

Senate Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Human Services Portfolio

Department of Human Services

Estimates 2004-2005

Question: HS1

Topic: Order for departmental and agency contracts

Hansard Page/Written Question on Notice: HS1

Senator Murray asked:

1. When did the Department/agency last update its procurement policy documentation?
2. What mechanisms does the Department/agency have in place to ensure its procurement guidelines reflect current policy in relation to government contracting?
3. Do the Department's/agency's current procurement guidelines refer to all of the following accountability mechanisms:
 - (i) The Senate order for departmental and agency contracts;
 - (ii) The Department of Finance and Administration's February 2003 *Guidance on Confidentiality of Contractors' Commercial Information*; and
 - (iii) The Commonwealth Procurement Guidelines (CPGs)?
4. Do the Department's/agency's tender documentation and contract templates include the following elements:
 - (i) a statement outlining the various Commonwealth accountability requirements;
 - (ii) a consistent definition of confidential information across all templates;
 - (iii) a provision for the inclusion of specific reasons justifying why a tenderer may wish to protect certain information in the contract if awarded;
 - (iv) a section that outlines the obligations of confidentiality after the contract has been awarded;
 - (v) a more detailed outline, with the general non-disclosure clauses, of the exceptions to confidentiality obligations for Commonwealth contracts; and
 - (vi) the model contract clauses, given in Department of Finance and Administration's (DOFA) February 2003 *Guidance on Confidentiality of Contractor's Commercial*?
5. At page 51 of Australian National Audit Office (ANAO) Audit Report No.10 2004-2005, *The Senate Order for Departmental and Agency Contracts (Calendar Year 2003 Compliance)*, the ANAO has concluded that all *Financial Management and Accountability Act 1997* agencies would benefit from implementation of contract training courses, or a review of current courses, to ensure that the Senate order requirements are adequately covered and that procurement staff receive relevant DOFA guidance?

What training does the Department/agency currently have in place for procurement staff?

6. Does this training cover the requirements of the Senate order for departmental and agency contracts and refer to DOFA's February 2003 *Guidance on Confidentiality of Contractor's Commercial Information*?

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Answer

Question 1

Department of Human Services (DHS): The DHS comprises the core department, the Child Support Agency (CSA) and the Commonwealth Rehabilitation Service (CRS) Australia. The core department was established in late October 2004 and is currently drafting its procurement policies and procedures.

Child Support Agency (CSA): CSA's procurement policy documentation is under continual review and is presently being revised to reflect the new Commonwealth Procurement Guidelines (CPGs). This latest exercise is expected to be complete within the next four weeks.

CRS Australia: CRS Australia last updated its procurement policy documentation in April 2004, and is currently in the process of revising the documentation to reflect the (CPGs) dated 1 January 2005.

Health Insurance Commission (HIC): The HIC last updated its procurement policy documentation in December 2004.

Centrelink: Centrelink continuously updates its procurement policy documentation and the last update took effect from 1 January 2005.

Health Services Australia (HSA): HSA last reviewed its policy and procedures on 27 August 2004.

Australian Hearing (AH): AH last updated its procurement policy documentation on 4 January 2005 (template procurement contract) and 18 January 2005 (template request for tender).

Answer

Question 2

DHS: The DHS comprises the core department, the Child Support Agency and CRS Australia. The core department was established in late October 2004 and is currently drafting its procurement policies and procedures. These procedures are being drafted with the assistance of the Australian Government Solicitor to ensure compliance with current policy in relation to government contracting.

CSA: CSA's procurement policy documentation is under continual review to reflect changes in policy and legislation as part of our continuous improvement process.

CRS Australia: Internal procurement policy documentation is constantly reviewed and updated to reflect changes and notifications of updates from DoFA.

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HIC: The HIC became subject to the CPGs on 1 January 2005. Internal procedures have been put in place to ensure internal policy / guidelines are updated to comply with revisions to the CPGs as advised by DoFA.

