountability to the Government, Parliament and the public.

2. The ABS has revised its procurement guidelines (contained in the Procurement Toolkit) in line with the new Commonwealth Procurement Guidelines. There is a specific section on confidentiality provisions which includes reference to the Senate Order. This section has been in the ABS guidelines for several years and has been updated to reflect the latest requirements.

A copy of the confidentiality provisions provided in ABS Procurement Guidelines section of the ABS Procurement Toolkit is attached.

3. The ABS has not had any problems with reporting for the Senate Order and the ANAO reports do not specifically refer to the ABS. The ABS procurement guidelines provide a link to the DoFA Guidance on Confidentiality of Contractor's Commercial Information, together with other relevant information. Before the Senate Order response is published, it is matched against the ABS' Contract Management Database and the Financial Management Information System to check for accuracy and compliance.

The standard position of the ABS' Central Procurement Unit (CPU) is that information provided by a contractor is not to be construed as confidential information, but rather as Commercial-in-Confidence. For all contracts entered into by the ABS that are \$80,000 or more, and where a contractor specifically requests the ABS to treat certain information as confidential, the CPU applies the 'four tests', as contained in DoFA's *Guidance on Confidentiality of Contractor's Commercial Information*, Guidance Document No. 3, to confirm that the information does in fact meet the criteria for treatment as confidential.

4. More detailed advice from DoFA would be useful, particularly more examples of which contracts meet the confidentiality provisions and which do not.

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ATTACHMENT: ABS PROCUREMENT GUIDELINES EXTRACTS

Confidentiality Provisions

Careful consideration should be given, at the time of preparing contract documentation, as to what information under the contract constitutes confidential information. Guidance and advice on deciding whether information should be kept confidential, based on legal principles can be found at DoFA's Guidance on Confidentiality of Contractor's Commercial Information [this provides a link to the relevant document].

If you require assistance with the development of confidentiality clauses contact the Central Procurement Unit.

As a result of a Senate Order on Government agency contracts, the Central Procurement Unit is required to advertise/publish a list of agency contracts exceeding \$100,000 in value and which have not been fully performed or which have been entered into in the previous 12 months. The information to be placed on the ABS's website is to include the purpose, the value, whether the contract includes confidentiality provisions and the reasons for confidentiality. A hard copy of any contract over the value of \$100,000 should be forwarded to the Central Procurement Unit.

Reference is also made in the Contract Management section of the Toolkit.

Reporting on Confidentiality Provisions in ABS Contracts

The ABS has an obligation to advise its Minister and make available through its website a list of contracts entered into by the agency which have not been fully performed or which has been entered into during the previous 12 months, and which provide for a consideration to the value of \$100,000 or more.

ABS must report details of:

- (a) the contractor, the amount of the consideration, the subject matter of each such contract, the commencement date of the contract, the duration of the contract, the relevant reporting period and the twelve-month period relating to the contract listings;
- (b) whether each such contract contains provisions requiring the parties to maintain confidentiality of any of its provisions, or whether there are any other requirements of confidentiality, and a statement of the reasons for the confidentiality; and
- (c) an estimate of the cost of complying with this order and a statement of the method used to make the estimate.

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In order to meet these Government reporting requirements the ABS extracts information from the Contract Management Database.

In order to obtain up-to-date and accurate information ABS staff are reminded to create not only a 'contract management form' on the Contract Management database but scan in a copy of the signed contract as 'contract documentation' which will automatically append or link itself to the contract management document.

If this is not possible it is asked that a hard copy of the contract be sent to the Central Procurement Unit.