

**Senate Finance and Public Administration Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Finance and Administration Portfolio**

**PSS BOARD**

Supplementary Estimates Hearings - 1 November 2005

**Question: F39**

**Outcome 1, Output 1.1**

**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.
  - 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?
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?

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**Answer:**

1. Staff are required to comply with the Chief Executive Instructions (CEI) which include references to the Commonwealth Procurement Guidelines (CPGs) and Financial Management Guidance No.8 which deals specifically with the Senate Order.
2. PSS Board staff have attended training provided by the Department of Finance and Administration (DOFA). These include the DOFA procurement framework training (one attendee in November 2005) and training specifically for the Senate Order (one attendee 2004).
3. The Chief Executive Instructions have been amended and approved by the Board on 8 December 2004, to include the new Commonwealth Procurement guidelines. Refer attached for an extract.
4. The PSS Board is a very small agency with very few contractual arrangements in respect of its public moneys. The same staff members are involved in the development of all contractual arrangements so the process is well controlled. Accordingly, the PSS Board has not identified compliance with the Senate Order as having a risk rating high enough to warrant an internal audit review. If the number and/or value of the Boards' contractual arrangements increased significantly, the Board would consider such an internal audit review.
5. The only difficulty has been the fact that the PSS and CSS Boards enter into contracts jointly. In consultation with the Department of Finance and Administration, it was resolved to use the combined contract amounts when determining whether a contract needs to be included on the list.

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**CHIEF EXECUTIVE INSTRUCTIONS**

**CHAPTER 6  
PROCUREMENT**

**6.1 Entering Into Contracts, Agreements or Arrangements**

The core principle of the Commonwealth Procurement Guidelines is *Value for money*. This principle requires an assessment of alternative procurement options to select the option that achieves the required procurement objective while taking into account all relevant benefits and costs, and legislation.

Staff must not enter into a contract, agreement or arrangement under which public money is, or may become payable, unless they have been delegated the authority to do so by the Chairperson.

Staff who have been delegated authority must:

- comply with the directions and conditions placed upon them by the Chairperson;
- comply with the *Commonwealth Procurement Guidelines (CPG)*; and
- follow the provisions and intent of FMA Regulations 7 - 12.

Where the contract or agreement involves the procurement of goods and services, staff must, where appropriate, follow CEI 6.2 – Procurement of Goods and Services.

Documentation relating to a procurement must be retained for a period of three years after the award of a contract.

Delegates must not enter into a contract, agreement or arrangement which requires the payment of public money in advance of satisfactory performance or delivery, unless the prepayment arrangement represents best value for money to the Commonwealth.



Further information is available:

- Practical Guide – Contracts, Agreements and Other Arrangements;
- Sections 14, 44, FMA Act;
- FMA Regulations 7, 8, 9, 10, 11, 12 and 13
- Financial Management Guidance No.1 “Commonwealth Procurement Guidelines”,

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- Financial Management Guidance No.8 "Guidance on the Listing of Contract Details on the Internet",
- Financial Management Guidance No.10 "Guidance on Complying with Legislation and Government Policy in Procurement",
- Finance Circular 2004/05 "Regulation 12 of the FMA Regulations 1997",
- Finance Circular 2004/10 "Using the FMA Regulation 10 Delegation".
- ANAO Better Practice Guide: Contract Management, 2001,
- ANAO BPG Selecting Suppliers, 1998,
- Procurement Circular 03/3 Evaluating Options in Procurement Contracts.



**Penalties for breaches of this instruction exist under sections 14 of the Financial Management and Accountability Act 1997.**

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**CHIEF EXECUTIVE INSTRUCTIONS**

**CHAPTER 6**

***PROCUREMENT***

**6.2 Procurement of Goods and Services**

Staff involved in:

- deciding procurement methods;
- sourcing potential suppliers; or
- entering into contracts, agreements or other arrangements

must have regard to the Commonwealth Procurement Guidelines issued by the Minister for Finance and Administration (FMA Regulation 7(1)).

Purchasers must:

- seek to obtain the best value for money outcomes for the Board;
- consider circumstances in which an open approach to the market is used;
- prepare the timeframes for open approaches to the market;
- include procurements in an annual procurement plan;
- document and file their decisions and the basis for them, including correspondence with potential/selected suppliers; and,
- only enter into contracts, agreements or other arrangements if they have been delegated the authority to do so by the Chairperson.

The procurement of all IT goods and services and major office machines must be arranged through suppliers who are qualified under the Endorsed Supplier Arrangements (ESA). The Government Information Technology and Communications framework, version 3 (GITC3) provides a standard set of terms and conditions, agreed between Government and Industry, which can be tailored to construct a contract for a specific purchasing requirement.



Further information is available:

- Practical Guide – Procurement of Goods & Services;
- Commonwealth Procurement Guidelines; and
- FMA Regulations 7, 8, 9, 10, 12 and 13
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- ANAO Better Practice Guide: Contract Management, 2001,
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- Procurement Circular 03/3 Evaluating Options in Procurement Contracts.



**Penalties for misapplication or improper use of public money exist under section 14 of the Financial Management and Accountability Act 1997.**