

QUESTION TAKEN ON NOTICE

BUDGET ESTIMATES HEARING: 22 May 2006

IMMIGRATION AND MULTICULTURAL AFFAIRS PORTFOLIO

(14) Output: Internal Product

Senator Patterson asked:

- (a) Did DIMA consider:
 - (i) the impact of the Patriot Act (US); and
 - (ii) whether this may effect the selection of the short-list and/or the final tenderer selection?
- (b) Given that the majority of the companies short-listed are US based are there any implications arising from the impact of the Patriot Act (US)?
- (c) Is there any likelihood if a US based company is selected that the US Govt (or US Govt Agency eg. FBI) could require access to information (sensitive or otherwise) held/handled by the Department?
- (d) Has the Department sought any legal advice on this and if so could you please provide that advice?
- (e) Has the Department studied cases where information has been acquired under the Patriot Act?

Answer:

(a)(i) Prior to the release of the REOI (but not specifically relating to the REOI), DIMA participated in a whole of government process which considered the potential impact of the USA PATRIOT Act. The Department of Finance and Administration (Finance), in conjunction with the Department of Foreign Affairs and Trade (DFAT), led the process and coordinated the Australian Government response to the issue.

As part of the process, the USA PATRIOT Act was examined and Australian Embassy officials in Washington held a number of discussions on its implementation with senior officials of the United States' Government.

The Australian Government concluded that there was a low risk that the United States' Government would seek to obtain Australian Government information through the USA PATRIOT Act. Ongoing monitoring of the issue will continue.

(ii) The impact of the USA PATRIOT Act did not affect the shortlisting process. DIMA followed the Commonwealth Procurement Guidelines which preclude discrimination based

on degree of foreign affiliation or ownership.

(b) United States' companies are required to act in accordance with the USA PATRIOT Act. We are advised that under the Act, a United States' company holding Australian Government information could be required to supply that information to the United States' Government.

Australia and the United States have a strong bilateral relationship which includes well-established and efficient means of exchanging the type of information which might otherwise be sought under the USA PATRIOT Act. Consequently it is considered highly unlikely that the US Government would utilise the US PATRIOT Act to obtain Australian Government information held by US companies.

(c) See (b) above.

(d) It is established practice accepted by this Government and previous governments not to disclose whether or not legal advice has been sought, or to disclose any legal advice which has been provided to the Government unless the Government decides to do so in a particular case.

(e) No.