

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT

**Outcome 1**

**Question No. 1**

**Senator Murray asked the following question on 2 December 2004:**

When did the Department last update its procurement policy documentation?

**The answer to the honourable senator's question is as follows:**

The Department updates its procurement policy documentation as needed. The last major update, in response to Government Procurement Framework changes, was promulgated on the Department's intranet site on 24 December 2004.

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**Outcome 1**

**Question No. 2**

**Senator Murray asked the following question on 2 December 2004:**

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

**The answer to the honourable senator's question is as follows:**

The Department has a dedicated contracts policy unit, and maintains membership on a number of networks largely facilitated by the Department of Finance and Administration, involving the Chief Finance Officer and procuring officials.

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**Outcome 1**

**Question No. 3**

**Senator Murray asked the following question on 2 December 2004:**

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)?

**The answer to the honourable senator's question is as follows:**

Yes.

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**Outcome 1**

**Question No. 4**

**Senator Murray asked the following question on 2 December 2004:**

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* ?

**The answer to the honourable senator's question is as follows:**

Tender documentation and contract templates include the elements in (a) to (e) as appropriate.

(f) The model contract clauses in the Department of Finance and Administration's *Guidance on Confidentiality of Contractor's Commercial Information* are not mandatory, and the Department follows them in a broad sense.

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**Outcome 1**

**Question No. 5**

**Senator Murray asked the following question on 2 December 2004:**

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?

**The answer to the honourable senator's question is as follows:**

The Department last ran information sessions on the new Commonwealth Procurement Guidelines on 6 December 2004. There is no cyclical training specifically on procurement, however, the Department runs 3 generalist financial courses, targeted at different staff audiences, which cover the procurement principles including the impact of government policies on procurement. The usual presenter and presentation is the same as that provided by the Australian Public Service Commission to maintain currency.

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**Outcome 1**

**Question No. 6**

**Senator Murray asked the following question on 2 December 2004:**

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*?

**The answer to the honourable senator's question is as follows:**

The training covers the general requirement to comply with government policies and mainly centres around the Commonwealth Procurement Guidelines, which do mention the Department of Finance and Administration's February 2003 *Guidance on Confidentiality of Contractor's Commercial Information*. The training also mentions Departmental sources of guidance such as the intranet and the Chief Executive Instructions, and these in turn cover the requirements of the *Guidance*.

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**Output: CSG**

**Question No. 7**

**Senator Ludwig asked the following question on 2 December 2004:**

- (a) how many Ministerial staff does the department provide?
- (b) to what Minister or Parliamentary Secretary are they assigned?
- (c) what is the total cost of these staff?

**The answer to the honourable senator's question is as follows:**

- (a) The Attorney-General's Department provides 3 Departmental Liaison Officers. In addition, the Australian Federal Police (AFP) provides a Law Enforcement Liaison Officer and the Australia Customs Service (ACS) provides a Customs Liaison Officer.
- (b) 2 Departmental Liaison Officers are provided to the Attorney-General. The Minister for Justice and Customs has 1 Departmental Liaison Officer, as well as the Law Enforcement and Customs liaison officers referred to above.
- (c) For the period 1 January 2004 to 2 December 2004, the total costs, including salaries, superannuation, ministerial allowance, travel and other administrative expenses, was as follows:
  - Attorney-General's Department - 3 Departmental Liaison Officers: \$335,074
  - AFP - Law Enforcement Liaison Officer: \$128,230
  - ACS - Customs Liaison Officer: \$138,000 (approximately).

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**Question No. 8**

**Senator Ludwig asked the following question on 2 December 2004:**

Can the Department provide data on how many staff are in each salary band?

**The answer to the honourable senator's question is as follows:**

The 3 Departmental Liaison Officers positions are at the Principal Legal Officer (PLO) level. The salary band is \$79,007 to \$94,933 (as at 2 December 2004).

The Law Enforcement Liaison Officer is an AFP Band 9 position. The salary band is \$77,437 to \$91,986 (as at 2 December 2004).

The Customs Liaison Officer position is a Customs Level 5 (Executive Level 2), with a salary band of \$73,954 - \$92,676 (as at 2 December 2004).



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**Outcome 1**

**Question No. 9**

**Senator Ludwig asked the following question on 2 December 2004:**

Regarding the Departmental Outputs, which programs incurred lower than expected expenditures?

**The answer to the honourable senator's question is as follows:**

The Departmental programs with lower than expected expenditure for 2003-04 are as follows:

<u>Program</u>	<u>Underspend</u>
CrimTrac	\$6.3m
National Crime Prevention	\$4.5m
National Security	\$1.5m
Tough on Drugs	\$1.0m
National Firearm Training	\$1.0m

The underspends were due to the timing of the implementation of measures and variations in the timing of payments.

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**Question No. 10**

**Senator Ludwig asked the following question on 2 December 2004:**

Regarding the consultancy services:

- a) Why were no tenders publicly advertised in 2003–04?
- b) Of the tenders that were public, how many applications were received for each offered?
- c) On what criteria are individuals and organisations identified as 'recognised and pre-eminent experts' and therefore hired without a tender being offered?
- d) What is the composition of the committee deciding the tenders?
- e) Regarding selection key 'f', on what criteria are projects deemed not to justify the expense and delay associated with seeking tenders?
- f) Regarding selection key 'c' on what basis are companies selected to be offered the selective tender/
- g) How many of the successful tenders have previously been engaged for tender work for the Attorney-General's department?

