

The Auditor-General  
Audit Report No.5 2006–07  
Performance Audit

**The Senate Order for the Departmental and  
Agency Contracts  
(Calendar Year 2005 Compliance)**

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of Australia 2006

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Canberra ACT  
28 September 2006

Dear Mr President  
Dear Mr Speaker

The Australian National Audit Office has undertaken a business support process audit across agencies in accordance with the authority contained in the *Auditor-General Act 1997*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit and the accompanying brochure. The report is titled *The Senate Order for Departmental and Agency Contracts (Calendar Year 2005 Compliance)*.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's Homepage—<http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian McPhee', is positioned above the printed name.

Ian McPhee  
Auditor-General

The Honourable the President of the Senate  
The Honourable the Speaker of the House of Representatives  
Parliament House  
Canberra ACT

## AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office. The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits and financial statement audits of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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# Contents

Abbreviations and Glossary .....	6
<b>Summary and Recommendations .....</b>	<b>9</b>
Summary .....	11
Audit scope and objectives .....	11
Selected agencies .....	11
Audit conclusion and key findings .....	12
Agencies' responses .....	14
Recommendations .....	15
<b>Audit Findings and Conclusions .....</b>	<b>17</b>
1. Introduction .....	19
Background .....	19
This audit report .....	19
Other relevant ANAO audits .....	21
2. Content of Internet contract listings and processes for compiling the listings .....	23
Content of Internet listings .....	23
Processes for compiling the listings .....	25
3. Confidential provisions in contracts .....	30
Determining confidential provisions .....	30
The use of confidential provisions in contracts .....	32
Contracts excluded from the Internet contract listing .....	41
<b>Appendices .....</b>	<b>43</b>
Appendix 1: The Senate Order on Departmental and Agency Contracts .....	45
Appendix 2: Process chart for dealing with confidentiality of information in contracts .....	47
Appendix 3: Confidentiality Criteria .....	48
Appendix 4: Agencies' responses to the audit report .....	49
Index .....	51
Series Titles .....	53
Better Practice Guides .....	54
<b>Tables</b>	
Table 2.1 Unreported contracts identified by ANAO .....	28
Table 3.1 Department of Finance and Administration confidentiality criteria .....	33
Table 3.2 Number of contracts listed on the Internet – selected agencies .....	35
Table 3.3 ANAO assessment of specific confidential provisions for agency contracts .....	36

# Abbreviations and Glossary

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AFP	Australian Federal Police
ANAO	Australian National Audit Office
AusAID	Australian Agency for International Development
<i>AusTender</i>	A service that provides the public with information about the Australian Government's procurement activities.
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
CEIs	Chief Executive Instructions
confidential information	Information that is subject to an obligation or confidence – either under the contract or under general law principles.
confidentiality provisions	The clauses of a contract that operate to create the contractual confidentiality obligations on the parties to the contract in respect of information that is specified in the contract (for example, in the schedule of legal fees). For the purposes of the audit, the terms 'confidential provisions' and 'confidentiality provisions' are synonymous.
contractual information	Information in, or relating to, the contracts.
CPGs	Commonwealth Procurement Guidelines
DAFF	Department of Agriculture, Fisheries and Forestry
DEST	Department of Education, Science and Training
DFAT	Department of Foreign Affairs and Trade
Family Court	Family Court of Australia
Finance	Department of Finance and Administration

Finance <i>Guidance on Confidentiality</i>	Department of Finance and Administration <i>Guidance on Confidentiality of Contractors' Commercial Information</i> , February 2003
Finance <i>Guidance on Internet listing</i>	Department of Finance and Administration <i>Guidance on the Listing of Contract Details on the Internet</i> , January 2004
FMA Act	<i>Financial Management and Accountability Act 1997</i>
FMIS	Financial Management Information System
FOI Act	<i>Freedom of Information Act 1982</i>
Necessary qualities of confidentiality	Tests to ascertain whether particular information has the necessary qualities of confidentiality, determining whether the information is both 'sufficiently secrets' and 'significant': secret in the sense that the information is generally not known, and significant in the sense that the owner of the information would be likely to suffer some detriment if the information were made public.
Senate FPA Committee	Senate Finance and Public Administration References Committee
Senate Order	The Senate Order for Departmental and Agency Contracts
Treasury	Department of the Treasury





# **Summary and Recommendations**



# Summary

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1. This report outlines the results of the eighth audit of Financial Management and Accountability Act 1997 (FMA Act) agencies' compliance with the Senate Order for departmental and agency contracts (the Senate Order), to list contract details on the Internet.
2. The audit was conducted in accordance with the Senate Order request for the Auditor-General to undertake an annual review of agency contracts listed on the Internet, and report whether there had been any inappropriate use of confidentiality provisions.

## Audit scope and objectives

3. The objectives of the audit were to assess agency performance in relation to compiling Internet contract listings as required by the Senate Order, and the appropriateness of the use of confidentiality provisions in Government contracts.
4. The audit involved a detailed examination in seven agencies of the processes used to compile Internet contract listings and the use of confidentiality provisions in contracts for the 2005 calendar year.

## Selected agencies

5. The seven agencies selected for review were:
  - Australian Federal Police;
  - Australian Agency for International Development;
  - Family Court of Australia;
  - Department of Education, Science and Training;
  - Department of Agriculture, Fisheries and Forestry;
  - Department of Foreign Affairs and Trade; and
  - Department of the Treasury.

## Audit conclusion and key findings

### Audit conclusion

6. The results of this audit, and the ANAO's audits over the last four years, have indicated a progressive reduction in the number of contracts reported as including specific confidential provisions. This situation is consistent with the Government's policy position that contracting information should not be treated as confidential, unless there is a sound reason for doing so.

7. However, the audit found that some agencies had given insufficient attention to ensuring the completeness and accuracy of the contract listing, which was provided on agencies' websites. The ANAO considered these agencies needed to strengthen the controls and quality assurance processes for compiling their contract listings.

8. While the proportion of contracts listed with specific confidential provisions was low, a significant number of the contracts reviewed were considered by the ANAO to be inappropriately listed. This situation could be attributed to inadequate guidance on the use of confidentiality provisions provided to staff responsible for contract negotiations. Errors were also identified in the preparation of the contract listing in some agencies. This indicated the need for staff responsible for the preparation of the contract listing to have a better understanding of the requirements of the Senate Order.

### Key findings

9. The audit found that each of the audited agencies had placed contract listings on their website that were, with the following exceptions, in accordance with the timing requirements set out in the Senate Order. In three audited agencies, two in the same portfolio, ministerial letters were not tabled in the Senate by the due date of 28 February 2006. The letters were tabled on 28 March 2006.

10. Although each of the agencies had controls and processes in place for compiling the Internet contract listing, the audit identified contracts that had been excluded from the contract listing. This result cast doubt on the effectiveness of audited agencies' various controls and processes for maintaining up to date contract registers and for compiling their contract listings.

11. Consistent with previous audits, the ANAO considered that these controls and processes could be strengthened in some agencies by the implementation of additional controls such as a reconciliation between the Senate Order contract listing and contract information contained in Financial Management Information Systems (FMIS) and reported in *AusTender*.<sup>1</sup>

12. The audit found that all of the selected agencies had included in their standard Request For Tender documentation and contract templates information on the Government's accountability requirements, including the policy in relation to confidential information and disclosure to the Parliament and its committees.

