



Managing the Requirements for Disclosing Private Sector Contracts



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Auditor-General

Managing the Requirements for Disclosing Private Sector Contracts

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The Hon. Robert Smith MLC
President
Legislative Council
Parliament House
Melbourne

The Hon. Jenny Lindell MP
Speaker
Legislative Assembly
Parliament House
Melbourne

Dear Presiding Officers

Under the provisions of section 16AB of the *Audit Act 1994*, I transmit my performance report on *Managing the Requirements for Disclosing Private Sector Contracts*.

Yours faithfully



D D R PEARSON
Auditor-General

23 June 2010

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Audit summary

The Financial Reporting Direction—FRD12A *Disclosure of Major Contracts* (FDR12A) under the *Financial Management Act 1994* and other government contract disclosure policies, require agencies to publicly disclose summary details of contracts over \$100 000 and make public the full text of all contracts over \$10 million. A statement about private sector contracts is also required within annual reports. Only material which falls within exemptions of the *Freedom of Information Act 1982* may be excluded, for example, genuinely confidential business information or trade secrets.

We examined whether these contract disclosure requirements had been complied with. Contract management and reporting by the Departments of Planning and Community Development (DPCD), Sustainability and Environment (DSE) and Treasury and Finance (DTF) were examined in depth, combined with a review of the information published by all 11 departments on the Contract Publishing System (CPS) maintained by the Victorian Government Purchasing Board (VGPB). We used 1 January 2010 as the date on which we checked compliance.

Conclusions

Departments are generally complying with the requirement to disclose summary details of contracts above \$100 000 on the CPS. The incidence of non-compliance was low and the reasons for non-compliance do not point to systemic breakdown of controls.

However, levels of non-compliance with the requirement to publish the text of contracts where they exceed \$10 million are higher, and reflect systemic breakdowns in disclosure and reporting controls that diminish transparency.

One consequence is that the relevant statements of compliance made by secretaries in their departmental annual reports have not been accurate, raising questions also about the effectiveness of the internal processes they use to support this certification.

There is also confusion about aspects of the disclosure requirements, including disagreement about which agencies need to comply. Consequently, there are inconsistent reporting practices that diminish transparency further.

Findings

Compliance with contract disclosure requirements

Collectively across all 11 departments, about 1 900 private sector contracts valued at around \$31 billion are disclosed on the CPS. As at 1 January 2010, six departments had not disclosed on the CPS the text of 43 of 144 contracts valued at over \$10 million, as required by the disclosure policies. The total value of these contracts was around \$3 billion, which is 10 per cent of the total value of all contracts on the CPS.

There is misunderstanding regarding the disclosure requirements. Disclosure of standing offer agreements was inconsistent between departments.

At DSE and DTF there were deficiencies in processes to approve, explain and document decisions to excise information from published contracts.

Departmental oversight and contract administration

DPCD, DSE and DTF all had adequate internal policies and guidelines to record and report private sector contracts. The internal policies are well documented and consistent with FRD12A and government policies and are regularly reviewed and disseminated on the departments' intranets.

Contract disclosure controls in DTF were not as strong as the other two departments examined, and inconsistencies, errors and omissions in their underlying contract records were detected.

Central oversight and contract administration

The confusion, inconsistency and non-compliance with disclosure requirements by departments can be addressed in part through clearer guidance from the VGPB.

CPS functionality does not facilitate departments' making adequate disclosures. There is no function to record contract variations, or to record procurement under a whole of government contract; there is no means to link related contracts; and no mandatory description and titling conventions. The CPS's rudimentary search functionality limits users' ability either to locate a specific contract or to aggregate information.