Centrelink: Centrelink ensures that its procurement guidelines reflect current policy in relation to government contracting by the following mechanisms:

- continuous review and updating of Centrelink's Procurement and Contracting Manual to incorporate:
 - changes in the CPGs; and
 - DoFA procurement and contracting advices / requirements;
- clearance of all procurement and contract pro forma through legal service providers;
- participation in interagency procurement working groups; and
- active provision of comment on proposed changes from DoFA.

HSA: The HSA is a Government Business Enterprise subject to the *Commonwealth Authorities and Companies Act 1997* and is legally and financially separate from the Commonwealth. As such HSA is not subject to CPGs.

AH: AH seeks regular legal advice in relation to its procurement documentation to ensure that its procurement guidelines reflect current policy in relation to government contracting.

Answer

Question 3

DHS: The DHS comprises the core department, the Child Support Agency and CRS Australia. The core department was established in late October 2004 and is currently drafting its procurement policies and procedures. The procedures will be drafted to ensure compliance with the noted accountability mechanisms.

CSA: CSA's procurement policy documentation refers directly to the CPGs, which reference the other material mentioned above.

CRS Australia:

- (i) Yes.
- (ii) No. CRS Australia will include this in the policy update currently underway.
- (iii) Yes.

HIC:

- (i) This is not a requirement for a Commonwealth Authorities and Companies (CAC) Act entity.
- (ii) This is not a requirement for a CAC Act entity.
- (iii) Yes.

Centrelink:

- (i) Yes.
- (ii) Yes.

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(iii) Yes.

HSA: Refer to answer to question 2.

AH: The AH's current procurement documentation does not expressly cite the Senate order for departmental and agency contracts. However, AH's standard RFT and contract adopts the DoFA's February 2003 Guidance on Confidentiality of Contractors' Commercial Information. Consequently, tenderers are informed that because of governance and accountability framework, AH is to minimise the amount of information that is subject to confidentiality, but at the same time, give appropriate protection to sensitive information. Tenderers are invited to identify their confidential information and provide reasons in support of confidential information claims. AH reserves the right to disclose Tenderer confidential information to Parliament and Parliamentary Committees.

The AH's procurement documentation adopts the DoFA's February 2003 Guidance on Confidentiality of Contractors' Commercial Information. The AH seeks legal advice to determine whether the information supplied by the tenderers satisfies government confidentiality requirements. There are references to the CPGs in the procurement documentation. Important examples of CPG references relate to the area of probity and ethics in procurement and in achieving value for money.

Answer

Question 4

DHS: The DHS comprises the core department, the Child Support Agency and CRS Australia. The core department was established in late October 2004 and is currently drafting its procurement policies and procedures. The procedures will be drafted to ensure compliance with best practice on Commonwealth accountability mechanisms and confidentiality obligations.

CSA:

- (i) Yes
- (ii) Yes
- (iii) Yes
- (iv) Yes
- (v) Yes
- (vi) Yes

CRS Australia:

- (i) Yes
- (ii) Yes
- (iii) Yes
- (iv) Yes
- (v) Yes
- (vi) Yes

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HIC:

- (i) Yes
- (ii) Yes
- (iii) Yes
- (iv) Yes
- (v) Yes
- (vi) The HIC does not use the exact form of the model clause, but the HIC's confidential information clauses reflect the essential elements of the model clause (e.g. in regard to public accountability disclosures).

Centrelink:

- (i) Yes
- (ii) Yes
- (iii) Yes
- (iv) Yes
- (v) Yes
- (vi) Yes

HSA: Refer to answer to question 2.

AH:

- (i) Yes
- (ii) Currently in progress
- (iii) Yes
- (iv) Yes
- (v) Yes
- (vi) Yes

The AH's current tender documentation templates inform tenderers of the various Commonwealth accountability requirements. A consistent definition of 'confidential information' is being adopted throughout all AH procurement templates. A schedule in the template RFT and contract documents is provided to the tenderers for them to identify their confidential information and to specify reasons as to why that information should be protected as confidential information in the contract if awarded.