13. The ANAO found that less than 20 per cent of the contracts included in the Senate Order contract listings of the agencies audited were reported as containing specific confidential provisions. This is consistent with the trend over a number of years that indicates a progressive reduction in the number of contracts listed as containing specific confidential provisions. This reflects the Government's policy position that contracting information should not be treated as confidential, unless there is a sound reason for doing so. The ANAO also found that a number of the agencies audited had listed some contracts as containing general clauses of confidentiality, such as Privacy Act requirements. These are referred to in the Senate Order as 'other requirements of confidentiality'. Such clauses exist in the majority of agencies' contracts.

14. The ANAO reviewed a sample of 87 contracts that were listed on the Internet as containing confidential information or confidential provisions to determine whether they had been appropriately listed.<sup>2</sup> Of the 45 contracts that were listed as containing specific confidential provisions, the ANAO assessed that only one was appropriately listed. The ANAO considered that 12 of the 45 contracts (27 per cent) were inappropriately listed as the information identified as being confidential did not meet the required confidentiality criteria – this is the more substantial finding from the audit in terms of agency contracting arrangements.<sup>3</sup> The remaining 32 of the 45 contracts (71 per cent)

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<sup>1</sup> All agencies subject to the *Financial Management and Accountability Act 1997* are required by the Commonwealth Procurement Guidelines to publish on *AusTender* contracts and standing offers with a value of \$10 000 or more.

<sup>2</sup> Of the 87 contracts reviewed, 45 were listed as containing specific confidential provisions and 45 were listed as containing 'other requirements of confidentiality'. A total of 14 contracts were listed as containing both types of confidential provisions. Eleven contracts were reviewed that were listed as not containing any confidential provisions.

<sup>3</sup> Finance's confidentiality criteria are contained in Appendix 3: Confidentiality Criteria.

were considered by the ANAO to be inappropriately listed due to the incorrect recording of the use of confidentiality provisions in the agencies' listings; the contracts did not identify any specific information that was confidential. Of the contracts listed as containing 'other requirements of confidentiality', the ANAO's testing identified that 41 out of the 45 contracts reviewed were appropriately listed.

15. The results of this audit testing indicated some confusion about the difference between the provisions in a contract that specifically identify confidential information and contracts containing 'other requirements of confidentiality'. This suggests that, in addition to some agencies giving more attention to complying with the requirements of the Senate Order, there is likely to be benefit in the Department of Finance and Administration (Finance) enhancing its guidance about the use of confidentiality provisions in contracts. Finance shares this view.

16. The audit findings also indicated that guidance that outlined the requirements of the Senate Order, as well the extent and timing of training and awareness sessions on the Senate Order requirements were areas that needed improvement in some agencies. These matters are particularly important in situations where agencies have a devolved procurement environment where line managers are responsible for the negotiation and management of contracts, including judgements about the use of confidentiality provisions in contracts.

17. The ANAO confirmed, where relevant, that individual instances of under-reporting identified in Audit Report No.27, 2005–06 *Reporting Expenditure on Consultants*, had been correctly reported in, or correctly excluded from, the 2005 Senate Order contract listings.

## Agencies' responses

18. All agencies agreed with the recommendations. Where provided, agencies' additional responses to each recommendation are provided in the body of the report, and agencies' general comments are provided at Appendix 4.

# Recommendations

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## Recommendation No.1

### Para 2.35

The ANAO **recommends** that agencies improve the accuracy and completeness of their contract listings by:

- implementing controls to assist in confirming that contract listings are complete and accurate. This could include, for example, reconciling the contract listing details to other relevant sources of information, such as FMIS records or to *AusTender*; and
- developing quality assurance processes to improve the accuracy of the contract listing.

## Recommendation No.2

### Para 3.38

The ANAO **recommends** that agencies provide guidance to those staff responsible for negotiating contracts and completing the Senate Order contract listing, to improve the level of understanding of the Senate Order, particularly relating to the use of confidentiality provisions.

## Agencies' responses to the recommendations

19. The audited agencies agreed to the recommendations. Where provided, agencies' additional responses to each recommendation are provided in the body of the report.





# **Audit Findings and Conclusions**



# 1. Introduction

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*The chapter provides background information about the Senate Order and the audit, including details of the audit's scope and objectives.*

## Background

**1.1** The Senate Order on Departmental and Agency Contracts was originally made in June 2001 and has been amended several times, most recently on 4 December 2003. The Senate Order was directed to underlining the principle that information in Government contracts should not be protected as 'commercial-in-confidence', unless there was a sound reason to do so. The text of the current Senate Order is reproduced at Appendix 1.

**1.2** Policy relating to the listing of contract details on the Internet is set out in the Department of Finance and Administration's *Guidance on the Listing of Contract Details on the Internet*, dated January 2004 and *Confidentiality of Contractors' Commercial Information*, dated February 2003. In January 2005 the Department of Finance and Administration also issued *Guidance on the Mandatory Procurement Procedures*, which stipulate that confidentiality arrangements should be clearly articulated in request for tender documentation, and the draft contract made available at tender stage should identify relevant Government policies relating to confidentiality and accountability requirements.

**1.3** Clause 5 of the Senate Order requests that the Auditor-General report annually on agency compliance with the requirements of the Senate Order. The Auditor-General has agreed to this request.

## This audit report

### Scope of the audit

**1.4** This audit is the eighth in a series of audits fulfilling the Senate's request. The audit reviewed the information reported by selected agencies in the 2005 calendar year contract listings. Testing of contracts identified as containing confidentiality provisions was weighted towards contracts entered into during 2004 and 2005.

**1.5** The audit focussed on the following areas:

- processes to compile the Internet contracts listing;

- appropriate use of confidentiality provisions; and
- form and content of procurement policies, and of tendering and contracting documentation.

**1.6** The following agencies were selected for audit:

- Australian Federal Police (AFP);
- Australian Agency for International Development (AusAID);
- Department of Agriculture, Fisheries and Forestry (DAFF);
- Department of Education, Science and Training (DEST);
- Department of Foreign Affairs and Trade (DFAT);
- Department of the Treasury (Treasury); and
- Family Court of Australia (Family Court).

## **Audit objectives and criteria**

**1.7** The audit objective was to assess, in each of the selected agencies, performance in relation to compiling the Internet contract listings required by the Senate Order, and the appropriateness of the use of confidentiality provisions in the contracts included in listings. To achieve this objective, the following matters were examined at each of the audited agencies:

- whether all the details required by the Senate Order were included in the contract listing on the Internet;
- the processes used to prepare the contract listing to assess whether they were likely to lead to the development of a contract listing that was complete;
- the processes in place to determine whether information in contracts should be protected as confidential;
- a selection of contracts to assess if they were correctly listed and whether the use of confidentiality provisions was appropriate; and
- a review of contracts excluded from the contract listing to assess whether they should have been listed.

**1.8** A series of audit criteria were developed for each of these matters, using the relevant guidance material referred to at paragraph 1.2. In summary, the criteria represented the internal controls and processes that an agency

would be expected to have in place to comply with the Senate Order and the relevant Government policy.

**1.9** The audit criteria for each component of the audit are outlined in Chapters 2 and 3.

## **Audit approach**

**1.10** In respect of each of the audited agencies, the audit involved:

- accessing Internet sites and downloading the relevant contract listing;
- conducting interviews and examining files and records relating to the compilation of the contract listing and the individual contracts selected for testing; and
- issuing a management report detailing the audit findings.

