

Standing Committee on Finance and Public Administration

ANSWER TO QUESTION ON NOTICE

Supplementary Budget Estimates Hearing – October 2008

**Department of Finance and Deregulation,
Finance and Deregulation Portfolio**



Outcome 2: Improved and More efficient Government Operations

Output 2.3.1: Procurement Framework

Topic: Reform of Contracts

Question reference number: F44(a) to F44(d)

Type of Question: Written

Date set by the committee for the return of answer: 5 December 2008

Number of Pages: 2

Senator: Senator Fifield asked:

I understand that for the past few years the Department of Finance & Deregulation (The Department) has been in discussions with the Institute of Chartered Accountants and the Big Four accounting firms about the need to reform contracts for the provision of services by accounting firms to government departments and agencies.

- (a) Is it the case that Commonwealth agencies routinely insist on the accounting firm bearing all the risk of a contract, with unlimited liability?
- (b) Is it the case that contracts with accounting firms routinely contain a clause permitting the Commonwealth agency to change the contract terms at will without notifying or discussing with the other party?
- (c) Does the Department consider that it would be more efficient and equitable to include standard clauses covering liability in contracts for accounting services? Please explain the rationale for the Department's view.
- (d) I understand that the Department received in November 2007 an agreed set of standard clauses covering liability, intellectual property rights and other matters. Has the Department yet acknowledged receipt of these clauses? When and in what form was this acknowledgement provided?

Answer:

The answers to the Senator's questions are as follows:

- (a) Under the *Financial Management and Accountability Act 1997*, each agency's Chief Executive is responsible for the financial management of their agency, including for procurement. Finance does not have a role in monitoring agencies' specific contract conditions. The Government's policy, reflected in the *Commonwealth Procurement Guidelines*, sets out the risk management principles for procurement:

“Risk is part of the environment within which agencies operate. Risk management involves the systematic identification, analysis, treatment and allocation of risks.

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Risk management should be built into an agency's procurement processes. The extent of risk management required will vary from following routine procurement processes, to a significant undertaking involving the highest level of planning, analysis and documentation. A variety of risks may arise during each stage of a procurement process. Agencies should ensure that appropriate procedures are in place to identify and consider all relevant risks throughout the procurement cycle.

As a general principle, risks should be borne by the party best placed to manage them – that is, agencies should generally not accept risks which another party is better placed to manage. Similarly, where an agency is best placed to manage a particular risk, it should not seek to inappropriately transfer that risk to a supplier.

Agencies need to carefully monitor the terms and conditions, including pricing, on which risk allocations are determined, to ensure that they reflect value for money."

- (b) Contractual matters are the responsibility of each agency.
- (c) Finance considers that liability should reflect the risk associated with an activity and that the risk should be carried by the party best placed to manage that risk. Question (a) above sets out the risk management principles for procurement.
- (d) Finance facilitated a discussion between Institute of Chartered Accountants in Australia (ICCA) members and a group of *Financial Management and Accountability Act 1997* agencies in April 2007 and subsequently received a submission from the ICAA during the Caretaker period in 2007. The Finance Minister has since announced that accounting professional services will be subject to a scoping study for coordinated procurement contracting. If accounting professional services are subject to a coordinated procurement contracting arrangement, the issue of standard clauses for that sector would be addressed through that process.