**The answer to the honourable senator's question is as follows:**

By way of preliminary, general comments, it should be pointed out that, as noted in the Attorney-General's Department 2003–04 Annual Report, departmental policy requires that the selection process for consultants promotes open and effective competition to the extent practicable. The primary guidance comes from the *Commonwealth Procurement Guidelines* which set out core policies and principles for purchasing activities, including engaging consultants. This document is supplemented by the Department's *Chief Executive Instructions* (CEIs).

The *Commonwealth Procurement Guidelines* acknowledge that the procurement process imposes costs on agencies and also potential suppliers, and these costs should be considered when determining a process commensurate with the scale, scope and relative risk of the proposed procurement. After considering these factors the only practical option available to the agency might be to directly approach a supplier or limited number of suppliers.

The Department's CEIs note that there is no prescribed procurement method or minimum limits on the number of offers to be sought – the most suitable method should be selected on a case-by-case basis. The procurement methods adopted may vary according to the complexity of the procurement, the size of the expenditure, the requirement, the circumstances and the market. In relation to criteria for selecting consultants, the CEIs provide general guidance on possible criteria, rather than prescribing criteria for Department-wide use. Each area considering consultancy services determines the actual criteria to be applied in each case.

The answers to the senator's specific questions are as follows:

- a) Three tenders were publicly advertised in 2003-04. It was not considered necessary or appropriate to advertise any others.

- b) In relation to the above three publicly advertised tenders, a total of 18 applications were received – four each for two of them and ten for the other one.
- c) In assessing whether individuals or organisations are regarded as ‘recognised and pre-eminent experts’, the following factors are taken into account:
- whether they have specific and specialist expertise/knowledge/experience in the particular field
  - the degree of professional credibility they possess
  - whether they are recognised as experts nationally or internationally, and
  - whether they possess any relevant academic standing.
- d) The composition of the departmental committees which decide tenders varies from case to case. They will usually be comprised of senior departmental officers but can sometimes also include senior officers from other Departments and agencies and Ministerial staff members. The number of persons on such committees also varies from case to case.
- e) There are no fixed criteria required to be used in making such determinations. Situations during the past year in which it has been decided not to tender have included the following:
- where a consultant was known to have the requisite skills and the value of the project was not sufficiently high to warrant the expense of a tender, and
  - where the work had to be done extremely quickly, the consultant was known to have the requisite specialist skills, the consultant had done similar work for the Department in the past and the consultant’s price was known to be competitive.
- f) Situations in which selective tenders have been offered during the past year have included the following:
- where the project in question was security related and could only be offered to appropriately cleared persons
  - where the nature of the consultancy required that the work be carried out by a person with prior experience in working with or for the Department, and
  - where the possession of particular specialist knowledge and/or expertise was considered essential.
- g) Six organisations which were successful with tenders during 2003-04 had been previously engaged by the Department.

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**Output 2.1**

**Question No. 11**

**Senator Ludwig asked the following question on 2 December 2004:**

Regarding the Department's Fraud Control policy, are there any reports available on the implementation of the Commonwealth Fraud Control Guidelines by government agencies? If so, please provide. If not, why not?

**The answer to the honourable senator's question is as follows:**

In 2004 the Australian National Audit Office (ANAO) released the *2003-2004 Survey of Fraud Control Arrangements*, which reports on agency compliance with the Commonwealth Fraud Control Guidelines. This Report has been tabled in Parliament and is available from the ANAO.

The 2003-04 Fraud Annual Report has been prepared using data provided by Commonwealth agencies to the Attorney-General's Department. It reports on incidences of fraud against Commonwealth agencies and compliance with the Commonwealth Fraud Control Guidelines.

The report has been forwarded to the Minister for Justice and Customs for consideration by Government.

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**Output 2.1**

**Question No. 12**

**Senator Ludwig asked the following question on 2 December 2004:**

When does the department expect the fraud control website to be completed?

How much funding has been allocated to the completion of this website and how much of this funding has already been spent?

**The answer to the honourable senator's question is as follows:**

The Fraud Control website - <http://www.ag.gov.au/fraud> - has been completed.

The associated Commonwealth Fraud Survey website - <https://agex2.ag.gov.au/fraud> - will have some additional work done to correct some technical issues identified during the running of the 2004 annual fraud survey. This additional work will be completed before the 2005 survey is run.

No specific funding was allocated to these websites. They were developed in-house within existing resources. The cost of this is estimated at \$12,000 to date.

The additional work to be done, to correct the technical issues with the Commonwealth Fraud Survey, is considered to be minor and will also be completed in-house within existing resources. It is estimated that this will cost less than \$10,000.

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**Output 2.1**

**Question No. 13**

**Senator Ludwig asked the following question on 2 December 2004:**

- a) Is the fraud control website being developed in-house or by an outside organisation?
- b) If an outside organisation, what remuneration are they receiving?
- c) What was the selection process?
- d) Was a tender offered for the development of the website, and, if so, who was on the selection committee and what are their qualifications?

**The answer to the honourable senator's question is as follows:**

- a) The Fraud Control website - <http://www.ag.gov.au/fraud> - and the associated Commonwealth Fraud Survey website - <https://agex2.ag.gov.au/fraud> - were developed in-house within existing resources.
- b) Not applicable.
- c) Not applicable.
- d) Not applicable.