## **Other relevant ANAO audits**

**1.11** Seven audits of compliance with the Senate Order on Departmental and Agency Contracts have been previously undertaken. Issues identified in the earlier audits included the need for agencies to:

- implement additional controls, including reconciling contract listings to other relevant sources of information, to ensure the completeness and accuracy of their Internet contract listings;
- provide further guidance, together with training or awareness sessions, on the requirements of the Senate Order;
- provide adequate documentation of the reasons for agreeing to identify specified information in contracts as confidential;
- regularly review policy and procedural documentation to ensure that it reflects government contracting and procurement policy, including accountability and reporting requirements;
- improve the presentation of contract listings by ensuring that all details required by the Senate Order have been met; and
- develop an appropriate level of understanding, amongst relevant staff, of the accountability requirements, including making assessments of whether contracting information ought to be regarded as confidential.

**1.12** Another relevant ANAO audit was Audit Report No.27, 2005–06 *Reporting Expenditure on Consultants*. That report identified a significant level of

under-reporting of consultancies in the 2003–04 contract listings. As part of this audit, the ANAO confirmed, where relevant, that the individual instances of under-reporting had been corrected in the 2005 contract listings of the audited agencies.

## **Auditing standards**

**1.13** The audit was conducted under Section 18 of the *Auditor-General Act 1997*. The cost of the audit to the ANAO was \$167 725.

## 2. Content of Internet contract listings and processes for compiling the listings

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*The chapter reports on whether agencies' contract listings met the requirements of the Senate Order and also details the results of the ANAO's assessment of the adequacy of agencies' processes for preparing 2005 contract listings.*

### Content of Internet listings

**2.1** The audit assessed whether the audited agencies' contract listing complied with the requirements of the Senate Order.

#### Audit criteria

**2.2** Each agency was expected to have:

- arranged for their Minister to table in Parliament, by no later than two calendar months after the last day of the calendar year, a letter of advice that a contract listing has been placed on the Internet by the due date;
- listed all the details as required by the Senate Order; and
- established a clear and readily accessible path to the contract listing on its website.

#### Audit findings

**2.3** The contract listings of the audited agencies were found to generally comply with the requirements of the Senate Order. In particular, each of the audited agencies was found to have included all of the details required by the Senate Order, and established an accessible path to the contract listing on its website.

**2.4** The following instances of non-compliance were identified by the audit.

#### *Contracts falling outside date parameters*

**2.5** The *Guidance on Listing of Contract Details on the Internet (Meeting the Senate Order on Departmental and Agency Contracts)* issued by Finance contained

the following parameters for determining the eligibility of contracts for inclusion in Senate Order contract listings:

- entered into in the 12 months prior to the end of the relevant reporting period; or
- not fully performed as at the end of the reporting period.

**2.6** To be eligible for inclusion in the 2005 calendar year contract listings, contracts would need to have been entered into during 2005 or not have been fully performed as at 31 December 2005.

**2.7** Other than AusAID, each of the audited agencies included at least one contract in their 2005 contract listing that did not comply with these date parameters. With the exception of DEST and Treasury, many of these contracts were incorrectly included in contract listings due to errors in the preparation process. The existence of contracts outside of the relevant date parameters also highlighted a lack of quality assurance processes in some agencies.

**2.8** DEST advised the ANAO that its policy was to include in its contract listing all contracts not fully performed throughout the reporting period, notwithstanding their status at the end of the period. DEST indicated that the inclusion of these contracts in its contract listing was based on an approach which sought to comply fully with the intent and spirit of the Senate Order, even if this resulted in reporting more contracts than required by the Finance guidance.

**2.9** Treasury advised the ANAO that contracts in its contract listing that fell outside the relevant date parameters may have been included because contract extensions had been negotiated at the time the contract listing was prepared but details had not been recorded in the contract register.

#### *Letters of advice not tabled in time*

**2.10** The following letters of advice were not tabled in the Senate within two months of the end of the reporting period (by 28 February 2006) as required by the Senate Order:

- DAFF - the letter of advice for the Agriculture, Fisheries and Forestry portfolio was not tabled until 28 March 2006. The Department's contract listing was not placed on the Internet until the same date; and
- AFP and Family Court - the letter of advice for these agencies, prepared by the Attorney-General's Department as the portfolio department, was not tabled until 28 March 2006.



**2.11** DAFF and the Attorney-General's Department both advised the ANAO that they would amend procedures to ensure that tabling by the respective Ministers occurs by the due date for future contract listings.

*Use of overarching statements relating to confidentiality*

**2.12** Six of the audited agencies included a general statement about the use of general confidentiality provisions in contracts on their website.<sup>4</sup> The use of such a statement, known as an overarching statement, was consistent with the Finance publication, *Guidance on Listing of Contract Details on the Internet (Meeting the Senate Order on Departmental and Agency Contracts)*.

**2.13** The Finance guidance indicates that when such a statement is used, the 'other requirements of confidentiality' column of the listing should contain 'yes' responses, or alternatively be left blank, for all contracts except those that are not covered by the overarching statement.

**2.14** The presentation of the contract listings at AusAID and AFP were consistent with the use of an overarching statement on confidentiality, as all of the contracts were listed as containing 'other requirements of confidentiality'.

**2.15** In the remaining agencies that had contract listings with an overarching statement of confidentiality, the ANAO found that a relatively low proportion of contracts were listed as containing 'other requirements of confidentiality'. This was inconsistent with the inclusion of the general statement on confidentiality and highlighted a degree of misunderstanding about the use of such a statement.

## Processes for compiling the listings

**2.16** The audit examined the processes at each of the audited agencies for preparing the Internet listing to assess whether they were designed to ensure the contract listing was accurate and complete.

### Audit criteria

**2.17** Each agency was expected to have:

- developed policy and guidelines for the preparation of its contract listing;
- provided training on the requirements of the Senate Order and on the application of relevant policies and guidance material;

<sup>4</sup> DEST did not include a general statement relating to confidentiality.

- implemented a system for the recording and reporting of the relevant contracting information; and
- implemented appropriate controls designed to ensure that the contract listing was accurate and complete.

## **Audit findings**

### *Policy and guidance material*

**2.18** Each of the agencies had included, in their procurement-related policy and guidance material, information on the requirements of the Senate Order.

### *Training*

**2.19** The ANAO found that DFAT, AFP and DEST regularly addressed, as part of their procurement-related training or awareness sessions, the requirements of the Senate Order, including guidance on making decisions about the confidentiality of information in contracts. During 2005–06 Treasury delivered, as part of an ongoing series of procurement-related seminars, information on the use, recording and reporting of confidentiality provisions in contracts.

**2.20** At DAFF, Family Court and AusAID, the audit found that staff in the central procurement units had been provided with training on the requirements of the Senate Order. However, no training addressing the requirements of the Senate Order had been conducted for staff undertaking procurement activities in line areas.

**2.21** As mentioned in previous reports, the ANAO considers that the provision of regular targeted procurement training assists in improving the level of understanding of the requirements of the Senate Order. This in turn facilitates the production of more accurate and complete contract listings.

### *Contract registers*

**2.22** Each of the agencies had established a contract register for the purpose of recording details of their contracts. In each case, overall responsibility for the management of the contract register was allocated to a centralised procurement unit.

