

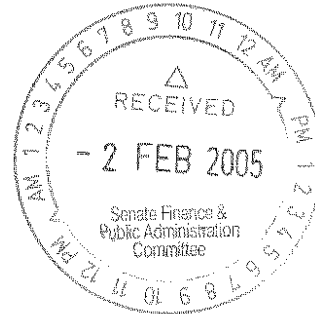


Parliament of Australia
Department of Parliamentary Services

DPS ref: 05/120

28 January 2005

Mr Alistair Sands
The Secretary
Finance and Public Administration Committee
Department of the Senate
Canberra ACT 2600



Dear Mr Sands

Estimates Questions on Notice November 2004—Answers.

1 I refer to Questions on Notice lodged with the Senate Finance and Public Administration Legislation Committee by Senator Murray following a Senate Resolution on 18 November 2004.

2 Attached are responses provided by the Department of Parliamentary Services to Senator Murray's questions relating to order for departmental and agency contracts.

Yours sincerely

David Kenny
Acting Secretary

Senate Finance and Public Administration Legislation Committee—Estimates 2004-05

Parliament Portfolio, Department of Parliamentary Services

Answers to supplementary written questions, November 2004

Topic: Order for departmental and agency contracts

Question 1

Senator Murray: When did the Department last update its procurement policy documentation?

Answer

1 The three former joint parliamentary departments – the Joint House Department (JHD), the Department of the Parliamentary Library (DPL) and the Department of the Parliamentary Reporting Staff (DPRS) - were abolished on 31 January 2004. The Department of Parliamentary Services (DPS) commenced on 1 February 2004, and the functions of each of the former entities were transferred to the new department. Since the amalgamation, many of the policies and procedures from the former departments, including those related to procurement, have continued unchanged pending:

- (a) the release of the revised *Commonwealth Procurement Guidelines*; and
- (b) the formalisation of the DPS Chief Executive's Instructions.

2 New Chief Executive's Procedures (CEPs) are currently being developed, including chapters on procurement and contract management.

Question 2

Senator Murray: What mechanisms does the Department have in place to ensure its procurement guidelines reflect current policy in relation to government contracting?

Answer

1 The responsibility for the development of internal procurement guidelines for the department rests with DPS Procurement, as its accredited procurement unit. DPS Procurement monitors contracting and tendering activities within this department and routinely updates guidelines and tender/contract templates to reflect contemporary Commonwealth procurement policies.

2 Early in 2005, following the conclusion of an internal consultation process, the new CEP chapters on procurement and contract management will be finalised.

Question 3

Senator Murray: Do the Department's current procurement guidelines refer to all of the following accountability mechanisms:

- (a) the Senate Order for departmental and agency contracts;
- (b) the Department of Finance and Administration's February 2003 *Guidance on Confidentiality of Contractors' Commercial Information*; and
- (c) the *Commonwealth Procurement Guidelines* (CPGs)?

Answer

1 Each of the accountability mechanisms identified at Question 3 is referred to in guidelines belonging to the former joint departments. In addition, each is included in the DPS guidelines and procedures currently being developed.

2 DPS's Procurement section:

- (a) maintains the currency of the Senate Order listing;
- (b) ensures that tender and contractual templates contain appropriate confidentiality and disclosure provisions; and
- (c) monitors procurement activities in DPS so as to ensure observance of the CPGs.

Question 4

Senator Murray: Do the Department's tender documentation and contract templates include the following elements:

- (a) a statement outlining the various Commonwealth accountability requirements;
- (b) a consistent definition of confidential information across all templates;
- (c) a provision for the inclusion of specific reasons justifying why a tenderer may wish to protect certain information in the contract if it awarded;
- (d) a section that outlines the obligations of confidentiality after the contract has been awarded;
- (e) a more detailed outline, with the general non-disclosure clauses, of the exceptions to confidentiality obligations for Commonwealth contracts; and
- (f) the model contract clauses, given in DOFA's February 2003 *Guidance on Confidentiality of Contractor's Commercial Information*?