The current template RFT and contractual documents explain the obligations of confidentiality after the contract has been awarded. The documents explain that exceptions to confidentiality obligations for Commonwealth contracts, including the disclosure to the responsible Minister, Parliament and Parliamentary Committees. The standard contract adopts the model contract clauses given in DOFA's February 2003 *Guidance on Confidentiality of Contractor's Commercial Information*.

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Answer

Question 5

DHS: The DHS comprises the core department, the Child Support Agency and CRS Australia. The core department was established in late October 2004 and is currently drafting its procurement policies and procedures. No procurement training has yet been undertaken by staff in the core department. This will occur as part of the implementation of the procurement policies and procedures.

CSA: CSA has developed and implemented an in-house training course that covers the matter of procurement. This course is progressively being delivered to all personnel with the delegation to purchase goods and/or services. This course is continually modified to take account of the overall revision being undertaken of all CSA's procurement policy documentation.

CRS Australia: The CRS Australia's procurement staff undergo ongoing training with external Complex Procurement Consultants on a regular basis, and is currently considering supporting staff to obtain Certificate IV in Government Procurement and Contracts.

HIC: While not a requirement for a CAC Act entity, the HIC procurement staff training requirements are identified and included as part of their performance support agreements with their managers.

Centrelink: Centrelink provides direct expert guidance to its purchasing staff by formally 'workflowing' all complex procurement and contracts (over \$80,000) to trained procurement specialists who generally hold Certificate III or Certificate IV accreditation in public sector procurement and contracting, in addition to other formal qualifications in contract and project management and tender evaluation.

All holders of Centrelink credit cards are required to have completed an internally developed Compact Disc (CD) based simple purchasing training course before being issued a card. Centrelink also has available, on its intranet, a Procurement and Contracting Manual and a Contract Management Manual, as well as a range of task cards and templates to guide staff in their procurement activities.

Centrelink is currently in the process of reviewing its overall package of procurement training for both specialists and general staff alike.

HSA: Training is provided on an as required basis when staff are appointed to procurement positions. Ongoing updates of procurement policy and procedures are maintained through its ISO 9001 quality accreditation including regular internal audits.

Australian Hearing: Australian Hearing is a Commonwealth Authorities and Companies Act Agency not a FMA Agency.

In 2003 Australian Hearing had a contract management audit by Deloitte, the internal auditors. That audit was rated at reasonable levels of control with areas of work identified for

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further management. As a result of the audit, the internal auditors conducted training sessions for Regional Managers and Head Office staff in late 2003 on fraud awareness, which included contract management.

In addition, prior to the audit all purchasing, with the exception of petty cash arrangements, was brought within national head office control. Since then a staff of three people have been involved in contract management. Specific documented procedures were put in place in 2004.

Answer

Question 6

DHS: The DHS comprises the core department, the Child Support Agency and CRS Australia. The core department was established in late October 2004 and is currently drafting its procurement policies and procedures. No procurement training has yet been undertaken by staff in the core department. This will occur as part of the implementation of the procurement policies and procedures.

CSA: Yes. These matters are covered as part of the training course, which refers directly to the CPGs, which in turn refer to the Senate order and DOFA's February 2003 Guidance on Confidentiality of Contractor's Commercial Information.

CRS Australia: Yes.

HIC: While not a requirement for a CAC Act entity, the HIC training in relation to procurement and contracting does cover confidentiality of commercial information.

Centrelink: Yes

HSA: Refer to answer to question 2.

Australian Hearing: While not an FMA Agency, the training provided by Australian Hearing does cover confidentiality of contractors' commercial information. The training covers the Department of Finance & Administration's procurement guidelines. In addition, all senior managers in 2002 and 2003 were asked to sign confidentiality agreements specifically in relation to our leading contractors' commercial information.

Australian Hearing's corporate policies and procedures and business ethics guidelines makes reference to this and makes reference to DoFA's guidance on confidentiality of contractors commercial information.