**2.23** In DFAT, Treasury, AusAID, DEST and DAFF individual business areas were responsible for entering the details of new contracts into the contract register. Each of these agencies had a range of controls in place to limit the ability of business areas to amend existing contract records. In the

Family Court and the AFP, business areas were required to provide details of new contracts to a central procurement unit that was responsible for entering contract details into the register.

**2.24** At the time of the audit, only DEST and DFAT had established formal links between their contract registers and their Financial Management Information Systems (FMIS). In DEST, contract payment transactions were unable to be processed through their FMIS unless a contract number, which was obtained from the contract register, was recorded. In DFAT, the entry of suppliers' details in the contracts register drew on data maintained in the FMIS. The audit found that these links assisted the agencies to maintain the accuracy and completeness of their contract registers.

**2.25** During the audit, DAFF, Family Court, and Treasury advised the ANAO that they planned to link the information in their contract register with their FMIS. The ANAO considered that these enhancements would assist the agencies maintain more accurate and complete contract registers, as well as improve the management of procurement processes and associated expenditure.

*Processes for reviewing the completeness and accuracy of contract listings*

**2.26** In each of the audited agencies, the contract listing was compiled by the central procurement unit responsible for the contracts register. In each case, the contracts register was the primary source of information for the production of the contract listing.

**2.27** The audited agencies had a range of additional processes aimed at ensuring the completeness of their contract listings. For example, six of the agencies provided the contract listing to relevant business areas, and requested verification of the accuracy and completeness of the contracts listed, together with details of any amendments or deletions.

**2.28** The AFP was the only agency that compared its contract listing with contract payment information in its FMIS and contract details published in *AusTender*.

**2.29** DFAT advised that although it did not undertake a formal reconciliation, it has a number of processes for ensuring that information in its contract listing was consistent with information in *AusTender*. DAFF advised the ANAO that following the introduction of enhancements to its FMIS, it had commenced monthly reconciliations between its FMIS and its contract register.

**2.30** The ANAO's testing revealed a number of contracts that had been excluded from the audited agencies' 2005 contract listings. This cast doubt on the effectiveness of the processes for compiling agencies' contract listings. It also highlighted the difficulties encountered by some agencies in keeping their contract registers up to date. This finding was consistent with the findings reported in Audit Report No.27, 2005–06 *Reporting of Expenditure on Consultants*.

**2.31** Table 2.1 outlines the extent of under-reporting identified.

**Table 2.1**

**Unreported contracts identified by ANAO**

Agency	Number of unreported contracts
Agriculture, Fisheries and Forestry	25 of 268
Australian Agency for International Development	23 of 756
Australian Federal Police	26 of 284
Education, Science and Training	4 of 1 297
Family Court	3 of 54
Foreign Affairs and Trade	1 of 509
Treasury	3 of 39
<b>Total</b>	<b>85 of 3 207</b>

Source: ANAO testing.

**2.32** Some of the errors identified by the ANAO suggested that there was a lack of quality assurance of the processes used to update the contract listing. For example:

- each of the 'date' errors identified at DAFF related to contracts included in the contract listing following advice from business areas; and
- a number of the errors in DEST's contract listing were the result of changes made to the information previously recorded in the contracts register.

**2.33** The results of this audit reinforced the need, as indicated in Audit Report No. 11, 2005–06 *The Senate Order for Departmental and Agency Contracts (Calendar Year 2004 Compliance)*, for agencies to continue to assess opportunities to implement additional, cost effective controls to assist in the production of complete and accurate contract listing.

**2.34** In this regard, improving linkages between an agency's contract register and its FMIS should improve an agency's ability to capture all relevant contract details. Each agency should assess the form of linkages that are the most appropriate to their individual circumstances. For example, creating an interface between the two systems may require considerable investment and therefore may not be cost effective in all cases. An alternative approach is to require a unique identifier, such as a contract number, to be recorded in the FMIS, before contract payments can be processed.

## Recommendation No.1

**2.35** The ANAO **recommends** that agencies improve the accuracy and completeness of their contract listings by:

- implementing controls to assist in confirming that contract listings are complete and accurate. This could include, for example, reconciling the contract listing details to other relevant sources of information, such as FMIS records or to *AusTender*; and
- developing quality assurance processes designed to improve the accuracy of the contract listing.

### *Agencies' responses*

**2.36** All agencies agreed with the recommendation. Specific comments provided were:

#### *Department of Education, Science and Training*

Agree. DEST notes that our Procurement Management System (BUYiT) is linked to our Financial Management Information System which allows for greater accuracy, greater control and increased consistency across reporting regimes.

#### *Department of the Treasury*

Treasury will institute an FMIS contracts reporting module in October 2006 that will link contract information, financial records and *AusTender* reporting records. This new information management system will enable better reporting for the Senate Order.

### 3. Confidential provisions in contracts

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*The chapter reports on the accountability environment in place at each of the audited agencies relating to the use of confidential provisions in contracts, and the adequacy of processes used by these agencies to decide which contracts should be listed as containing confidential provisions. The chapter also sets out the results of the ANAO's assessment of whether selected contracts from the contract listing were appropriately listed.*

#### Determining confidential provisions

**3.1** Apart from the nature of the goods or services to be delivered, and the information provided by the respective parties, the other factors that influence the number of contracts containing confidential information are likely to include:

- the adequacy of guidance to agency staff about the use of confidentiality provisions, including the recording of such details in the contract register;
- the adequacy of tender and contract documentation in addressing the Government's policies relating to the inclusion of confidentiality provisions in contracts; and
- the extent to which relevant agency staff had been provided with training or had attended awareness raising sessions.

**3.2** The audit examined the processes in place to determine whether information in contracts should be protected as confidential.

#### Audit criteria

**3.3** Each agency was expected to have contract policies and procedures that:

- advised potential contractors at the time of tendering, or if no tender process was undertaken, at the beginning of contract negotiation, that:
  - the Government's position is that contracting information is not protected as confidential unless there is a good reason for confidentiality;

- contracting information may be required to be disclosed by law even though the contractor and the Government have agreed that the information is confidential;
  - accountability requirements of the Government should be met, including disclosure to the Parliament and its committees and the requirements of the *Freedom of Information Act 1982* (FOI Act);
  - indicate if they consider any information in the tender or the contract to be confidential, and provide supporting reasons;
  - any information provided by tenderers or prospective suppliers would be treated as confidential prior to the award of a contract and, in respect of unsuccessful tenderers, after the contract is awarded; and
- provided guidance on confidentiality to assist agency officers to assess, on a case-by-case basis the merits or otherwise of a contractor's claim that particular contracting information is confidential and should be protected.

## Audit findings

### *Policy and guidance material relating to the use of confidentiality provisions in contracts*

**3.4** The audited agencies had a range of information available to assist staff make decisions about the use of confidentiality provisions in contracts. Most of the agencies had included in procurement policy and procedural documents references to relevant procurement guidance published by Finance. A better practice observed at DEST and DFAT was the inclusion of detailed guidance on the use and recording of confidentiality provisions in their respective contract registers. The AFP also included examples of the type and nature of information that would be considered to be confidential in its contract registration documentation.

**3.5** Notwithstanding the existence of this material, the ANAO found that the requirements of the Senate Order in relation to confidentiality were, in the main, not well understood. In particular, the audit found a low level of awareness and understanding, amongst staff interviewed during the audit, about the use of confidentiality provisions in contracts and Finance's confidentiality criteria.