Recommendations

Number	Recommendation	Page
1.	The secretaries of departments should strengthen their processes for monitoring their compliance with contract disclosure requirements on the Contract Publishing System and in their annual reports.	16
2.	The Departments of Sustainability and Environment and Treasury and Finance should develop and document protocols and procedures for approving and documenting decisions for excising contract information.	16
3.	The Departments of Sustainability and Environment and Treasury and Finance should develop a protocol and supporting processes regarding the future release of excised information.	16
4.	The Department of Treasury and Finance should establish a process to monitor the department's payment system to identify payment activities that trigger a disclosure requirement.	22
5.	The Victorian Government Purchasing Board should issue additional guidance on disclosure requirements, particularly in regard to: <ul style="list-style-type: none"> • which government entities should comply with the contract disclosure requirements • conventions for contract descriptions, values and titling. 	22
6.	The Victorian Government Purchasing Board should improve the Contract Publishing System functionality to allow: <ul style="list-style-type: none"> • for an improved search function • variations to be recorded against the original contract • entries to record procurement under standing offer agreements. 	22

Audit Act 1994 section 16— submissions and comments

Introduction

In accordance with section 16(3) of the *Audit Act 1994* a copy of this report, or relevant extracts from the report, was provided to the Victorian Government Purchasing Board and the departments of Education and Early Childhood Development; Human Services; Innovation, Industry and Regional Development; Planning and Community Development; Sustainability and Environment; Transport and Treasury and Finance with a request for comments or submissions.

The comments and submissions provided are not subject to audit nor the evidentiary standards required to reach an audit conclusion. Responsibility for the accuracy, fairness and balance of those comments rests solely with the agency head.

Submissions and comments received

An extract of the submission received from the Department of Sustainability and Environment has been included below where further comment from the Auditor-General has been provided. The departments' full submissions are included in Appendix A.

RESPONSE provided by the Secretary, Department of Sustainability and Environment

Chapter 2.4.1 – Multiple contracts for the one procurement type (p. 12)

DSE believes the two instances indicated in the report of possible tender splitting are not supported by evidence. The department is confident that full details of the procurement strategies pursued by DSE were provided to your Office and these demonstrated that multiple tenders were sought and bids were independently assessed. These processes would not preclude a firm being successful on more than one occasion.

Further comment by the Auditor-General

The report at page 12, acknowledges that contracts were subject to a separate tender process. However, the fact that these contracts were entered into on the same day, for a similar time period and to provide identical services by the same supplier indicates poor procurement practice and results in avoiding the intended level of disclosure.

1 Background

1.1 Introduction

Departments and agencies increasingly engage private sector contractors to deliver a range of goods and services such as construction, maintenance, cleaning, training and professional advice.

Outsourcing arrangements are intended to deliver value for money and more efficient results. In the interests of open and transparent government business it is equally important that contracts are publicly disclosed.

Inadequate disclosure of contracts with the private sector can lead to a culture where some might gain advantage at the expense of others and the community, and practices that are not in the public interest can become entrenched. The quality of services and getting the best value outcomes may be jeopardised.

1.2 Key disclosure requirements

The present disclosure requirements arise from the June 2000 report of the *Audit Review of Government Contracts*. This review, commissioned by the government, criticised the secrecy that had surrounded government contracts and made key recommendations, including that:

- government should publicly disclose, to the maximum extent possible, details of major contracts to which they are a party
- government should be guided by the policy and principles underlying Freedom of Information legislation
- consideration be given to establishing reporting mechanisms on contractual performance.

In response, the government announced in October 2002 a policy statement *Ensuring Openness and Probity in Victorian Government Contracts*.

Specifically, this led to a legislative and government policy requirement for departments and nominated public agencies to publicly disclose summary details of contracts over \$100 000 and make publicly available the full text of all contracts over \$10 million.

Financial Reporting Direction—FRD12A *Disclosure of Major Contracts* (FRD12A), issued in July 2005 under the *Financial Management Act 1994*, also requires a statement about disclosure of private sector contracts within annual reports. Only material which falls within exemptions of the *Freedom of Information Act 1982* may be excluded, for example trade secrets.

To facilitate disclosure, the Victorian Government Purchasing Board (VGPB) set up the Victorian Government Contracts Publishing System (CPS)—a database which is accessible at <www.vgpb.vic.gov.au>. VGPB policy requires departments to notify on the CPS contracts for the procurement of goods and services under which the state is obliged, or may become obliged to pay public money.

Departments are required to report their contracts on the CPS within 60 days of the contract being awarded.

As at 1 January 2010, the CPS disclosed contract details for 18 government entities, including all 11 departments and seven public sector agencies. Around 1 900 contracts were listed, with a total value of around \$31 billion.

