

Senate Finance and Public Administration Legislation Committee

ANSWERS TO QUESTIONS ON NOTICE

Finance and Administration Portfolio

Department of Finance and Administration

Supplementary Estimates Hearings - 1 November 2005

Question: F36

Cross Outcomes

Topic: Order for departmental and agency contracts

Written Question on Notice

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. What training and awareness sessions are provided, either in-house or through other training providers (eg. DOFA, APS Commission or private firms) in respect of the Order? Please provide a list of the dates, the identity of the training providers and the content of the training that staff attended in 2005. If training and awareness sessions are not provided, please explain why this is the case.
3. 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?
4. 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?

Senate Finance and Public Administration Legislation Committee

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5. 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?

Answer:

1. Confidentiality and accountability requirements are detailed in Finance's Operational Guidelines that underpin this Agency's Chief Executive Instructions (CEIs). Public Reporting including Finance's reporting obligations under the Senate Continuing Order No. 9 (Senate Order on Departmental and Agency Contracts) are clearly defined in these Operational Guidelines.

All Approaches to the Market (ATM) are centrally reviewed by the Chief Financial Officer (CFO) Unit for Procurement Policy compliance, which includes assessment against the Commonwealth Procurement Guidelines (CPGs), financial management guidance material and other Commonwealth policies that apply to procurement. Finance developed a standard Request for Tender (RFT) template in April 2005 for use across the Department, which includes Finance's position on confidentiality and treatment thereof.

Finance's Legal Services Branch (or a Legal Services Panel member) prepares contracts, agreements and arrangements for the Department. This ensures rigour and compliance with the Commonwealth legislative framework as well as meeting Finance's procurement policy requirements including that of confidentiality. The Department's Legal Services Branch has developed a suite of contractual templates that include Finance's terms and conditions in respect of service provider's confidentiality requirements and undertakings. In addition assistance is available to staff via a range of corporate specialists including legal, risk management, procurement and internal audit.

2. Finance, through its CFO Unit, regularly undertakes in-house training on procurement and managing contracts agreements and arrangements, which includes a direct reference to the Senate Order obligations as detailed in Finance's Operational Guidelines.

In respect of matters relating to the Senate Order, the training addresses:

- risk management;
- security requirements in respect of confidential information including the use of Deeds of Non-Disclosure and Privacy Act Deeds;
- confidentiality and accountability requirements throughout a procurement process;

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- negotiation; and
- public reporting.

During the calendar year 2005, training sessions were provided in January, February, March, April, May, June, November and December 2005 to staff across the Department.

3. Finance's revised Operational Guidelines for procurement in respect of the new Commonwealth Procurement Guidelines - 1 January 2005, were issued to all staff in January 2005 and published on Finance's Intranet. Finance continually reviews its Chief Executive Instructions and underpinning Operational Guidelines to ensure that this agency keeps abreast of current legislative and Australian Government policy requirements. The Operational Guidelines were subsequently amended in March, August and November 2005 because of amendments to certain internal administrative processes and other changes to Australian Government procurement policy.

4 (a) Finance's standard Tender documentation notifies prospective tenderers and contractors to the implications of the public accountability responsibilities of agencies and offers detailed guidance to staff on the confidentiality requirements of the Commonwealth. Finance's Operational Guidelines detail the criteria for determining confidentiality, the provision of examples of legitimate confidential information and non-confidential information, and instructions on composing confidentiality provisions in contracts.

The Legal Services Branch review Tenders that identify compliance issues for substantial compliance, which includes Tenderers ability to adhere to Commonwealth confidentiality requirements.

4 (b) As previously stated, Finance's Operational Guidelines offers highly detailed guidance on the confidentiality requirements of the Commonwealth including the well defined criteria for determining confidentiality, the provision of examples of legitimate confidential information and non-confidential information, and instructions on composing confidentiality provisions in contracts. As stated in Q.2 above, Finance has conducted a series of training for staff on its Operational Guidelines for procurement including Commonwealth confidentiality criteria and accountability requirements in respect of confidential information.

4 (c) Finance currently maintains sound internal controls and checks when responding to the Senate Order. Financial data is currently downloaded from both the Department's financial management system and its Contracts Registration System. A draft Senate Order report is then compiled centrally and disseminated to operational Business Groups of the Department for verification against the Commonwealth confidentiality criteria. The operational areas are required to review, provide

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comments and make necessary adjustments to the draft report using the criteria and return the report to the CFO Unit for actioning. The Department's CFO Unit again reviews the draft report centrally and once proposed adjustments have been verified, Finance's business systems are then updated. A final report is then run for publishing on Finance's Internet website.

5. Although Finance has met the reporting timeframes for this Senate Order, Finance has experienced minor difficulties in collating a timely response. As part of Finance's continual review of policy and business processes, Finance is currently enhancing its IT business systems to further automate its reporting processes in respect of this Senate Order