## *Tender and contract documentation*

**3.6** Each of the audited agencies had appropriately worded tendering and contracting documents to inform potential contractors about the Government's procurement policies, including its accountability and disclosure requirements.

**3.7** The ANAO considers that it is better practice for Request For Tender (RFT) documentation to clearly stipulate that the confidentiality criteria contained in the Finance publication *Guidance on the Confidentiality of Contractors' Commercial Information* are relevant to any decisions on issues of confidentiality.<sup>5</sup> The Family Court, AFP and DEST clearly stated, in their standard RFT documentation, that requests for confidentiality would be assessed against the confidentiality requirements promulgated by Finance.

**3.8** The standard tendering documents of the other agencies, Treasury, DAFF and DFAT did not specifically refer to the use of the contract confidentiality criteria promulgated by Finance in assessing requests for treating contracting information as confidential.

## **The use of confidential provisions in contracts**

**3.9** One of the main objectives of the Senate Order is to require agencies to make considered decisions in relation to the inclusion of confidential provisions in Government contracts. In particular, the Senate Order requires agencies' contract listings to identify those contracts that contain such provisions.<sup>6</sup>

**3.10** The ANAO examined a selection of the contracts listed as containing specific confidential provisions or 'other requirements of confidentiality' to assess whether the contracts were appropriately listed.<sup>7</sup>

**3.11** In selecting contracts for review, the ANAO drew from more recent contracts, recognising that agencies have had access to Finance's guidance material since February 2003. Consistent with the approach adopted in previous audits, the ANAO's assessment of the use of confidentiality

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<sup>5</sup> This is consistent with the model RFT clauses promulgated by Finance at [www.finance.gov.au/ctc/toolkits/procurement\\_guidance.html](http://www.finance.gov.au/ctc/toolkits/procurement_guidance.html).

<sup>6</sup> The Finance *Guidance on Confidentiality* interprets confidential provisions as those that make specific information contained in the contract confidential, and 'other requirements of confidentiality' as those that protect confidential information of the parties that may be obtained or generated in carrying out the contract (but cannot be specifically identified when the contract is entered into).

<sup>7</sup> Given the significant proportion of contracts listed as not containing either specific confidential provisions or 'other requirements of confidentiality' in some agencies, the ANAO also reviewed a sample of these contracts.



provisions was based on the review of the individual contracts selected for testing, a review of associated documentation relating to the procurement and, where necessary, interviews with relevant staff. The ANAO did not discuss its assessments with the respective suppliers or contractors.

## Audit criteria

**3.12** The ANAO assessed each of the contracts selected for examination against the criteria for determining whether information in contracts could properly be protected as confidential. The criteria for evaluation, presented in Finance's *Guidance on Confidentiality* and *Guidance on Internet Listing*, and attached at Appendix 3 and are summarised in Table 3.1. All of the confidentiality criteria set out in the Finance guidance must be met for the information to be treated as confidential. In the view of the time the Senate Order has been in place and the availability of Finance guidance, in this audit the ANAO assessed whether all confidentiality criteria had been met.

**Table 3.1**

### Department of Finance and Administration confidentiality criteria

Confidentiality Criteria	
Criterion 1	The information to be protected must be identified in specific rather than global terms
Criterion 2	The information must have the necessary quality of confidentiality <sup>8</sup>
Criterion 3	The disclosure of information would cause detriment to the contractor or other third party
Criterion 4	The information was provided under an understanding that it would remain confidential

Source: Department of Finance and Administration *Guidance on Confidentiality of Contractors' Commercial Information* February 2003 Section 3 'The Tests'.

## Examples of confidential information

**3.13** As well as setting out the criteria for the determination of confidentiality, Finance's guidelines on confidentiality provide examples of the type of information that could be considered confidential, and also examples of information that would not generally be considered to be confidential.

<sup>8</sup> Useful tests to ascertain whether particular information has this quality are whether the information is both 'sufficiently secret' and 'significant': secret in the sense that the information is generally not known, and significant in the sense that the owner of the information would be likely to suffer some detriment if the information was made public.

**3.14** The guidance states that the types of commercial information that could be legitimately protected by confidentiality clauses are:

- trade secrets;
- proprietary information, for example, information about how a particular technical or business solution was to be provided;
- internal costing information or details of the contractor's profit margins;
- pricing structures, where this information would reveal whether a contractor was making a profit or loss on the supply of a particular good or service; and
- intellectual property matters where these relate to a contractor's competitive position.

**3.15** On the other hand, the types of commercial information that would not generally be considered to be legitimately confidential are:

- performance and financial guarantees;
- indemnities;
- the price of goods or services (except in the circumstances noted above);
- rebate, liquated damages and service credit clauses;
- performance measures;
- clauses that describe how intellectual property rights were to be dealt with; and
- payment arrangements.<sup>9</sup>

## **Audit findings**

**3.16** Table 3.2 sets out, for each of the audited agencies, the total number of contracts listed, the number of contracts listed as containing confidential information and the number of contracts listed as containing 'other requirements of confidentiality'.

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<sup>9</sup> Department of Finance and Administration, op. cit. pp.11-12.

**Table 3.2****Number of contracts listed on the Internet – selected agencies**

Agency	Number of contracts listed by the agency	Number (and percentage) of contracts listed as containing specific confidential provisions <sup>10</sup>	Number (and percentage) of contracts listed as containing 'other requirements of confidentiality'
Agriculture, Fisheries and Forestry	268	65 (24%)	42 (16%)
Australian Agency for International Development	756	0 (0%)	756 (100%)
Australian Federal Police	284	1 (0.35%)	284 (100%)
Education, Science and Training	1 297	460 (35%)	93 (7%)
Family Court	54	5 (9%)	3 (6%)
Foreign Affairs and Trade	509	5 (1%)	3 (0.6%)
Treasury	39	1 (3%)	6 (15%)
<b>TOTALS</b>	<b>3 207</b>	<b>537 (17%)</b>	<b>1 187 (37%)</b>

Source: ANAO analysis of agency contract listings for the 2005 Calendar Year reporting period.

**Specific confidential provisions**

**3.17** Table 3.2 indicates that, in the agencies audited, 17 per cent of contracts were listed as containing specific confidential provisions. In five of the agencies, AusAID, AFP, DFAT, Family Court and Treasury, the proportion of contracts listed as containing specific confidential provisions was low (ranging from 0 per cent to 9 per cent). The proportion of contracts listed as containing specific confidential provisions was considerably higher in both DAFF and DEST (24 per cent and 35 per cent respectively).

**Other requirements of confidentiality**

**3.18** As indicated in paragraphs 2.12 to 2.15, the relatively low proportion of contracts listed as containing 'other requirements of confidentiality' at DAFF, DFAT, Treasury and Family Court was inconsistent with the inclusion, in their contract listings, of overarching statements about confidentiality. These low proportions were considered to be inconsistent with the use of general

<sup>10</sup> This column shows the numbers of contracts that had confidential information specifically identified in the contract.

confidentiality clauses in agencies' standard tendering and contracting documents.