Answer

DPS tender and contract templates are maintained and updated by DPS Procurement and include the elements at question 4. The clauses related to "Confidentiality of Contractor's Commercial Information" are drafted in similar terms to those recommended by Finance (see Attachment A).

Question 5

Senator Murray: At page 51 of 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 FMA 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 currently have in place for procurement staff?

Answer

- 1 Each officer in DPS Procurement is trained and experienced and is accredited, at a minimum, with a Certificate IV in Public Sector Procurement (or its equivalent).
- 2 Departmental officers are encouraged to seek expert contract management advice from DPS Procurement as part of their contract management responsibilities.
- 3 DPS has in place a Deed of Standing Offer (JH02046) for the "Provision of Contract Management Training". A tailored programme of one-day and three-day courses has previously been developed, and training was last delivered within the former JHD in 2003. It is proposed that the training material will be modified to reflect the business, policies and procedures of DPS following its creation in February 2004, and further training is proposed for 2005. As well, DPS staff may nominate to attend training courses currently available through the private sector.

Question 6

Senator Murray: 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*?

Answer

The responsibility for developing the Senate Order listings for the department rests with DPS Procurement. This is also the case with the responsibility for ensuring that appropriate confidentiality and disclosure provisions are included in tender and contract documents. The three-day contract management program includes training on the requirements of the Senate Order for departmental and agency contracts and how they are centrally administered.

Extract from DPS Request for Tender template:

13. Security, privacy and confidentiality

13.1 Security

Tenderers and their officers, employees, agents and advisers must, when having access to the Commonwealth's premises, facilities or information, comply with all Security Requirements including, without limitation:

- (a) obtaining security clearances for, and confidentiality undertakings from, those people; and
- (b) providing reasonable assistance to, and cooperation with, DPS, the Australian Federal Police, the Privacy Commissioner, and other authorities nominated by DPS, in relation to the investigation of any breach of Security Requirements.

13.2 Privacy

DPS is obliged to protect Personal Information in accordance with the Information Privacy Principles set out in the *Privacy Act 1988* and:

- (a) DPS may refuse to disclose any Personal Information to Tenderers; and
- (b) Tenderers and their officers, employees, subcontractors, agents and advisers must:
 - (i) comply with the National Privacy Principles and any other obligations or requirements under the *Privacy Act 1988*;
 - (ii) not disclose any Personal Information;
 - (iii) not do, or omit to do, any thing which may cause, or contribute to, a breach by the Commonwealth of an Information Privacy Principle or any other obligation or requirement under the *Privacy Act 1988*; and
 - (iv) not do, or omit to do, any thing which, if done, or omitted to be done, by the Commonwealth, would breach an Information Privacy Principle.

13.3 Confidentiality undertaking by Tenderers

Tenderers must not, without the prior written consent of DPS, (which may be withheld or given in the absolute discretion of DPS), disclose any Commonwealth Confidential Information to any person.

Tenderers may disclose Commonwealth Confidential information to employees, agents and advisers provided:

- (a) those persons enter into similar confidentiality undertakings as contained in this Part 13; and
- (b) the disclosure is necessary for the purpose of preparing their Tenders.

13.4 Publicity

Without limiting any other obligation, whether under this RFT or otherwise, a Tenderer must not:

- (a) make any public announcement about this RFT; or
- (b) discuss with:
 - (i) another Tenderer; or
 - (ii) any other person who is not assisting it to prepare and submit its Tender;

this RFT or its response to this RFT.

13.5 Tenderers' confidentiality

Where a Tenderer believes that disclosure of information included in its Tender, or any other documents provided to DPS in relation to this RFT, might affect the Tenderer's personal privacy or business affairs:

- (a) the Tenderer may, at the time of providing that information, clearly identify the information and give notice with supporting reasons to DPS that it requests the information to be treated as confidential; and
- (b) subject to this clause 13.5 and clause 13.6, and so far as its obligations under the law and policy permit, DPS will give effect to the Tenderer's request.

