

Senate Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Finance and Administration Portfolio

Department of Finance and Administration

Estimates 2004-05 – Supplementary written questions November 2004

Question: F2(1)

Outcome 1, Output 1.2.1

Topic: Senate Order on Departmental and Agency Contracts

Written Question on Notice: 30 November 2004

Senator Murray asked:

I refer the Department to ANAO Audit Report No.10 2004-2005, *The Senate Order for Departmental and Agency Contracts (Calendar Year 2003 Compliance)*. The report reflects ongoing deficiencies in agency accountability in relation to Government contracting. For example, the ANAO has concluded that:

Although the percentage of contracts appropriately listed is higher in this audit than in the previous five, the result continues to highlight the need, in contract negotiations, for rigorous application of the principle that, in order to provide transparency in Government contracting, contractors' information should not be protected unless there is a good reason to do so. (p.63)

What action is DOFA taking to embed understanding and application of this principle within agencies' contract negotiation procedures?

Answer:

The Department of Finance and Administration (Finance) has been active in developing and promoting a robust policy framework governing the issue of commercial confidentiality in Australian Government contracting activity. Finance is responsible for the policy but is reliant upon agencies taking steps to reflect the available policy guidance in their Chief Executive's Instructions and other contracting and training material in order to facilitate change in agencies' contracting procedures. The degree to which individual agencies have been successful in reflecting current policy precepts in their operational documentation and training materials has varied, and Finance has been working generally with agencies to assist in this regard.

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Specifically, Finance has broadened its channels of communication with agencies over the last 6-12 months through the establishment of the Procurement Agency Advice Branch, which is working closely with agencies to assist in ensuring their procurement processes and practices fully reflect the Government's procurement policy framework. Finance makes regular presentations to the Chief Finance Officers' Forum on procurement issues. Finance also hosts regular meetings of the

Procurement Discussion Forum, which is used as an important means of communicating procurement policy guidance directly with procurement officers.

These measures are focused at facilitating better practice in agencies' management of procurement issues, for example through the provision of improved guidance for procurement officers or the introduction of systems to ensure the implementation of policy measures.

Finance will also be re-issuing the two key guidance documents in this area, *Guidance on Confidentiality of Contractors' Commercial Information* and *Guidance on the Listing of Contract Details on the Internet*, during 2005. While the core principles and substance of the guidance will remain the same, the revised editions will present an opportunity to provide a greater focus on aspects of good practice in contract negotiation and management.

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Department of Finance and Administration

Estimates 2004-05 – Supplementary written questions November 2004

Question: F2(2)

Outcome 1, Output 1.2.1

Topic: Senate Order on Departmental and Agency Contracts

Written Question on Notice: 30 November 2004

Senator Murray asked:

What mechanisms can be put in place to accelerate the changes required within agencies to ensure a culture of accountability in relation to Government contracting?

Answer:

Finance has been active in developing and more clearly articulating the framework of accountability in relation to Australian Government procurement activity, of which the issue of commercial confidentiality is one element. The Minister for Finance and Administration has issued revised Commonwealth Procurement Guidelines (CPGs), effective from 1 January 2005, which more clearly articulate the expectations that exist for accountability in relation to Government contracting. Finance has been working with agencies to assist in ensuring the requirements of the revised CPGs are reflected in agencies' Chief Executive's Instructions and operational procurement guidance.

The more active role being played by Finance in building and promoting the procurement policy framework through the revised CPGs, the suite of supporting procurement guidance documents being issued or reissued over the next 6 months, and the support being provided directly to agencies, should assist in fostering the culture of accountability in relation to procurement across agencies.

Finance is also redeveloping the electronic systems (including reporting functions), which support procurement. A focus of this system redevelopment is on improving the integrity of inputs and the reporting capability, in order to further enhance accountability and transparency.

However, the specific agencies' conduct of contracting activities is in the final analysis, the responsibility of the agencies concerned.

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Question: F2(3)

Outcome 1, Output 1.2.1

Topic: Senate Order on Departmental and Agency Contracts

Written Question on Notice: 30 November 2004

Senator Murray asked:

The agencies reviewed in ANAO Report No.10 2004-2005 were generally not in the practice of discussing confidentiality with potential contractors prior to contracts being entered into. This result echoes the findings of previous audits.

Would it be appropriate for DOFA to issue a Finance circular emphasising the confidentiality criteria to be considered by agencies during contract negotiations?

Answer:

Finance Circulars advise of various aspects of the financial management framework in a concise format targeted at agency Chief Finance Officers. The range of procurement guidance publications issued by Finance are targeted at officers involved in contracting and procurement at all levels within agencies, and provide a depth of context and practical advice not available through Finance Circulars.

Finance's practice of promoting the *Guidance on Confidentiality of Contractors' Commercial Information* and *Guidance on the Listing of Contract Details on the Internet*, both of which explain the confidentiality criteria to be considered by agencies during contract negotiations, has been shown by the ANAO's audit reports to have been effective in improving performance in this regard over time. Finance agrees with the ANAO's view that further improvement requires an ongoing awareness raising effort, and will continue to maintain this effort in its communications with agencies.

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Question: F2(4)

Outcome 1, Output 1.2.1

Topic: Senate Order on Departmental and Agency Contracts

Written Question on Notice: 30 November 2004

Senator Murray asked:

What other mechanisms can be put in place to ensure agencies consider confidentiality during contract negotiations?