**3.19** Table 3.3 provides a summary by agency of the 45 contracts reviewed that were listed as containing specific confidential provisions.<sup>11</sup>

**Table 3.3**

**ANAO assessment of specific confidential provisions for agency contracts**

Agency	Number of contracts selected for review	Number of reviewed contracts containing specific confidential provisions appropriately listed	Number of errors due to the incorrect application of the criteria relating to confidentiality <sup>12</sup>	Number of errors due to the incorrect recording of the use of confidentiality provisions <sup>13</sup>
AFP	1	0	1	0
AusAID <sup>14</sup>	N/A	N/A	N/A	N/A
DAFF	9	0	4	5
DEST	28	0	7	21
DFAT	3	1	0	2
Family Court	3	0	0	3
Treasury	1	0	0	1
<b>TOTALS</b>	<b>45</b>	<b>1</b>	<b>12 (27%)</b>	<b>32 (71%)</b>

Source: ANAO analysis of agency contract listings for the 2005 Calendar Year reporting period.

*Incorrect application of the confidentiality criteria*

**3.20** The ANAO considered that 12 of the 45 contracts (27 per cent) were inappropriately listed as containing confidential information were as a result of the incorrect application of the confidentiality criteria promulgated by Finance.

**3.21** The ANAO identified two types of errors in the application of the confidentiality criteria. Firstly, a number of contracts contained only a

<sup>11</sup> Of the 87 contracts reviewed, 45 were listed as containing specific confidential provisions and 45 were listed as containing 'other requirements of confidentiality'. A total of 14 contracts were listed as containing both types of confidential provisions. Eleven contracts were reviewed that were listed as not containing any confidential provisions. The number of agency contracts reviewed was dependent on the number and age of the contracts listed as containing confidential provisions.

<sup>12</sup> These were contracts assessed as being incorrectly listed as the ANAO did not consider the information specified as confidential met the required criteria of confidentiality.

<sup>13</sup> These were contracts assessed by the ANAO to be incorrectly listed as the contracts did not identify any specific information that was confidential.

<sup>14</sup> There were no contracts reported as containing confidential information.

reference to, or a description of, the information identified as confidential. The ANAO considered that this was insufficient, on its own, to give the information the necessary qualities of confidentiality. Secondly, in several of the tested contracts, the ANAO considered that the nature of the information identified as confidential, for example, hourly rates charged by the contracted service provider, did not have the necessary qualities of confidentiality.

**3.22** These results highlighted that in some agencies there continues to be some level of misunderstanding by agency staff of the application of the confidentiality criteria for determining whether information should be protected as confidential.

### *Recording errors*

**3.23** The ANAO considered that 32 of the 45 contracts (71 per cent) were inappropriately listed as containing confidential information were because of errors identified at the time agencies were preparing contract listings. The contracts did not specifically identify any information as confidential. Rather, the contracts only contained general confidentiality provisions. The confidentiality guidelines promulgated by Finance indicate that the existence of general confidentiality provisions in contracts are not sufficient, on their own, to make the contracting information confidential.

**3.24** The ANAO considered that the errors indicated that, in several agencies, there was some confusion about the difference between the provisions in a contract that specifically identify confidential information and those confidentiality provisions that are of a standard or general nature.

## **Audit finding by agency**

**3.25** The results of the ANAO's assessment of the individual contracts, by each agency, are discussed below.

### *Australian Federal Police*

**3.26** The ANAO selected eight contracts for detailed assessment. Six of the eight listed contracts reviewed by the ANAO were considered to be appropriately reported. One of the other contracts reviewed was a whole of government contract entered into by the Department of Finance and Administration, and the AFP's reporting was consistent with that Department's reporting in its own contract listing. The information identified as being confidential was a description of a range of information relating to the administration of a vehicle fleet management contract and did not meet the confidentiality criteria. The contract was also appropriately listed as containing

‘other requirements of confidentiality’. The ANAO considered that the remaining contract was not appropriately listed because it did not contain any specific confidentiality provisions.

#### *Australian Agency for International Development*

**3.27** None of AusAID’s contracts were listed as containing specific confidential provisions. The ANAO selected 19 contracts that were listed as containing ‘other requirements of confidentiality’. Of these, 16 contracts were considered to be appropriately listed as containing ‘other requirements of confidentiality’. Of the remaining three contracts, the ANAO considered that they were inappropriately listed as the contracts did not contain any general clauses of confidentiality.

#### *Department of Agriculture, Fisheries and Forestry*

**3.28** The ANAO selected 10 contracts listed as containing specific confidential provisions for detailed assessment. The ANAO considered that all had been inappropriately listed. One was a duplicate contract. Five of these contracts did not include any specific confidential provisions, while the ANAO considered that the remaining four did not meet the confidentiality criteria. The information included hourly charge rates in relation to legal or other services, the names of grant recipients, and a description of the activities and materials to be produced under the contract, which did meet the confidentiality criteria. The ANAO also found that four of the contracts reviewed, which included a general clause of confidentiality, had been appropriately listed as also containing ‘other requirements of confidentiality’ in this respect.

#### *Department of Education, Science and Training*

**3.29** The ANAO selected 29 contracts that were listed as containing confidential provisions for detailed assessment. Of these, the ANAO considered that 28 contracts were inappropriately listed as containing specific confidential provisions. The ANAO found that 17 of these contracts did not contain any confidential information, and the ANAO considered that the remaining 11 contracts contained information such as schedules of fees payable and descriptions of material to be produced or used by the contractor that did not meet the confidentiality criteria. Seven of these contracts were also listed as containing ‘other requirements of confidentiality’. The ANAO found that these contracts had been appropriately listed in this respect.

**3.30** The ANAO considered that one remaining contract, listed as not containing either specific confidential provisions or ‘other requirements of confidentiality’, was inappropriately listed. The contract contained a general clause of confidentiality and therefore should have been listed as containing ‘other requirements of confidentiality’.

*Department of Foreign Affairs and Trade*

**3.31** The ANAO selected nine contracts listed as containing confidential provisions for detailed assessment. Of these, one contract was listed as containing specific confidential provisions. The contractor had requested that certain commercially sensitive information in the contract be confidential and the ANAO considered that the information did meet the confidentiality criteria. The ANAO found that three of the other contracts had been correctly listed as containing ‘other requirements of confidentiality’. The remaining five contracts were considered to be inappropriately listed as containing no ‘other requirements of confidentiality’ as each contained a general clause of confidentiality.

*Family Court of Australia*

**3.32** The ANAO selected six contracts for detailed assessment. Of the three contracts listed as containing specific confidential provisions, the ANAO found that all were inappropriately listed as they did not identify any specific information as confidential. Two of these contracts also contained a general clause of confidentiality and were considered to be appropriately listed as containing ‘other requirements of confidentiality’. The ANAO considered that the remaining three contracts were inappropriately listed as not containing either specific confidential provisions or ‘other requirements of confidentiality’ as the contracts contained general clauses of confidentiality.

*Department of the Treasury*

**3.33** The ANAO selected six contracts for detailed assessment. Of these, the ANAO considered that one contract was inappropriately listed as containing specific confidential provisions, as it did not identify any specific information as confidential. The ANAO found that two contracts were appropriately listed as containing ‘other requirements of confidentiality’, as they contained a general clause of confidentiality. The remaining three contracts, listed as containing no specific confidential provisions or ‘other requirements of confidentiality’ were considered to be inappropriately listed, as the contracts contained general clauses of confidentiality.

