

DMO

Defence Materiel Organisation



USDM 186/2001

Ms Helen Donaldson
The Secretary
Senate Finance and Public Administration References Committee
Suite SG 60
Parliament House
CANBERRA ACT 2600

Dear Ms Donaldson,

SUBMISSION TO THE SENATE FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE

I understand that the Committee is receiving submissions from departments in relation to the Senate order dated 20 June 2001 – Government Agency Contracts.

Defence has taken steps to implement the order. The required Ministerial letter has been tabled and a web site implemented identifying contracts entered into in the past five years valued at over \$100,000. The information on the web site has been drawn from the Gazette and includes the name of the contractor, contract date and a description of the subject matter. The web site also contains a statement detailing the Defence approach to commercial-in-confidence information.

However, Defence has experienced a number of difficulties in fully complying with the order. Specifically, these difficulties relate to the magnitude of the task and the resource implications of compliance.

Defence has listed approximately 14,000 contracts on the web site. In addition, Defence estimates that it enters 3,000 contracts per year that would fall within the parameters of the Senate order. The Senate order requires each contract to be reviewed individually to determine whether it contains commercial-in-confidence provisions. This is not a straightforward task because Defence contracting proformas do not identify individual provisions as commercial-in-confidence. The order goes further in that it asks for details of provisions "regarded by the parties as confidential". On the face of it, literal compliance with the order would require Defence to examine each contract individually and consult the contractor for its views. Such an exercise would take thousands of man-hours to complete.

Defence estimates that the Senate order would initially cost \$1.5 million dollars to fully implement. This figure includes costs associated with legal services, updating Defence's information management systems to capture the information, and personnel costs. Ongoing costs are more difficult to estimate but would be lower.

In light of the above issues, Defence suggests that a more effective way in which to achieve the Senate objectives would be to remove the requirement to publish information about all contracts over \$100,000 and to require agencies to report to the Senate on an exception basis.

Contracts to be reported would be those valued at over \$100,000 which would not be available for parliamentary scrutiny in whole or in part for reasons other than those set down in the Australian National Audit Office Report No. 38 2000-2001 (The use of confidentiality provisions in Commonwealth contracts.) This reports sets out certain types of information which would meet the criteria of being protected as confidential information, including trade secrets, proprietary information, a contractor's internal costing information, pricing structures and intellectual property.

Defence notes that such an approach would significantly reduce the volume of reporting and the load in both Departments and the Senate while still achieving the Senate objectives.

While agreeing that the Audit Report No.38 sets out a reasonable prima facie basis for identifying confidential information, there is a range of information, which if provided routinely, would erode the Commonwealth's negotiating position. This includes information identified in the Report as information that would not be considered confidential, such as performance and financial guarantees, the price of an individual item, indemnities and payment arrangements.

While not of itself a barrier to disclosure, consideration may need to be given to the protection of such information when and if it is provided to parliamentary bodies.

Yours sincerely,



(M J Roche)
Under Secretary
Defence Materiel

18 September 2001