Answer:

The key determinants as to whether agencies consider issues of commercial confidentiality during contract negotiations ultimately lie with the agency. They are:

- an awareness amongst agency staff of the principles and processes advocated and disseminated in the relevant Finance guidance; and
- the incorporation of appropriate guidance, checkpoints, model clauses etc within agencies' internal procurement procedural guidelines, tender documentation and contract templates.

In regard to the first point, Finance takes widespread opportunity through various channels of communication with agencies to promote awareness and use of the available guidance. The *Guidance on Confidentiality of Contractors' Commercial Information* and *Guidance on the Listing of Contract Details on the Internet* are both given a high profile in ANAO audit reports, and the mechanism is in place to ensure the guidance is reflected in Australian Public Service Commission training course material and thereby assists in raising awareness of agencies' obligations in this area.

In regard to the second point, officials' awareness of these issues is significantly reliant upon agencies taking steps to reflect the available policy guidance in their Chief Executive's Instructions, contracting documentation and training materials. In September 2004, Finance issued a Finance Circular and guidance for agencies on the development of Chief Executive's Instructions, which includes sections on procurement and entering into contracts, and refers agencies to the Finance guidance on commercial confidentiality and the Senate Order on departmental and agency contracts.

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Also, Finance has been working with agencies as they take the opportunity given by the issuing of revised *Commonwealth Procurement Guidelines* to update their internal procurement and contracting documentation. Finance will continue to focus on this issue in communication with agencies in an effort to ensure the appropriate guidance is available to procurement officials.

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Question: F2(5)

Outcome 1, Output 1.2.1

Topic: Senate Order on Departmental and Agency Contracts

Written Question on Notice: 30 November 2004

Senator Murray asked:

ANAO Report No.10 2004-2005 indicates that prior to the audit, none of the selected agencies had implemented changes to their policy guidance documentation and tender and contract documentation to adequately reflect the new accountability environment.

What mechanisms can be put in place to ensure that all FMA Act agencies have appropriate, up-to-date procurement policy documentation and contract and tender documentation, incorporating the elements listed at pages 50-51 of the above ANAO report?

Answer:

The content of agencies' Chief Executive's Instructions and supporting procedural guidance, contract templates and tender documentation is a direct responsibility of an agency under section 52 of the *Financial Management and Accountability Act 1997*. Finance does not validate the currency or coverage of agencies' internal operational guidelines, as this is the responsibility of agencies.

However, Finance has and will continue to provide input to agencies' internal procurement advice when approached to do so. Finance will also continue to work with agencies through the Procurement Agency Advice Branch to assist in ensuring the requirements of the revised *Commonwealth Procurement Guidelines*, including those relating to accountability and transparency in procurement, are well understood so that they can be accurately reflected in agencies' Chief Executive's Instructions and operational procurement guidance.

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Question: F2(6)

Outcome 1, Output 1.2.1

Topic: Senate Order on Departmental and Agency Contracts

Written Question on Notice: 30 November 2004

Senator Murray asked:

ANAO Report No.10 2004-2005 summarises the outcomes of a recent DOFA forum held with agency procurement staff. Which agencies were represented at the forum?

Answer:

The departments and agencies represented were:

Department of Agriculture, Fisheries and Forestry;
Department of Communications, Information Technology and the Arts;
Department of Defence;
Department of the Environment and Heritage;
Department of Family and Community Services;
Department of Finance and Administration;
Department of Foreign Affairs and Trade;
Department of Health and Ageing;
Department of Industry, Tourism and Resources;
Department of the Treasury;
Department of Veterans' Affairs;
Aboriginal and Torres Strait Islander Services;
Australian Agency for International Development;
Australian Bureau of Statistics;
Australian Electoral Commission;
Australian Greenhouse Office;
Australian National Audit Office;
Australian Taxation Office;
Commonwealth Grants Commission;
Commonwealth Ombudsman Office;
Comsuper;
CSS and PSS Boards;
Geoscience Australia;
National Archives of Australia; and
National Blood Authority.

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Finance and Administration Portfolio

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Estimates 2004-05 – Supplementary written questions November 2004

Question: F2(7)

Outcome 1, Output 1.2.1

Topic: Senate Order on Departmental and Agency Contracts

Written Question on Notice: 30 November 2004

Senator Murray asked:

The ANAO report states one of the outcomes of the forum as follows:

The incorporation of policy guidance in APS Commission courses has been discussed with the APS Commission, with the result that mechanisms have now been agreed for ensuring that developments in procurement policy are reflected in APS Commission training materials. (p.52)

Please provide details of the mechanisms agreed.

Answer:

Finance met with representatives of the Australian Public Service Commission (APSC) on 28 June 2004 to discuss the incorporation of current procurement policy guidance in relevant APSC training courses and materials. It was agreed at this meeting and in subsequent discussions that:

- Relevant APSC officers will be included in the distribution of Finance's monthly email update advising details of changes to procurement policy and any new or updated procurement guidance. The APSC will then distribute this information to their panel of contracting and procurement training providers. Finance will also provide hard copies of new guidance material for distribution to training providers where appropriate;
- Finance will become involved through direct communication with the APSC's forum of training providers to stress the need to regularly update training materials to reflect new policy and guidance. This forum meets approximately quarterly; and
- Finance and the APSC will work more closely together into the future on training issues relating to procurement and the financial framework.