### *Agencies' responses to audit findings*

**3.34** The ANAO made a number of recommendations in the respective management reports. Each agency agreed with the recommendations and advised of a range of actions to address the audit findings.

### **Parliamentary and ANAO access**

**3.35** Most of the contracts reviewed were found to contain appropriately worded clauses providing access to contract-related information to the ANAO and to the Parliament and its committees. This largely reflected the situation of the standard contract templates developed by the audited agencies containing such clauses.

**3.36** The main exception was DEST, which has a range of standard contract templates designed to be used when contracting for different services. Each of the instances of non-inclusion of such clauses related to the use of a standard contract that did not contain parliamentary access clauses. DEST advised that changes to their contract templates would address this issue.

**3.37** The other instances found during the audit stemmed from the use of non-standard contracts. While there could be legitimate reasons for use of non-standard contract terms and conditions, in these instances the ANAO suggested agencies should ensure that contractors are made aware of the need to provide for access to the Parliament and the ANAO.

## **Recommendation No.2**

**3.38** The ANAO **recommends** that agencies provide guidance to those staff responsible for negotiating contracts and completing the Senate Order contract listing, to improve the level of understanding of the Senate Order, particularly relating to the use of confidentiality provisions.

### *Agencies' responses*

**3.39** All agencies agreed with the recommendation. Specific comments provided were:

#### *Department of Education, Science and Training*

Agree. DEST regularly addresses, as part of our procurement relating training sessions, the requirements of the Senate Order, including guidance on making decisions about the confidentiality of information in contracts.



*Department of the Treasury*

Treasury will undertake further training for staff as well as provide further detailed information to comply with confidentiality guidelines. Treasury notes that improvements can be made to better educate staff who are negotiating contracts. These improvements have been identified and will be implemented.

**Contracts excluded from the Internet contract listing**

**3.40** The audit examined those contracts that had been excluded from the Internet contract listing, due to commercial sensitivity or national security reasons, to assess whether they should have been listed.

**Audit findings**

**3.41** The ANAO found that only the AFP had excluded contracts from its Internet contract listing due to national security reasons. The AFP had excluded eight contracts that would have otherwise been eligible for inclusion in the AFP's 2005 contract listing. The ANAO reviewed the supporting contract-related information and found that appropriate approvals had been given to the exclusion of the contracts from the contract listing.

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Ian McPhee  
Auditor-General

Canberra ACT  
28 September 2006



# Appendices



## Appendix 1: The Senate Order on Departmental and Agency Contracts

(1) There be laid on the table, by each minister in the Senate, in respect of each agency administered by that minister, or by a minister in the House of Representatives represented by that minister, by not later than 2 calendar months after the last day of the financial and calendar year, a letter of advice that a list of contracts in accordance with paragraph (2) has been placed on the Internet, with access to the list through the department's or agency's home page.

(2) The list of contracts referred to in paragraph (1) indicate:

(a) each contract entered into by the agency which has not been fully performed or which has been entered into during the previous 12 months, and which provides for a consideration to the value of \$100 000 or more;

(b) the contractor, the amount of the consideration, the subject matter of each such contract, the commencement date of the contract, the duration of the contract, the relevant reporting period and the twelve-month period relating to the contract listings;

(c) whether each such contract contains provisions requiring the parties to maintain confidentiality of any of its provisions, or whether there are any 'other requirements of confidentiality', and a statement of the reasons for the confidentiality; and

(d) an estimate of the cost of complying with this order and a statement of the method used to make the estimate.

(3) If a list under paragraph (1) does not fully comply with the requirements of paragraph (2), the letter under paragraph (1) indicate the extent of, and reasons for, non-compliance, and when full compliance is expected to be achieved. Examples of non-compliance may include:

(a) the list is not up to date;

(b) not all relevant agencies are included; and

(c) contracts all of which are confidential are not included.

(4) Where no contracts have been entered into by a department or agency, the letter under paragraph (1) is to advise accordingly.

(5) In respect of contracts identified as containing provisions of the kind referred to in paragraph (2)(c), the Auditor-General be requested to provide to the Senate, by not later than 30 September each year, a report indicating that the Auditor-General has examined a number of such contracts selected by the Auditor-General, and indicating whether any inappropriate use of such provisions was detected in that examination.

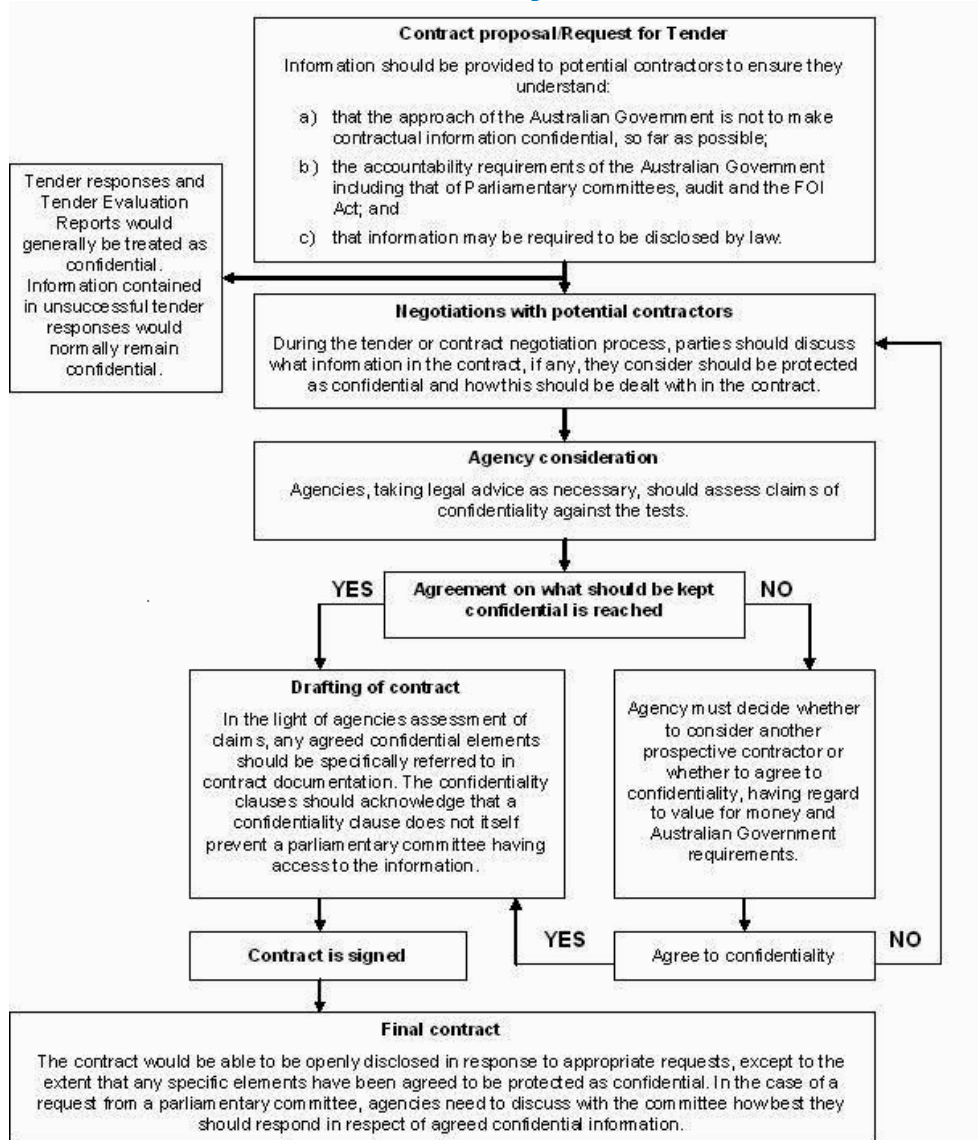
(6) In respect of letters including matter under paragraph (3), the Auditor-General be requested to indicate in a report under paragraph (5) that the Auditor-General has examined a number of contracts, selected by the Auditor-General, which have not been included in a list, and to indicate whether the contracts should be listed.