13.6 Authorised disclosure

By submitting a Tender, the Tenderer acknowledges and consents to DPS disclosing any information provided by the Tenderer, whether confidential or not, if:

- (a) that disclosure is required under legislation or by law;
- (b) that disclosure is required to meet DPS's reporting or accountability requirements, including, without limitation:
 - (i) under the *Financial Management and Accountability Act 1997*;

- (ii) to the Australian National Audit Office or any other auditor nominated by DPS;
 - (iii) in accordance with provisions that require reporting of agency agreements, Commonwealth contracts and standing offers in the *Commonwealth Purchasing and Disposals Gazette*;
 - (iv) to the Commonwealth Parliament (including parliamentary committees);
 - (v) in accordance with the *Requirements for Departmental Annual Reports*;
 - (vi) to the Commonwealth Ombudsman;
 - (vii) in accordance with the *Freedom of Information Act 1982* (if any);
 - (viii) to the Equal Opportunity for Women in the Workplace Agency in accordance with the *Equal Opportunity for Women in the Workplace Act 1999*;
- (c) the information is, or becomes public knowledge, other than by breach of confidentiality or other unlawful means;
- (d) the disclosure is to DPS's consultants, advisers or agents and, if the information is confidential, those persons are also under an obligation to keep it confidential; or
- (e) the disclosure:
- (i) has been consented to by the Tenderer; or
 - (ii) is reasonably necessary to enable DPS to exercise its rights or perform its obligations under this RFT or the Contract.

Extract from DPS Services contract template:

5.7 Confidentiality

The Service Provider must:

- (a) not, without the written consent of DPS:
 - (i) disclose or make public any Commonwealth Confidential Information; or
 - (ii) make any public announcement regarding this Contract or the provision of the Services;
- (b) at the request of DPS, require its employees, agents and Subcontractors to enter into a deed, in a form reasonably required by DPS, to prevent unauthorised disclosure of Commonwealth Confidential Information.

5.8 Service Provider's confidentiality

If the Service Provider believes that the disclosure of any information, provided to DPS in relation to this Contract, might affect the Service Provider's personal privacy or business affairs:

- (a) the Service Provider may, at the time of providing that information, give notice to DPS:
 - (i) that it requests the information to be treated as confidential; and
 - (ii) specifying the justification for treating that information as confidential;
- (b) subject to this clause 5.8, and so far as its obligations under the law and policy permit, DPS will give effect to the Service Provider's request.

The Service Provider acknowledges and consents to DPS disclosing any information provided by the Service Provider, whether confidential or not, if:

- (c) that disclosure is required under legislation or by law;
- (d) that disclosure is required to meet DPS's reporting or accountability requirements, including:
 - (i) under the *Financial Management and Accountability Act 1997*;
 - (ii) to the Australian National Audit Office or any other auditor nominated by DPS;

- (iii) in accordance with provisions that require reporting of agency agreements, Commonwealth contracts and standing offers in the *Commonwealth Purchasing and Disposals Gazette*;
 - (iv) to the Commonwealth Parliament (including parliamentary committees);
 - (v) in accordance with the *Requirements for Departmental Annual Reports*;
 - (vi) to the Commonwealth Ombudsman;
 - (vii) in accordance with its obligations under the *Freedom of Information Act 1982* (if any);
 - (viii) to the Equal Opportunity for Women in the Workplace Agency in accordance with the *Equal Opportunity for Women in the Workplace Act 1999*;
- (e) the information is, or becomes public knowledge, other than by breach of confidentiality or other unlawful means;
 - (f) the disclosure is to DPS's consultants, advisers or agents and, if the information is confidential, those persons are also under an obligation to keep it confidential; or
 - (g) the disclosure:
 - (i) has been consented to by the Service Provider; or
 - (ii) is reasonably necessary to enable DPS to exercise its rights or perform its obligations under this Contract.