(7) The Finance and Public Administration References Committee consider and report on the first and second years of operation of this order.

(8) This order has effect on and after 1 July 2001.

(9) In this order: "**agency**" means an agency within the meaning of the *Financial Management and Accountability Act 1997*; and "**previous 12 months**" means the period of 12 months ending on either 31 December or 30 June, as the case may be.

## Appendix 2: Process chart for dealing with confidentiality of information in contracts



15

<sup>15</sup> Finance Procurement Guidance *Confidentiality of Contractors' Commercial Information*.

## Appendix 3: Confidentiality Criteria

**Criteria for the determination of whether commercial information should be protected as confidential**

**Criterion 1: That the information to be protected must be identified in specific rather than global terms**

Commonwealth officials are required to identify and consider what specific information, if any, is legitimately protected from disclosure. A request for inclusion of a clause in a contract that states that all information is confidential does not pass this test. Individual items of information, for example pricing or intellectual property, must be separately considered.

**Criterion 2: That the information must have the necessary quality of confidentiality**

The specific information must in fact be commercially 'sensitive', that is, it must not already be in the public domain (such as price lists available on the Internet) and its continuing non-disclosure must provide an ongoing commercial benefit to the 'owner' of the information. Parties requesting that the confidentiality of such information be maintained would need to show that there was an objective basis for their request, and not that they simply wished to protect the information.

**Criterion 3: That disclosure would cause detriment to the contractor or other third party**

The information must be such that the disclosure of which would cause harm to the 'owner' of the information, also needs to be established on an objective basis. For example, disclosure of Internet price lists could not harm the owner, but disclosure of pricing information that reveals the contractor's margins may have this effect. The party seeking to maintain confidentiality would normally need to identify some real risk of commercial damage to its interests flowing from the disclosure.

**Criterion 4: That the information was provided under an understanding that it would remain confidential**

That the information was provided on an understanding that it remains confidential requires consideration of the circumstances in which the information was provided and a determination of whether there was a mutual express or implied understanding that confidentiality is to be maintained. The circumstances include such matters as tendering documentation and contract negotiations. For example, a tender condition and draft contract which included specific confidential provisions would support an assertion of such an understanding with respect to the information specified.

Source: Department of Finance and Administration (February 2003).



## Appendix 4: Agencies' responses to the audit report

*This Appendix contains any general comments received on the audit report that are not shown in the body of the report.*

Each of the agencies selected for audit and Finance were provided with the opportunity to comment on the proposed audit report (or extracts of the proposed report, where applicable) in accordance with the provisions of section 19 of the *Auditor-General Act 1997*.

Agencies' responses to the recommendations have been included in the main body of the report under the subheading "Agencies' responses" directly following each recommendation.

General responses are reproduced below.

### **Department of Agriculture, Fisheries and Forestry**

The Department of Agriculture, Fisheries and Forestry advised as follows:

The Department will be further examining opportunities for improvements in its reporting requirements for the Senate Order and will actively monitor the implementation of the recommendations made in your report.

### **Department of Finance and Administration**

The Department of Finance and Administration advised as follows:

The Department of Finance and Administration (Finance) has reviewed the report in line with our responsibilities for providing Financial Management and Accountability Act 1997 departments and agencies (agencies) with policy guidance on compliance with the Senate Order on departmental and agency contracts. Finance supports the recommendations of the report.

The audit indicates a continuation of the trend for agencies to progressively reduce the number of contracts that include specific confidentiality provisions.

However, Finance notes that the audit found that some agencies had not given sufficient attention to the accuracy of their Internet list. Finance shares the view expressed in the report that there is likely to be benefit in Finance enhancing its guidance about the use of confidentiality provisions in contracts. This finding supports the work that Finance has already undertaken to progress the revision of the relevant guidance.

## **Family Court of Australia**

The Family Court of Australia advised as follows:

The Court is currently implementing changes to its processes and procedures that will address the issues highlighted in the report.

# Index

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## A

Agencies, 5, 11-15, 19-32, 34-37, 40, 45, 49  
ANAO, 4-6, 12-15, 21-33, 35-41  
ANAO assessment, 5, 36  
Auditor-General, 4, 11, 19, 22, 46, 49  
AusTender, 6, 13, 15, 27-29  
Australian Agency for International Development, 6, 11, 20, 24-28, 35-36, 38  
Australian Federal Police, 6, 11, 20, 25-28, 31-32, 35-37, 41

## C

CAC Act, 6  
Chief Executive Instructions, 6  
commercial information, 7, 19, 32-34, 47-48  
Commonwealth Procurement Guidelines, 6, 13  
confidential information, 6, 13-14, 30, 32-33, 35-38  
confidential provisions, 5-6, 12-13, 30, 32, 35-36, 38-39, 48  
confidentiality criteria, 5, 13-14, 31-33, 36-39, 48  
confidentiality provisions, 6, 11-12, 14-15, 19-20, 25-26, 30-31, 33, 36-38, 40, 49  
contractual information, 6

## D

Department of Agriculture, Fisheries and Forestry, 6, 11, 20, 24-28, 32, 35-36, 38, 49  
Department of Education, Science and Training, 6, 11, 20, 24-29, 31-32, 35-36, 38, 40-41  
Department of Finance and Administration, 5-7, 14, 19, 23-25, 31-34, 36-37, 46-49  
Department of Foreign Affairs and Trade, 6, 11, 20, 26-28, 31-32, 35-36, 39

Department of the Treasury, 7, 11, 20, 24, 26-29, 32, 35-36, 39, 41

## F

Family Court of Australia, 6, 11, 20, 25-28, 32, 35-36, 39, 50  
Finance *Guidance on Confidentiality*, 7, 31-33  
Financial Management and Accountability Act 1997, 7, 11, 13, 46, 49  
Financial Management Information System, 7, 13, 15, 27-29  
Freedom of Information Act 1982, 7, 31

## G

Guidance to agency staff, 30

## I

intellectual property, 34, 48  
Internet listings, 23, 33

## M

Minister, 23, 45

## N

necessary qualities of confidentiality, 7, 37

## P

proprietary information, 34

## Q

qualities of confidentiality, 37

## R

Recommendations, 9, 14-15, 29, 40, 49

## **S**

Senate FPA Committee, 7  
Senate Order, 7, 11-15, 19-21, 23-26,  
29, 31-33, 40-41, 45, 49

## **T**

tender, 13, 19, 30-32, 48  
The Senate Order for Departmental  
and Agency Contracts, 7, 29

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---

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Attorney-General's Department

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Controlling Performance and Outcomes	Dec 1997
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Audit Committees	July 1997
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Telephone Call Centres Handbook	Dec 1996
Paying Accounts	Nov 1996
Asset Management Handbook	June 1996