1.3 Framework for procuring goods and services

Under the *Financial Management Act 1994*, VGPB is required to develop, implement and review policies and practices in relation to the supply of goods and services to departments. Its functions include monitoring departmental compliance with procurement policies and ministerial directions through annual supply reports submitted by departments and to audit departments' compliance against legislative and regulatory procurement requirements.

VGPB policy and practices apply to all departments, Victoria Police and 12 administrative offices as defined in the *Public Administration Act 2004*.

The VGPB has accredited departments to assume responsibility for purchasing. This accreditation process requires departments to comply with VGPB policy to establish an accredited purchasing unit (APU). Each department's APU has the delegated responsibility to oversee the procurement process and to approve purchases within its accreditation limit without reference to the VGPB.

The responsibilities of the APU include:

- assessing procurement proposals in excess of \$100 000 and high risk or complex purchases of lesser value
- approving proposals within the department's accreditation limit and endorsing proposals outside that accreditation limit for consideration by the VGPB
- monitoring and reporting on the department's purchasing processes and procedures.

Types of private sector contracts

VGPB policy guidelines define a contract as 'an agreement for the procurement of goods and services under which a department is obliged to pay public money to a supplier'. These include purchase orders or written contracts and leases over \$100 000 in value. We used this definition in this audit.

Figure 1A illustrates the main types of contractual arrangements typically established with the private sector to procure goods and services.

Figure 1A
Types of private sector contracts

Contract type	Description
Standing offer agreements	
State purchase contract	Managed by the Government Services Division within Department of Treasury and Finance. Mandatory for public entities bound by VGPB procurement policies.
Open state purchase contract	Established by one 'leading' department. Other departments with a similar need can access (not mandatory for other departments to use).
Departmental standing offer agreement	Procurement of goods and services used exclusively by one department.
One-off supply agreements	
Standard departmental contract	For goods or services not available through a standing offer agreement.
Exceptional procurement approval	For high-value procurement projects which support a major industry or government initiative.
Critical incident procurement approval	For procurement during a critical incident related to any subsequent relief effort.

Source: Victorian Auditor-General's Office.

Standing offer agreements, or panel contracts, are used to procure commonly used goods and services and are designed to provide more effective and efficient procurement. They cover a set period and usually impose no obligation on the state to purchase a particular quantity of the goods or services from the supplier. Usually, suppliers have been pre-selected to provide specific, cost effective services to government.

Public Finance and Accountability Bill

The Public Finance and Accountability Bill (the Bill) currently before Parliament is wide-ranging. It seeks to establish a revised framework for financial management in Victoria and to promote greater transparency and accountability of performance to Parliament and the public. The Bill, if enacted will replace a number of current Acts, including the *Financial Management Act 1994*.

Under the new legislation, the VGPB will be replaced with the State Procurement Board (SPB) which will have broader powers than its predecessor, including focusing on procurement activities across the public sector, not confined just to departments. As currently drafted, the Bill provides that the SPB has the power to advise the minister in relation to the application of the procurement principles and procurement policies.

The minister has the power to give direction to any department or defined public body including directions relating to policies, systems procedures and practices for the purchase and supply of goods and services on behalf of the state or public bodies in accordance with the procurement principles.

Disclosure of private sector contracts could be the subject of a ministerial direction. No such directions can be made until passage of the Bill which at the time of finalising this report remained to be passed.

1.4 Audit objective and scope

The objective of this audit was to determine whether contract disclosure requirements had been complied with. Specifically, the audit assessed whether three selected departments:

- maintained accurate and complete records of all contracts with private sector providers
- provided appropriate disclosures in their annual reports and on the CPS in accordance with FRD12A issued under the *Financial Management Act 1994*
- adequately disclosed contractor performance and outcomes of contracts consistent with requirements of the policy statement.

The three departments examined in depth were Planning and Community Development, Sustainability and Environment, and Treasury and Finance. Compliance with disclosure requirements was tested at 1 January 2010.

The audit also examined the monitoring role of the VGPB and the completeness and accuracy of the data maintained by all departments on the CPS.

The audit was performed in accordance with the Australian Auditing and Assurance Standards. The total cost of this audit was \$280 000.

1.5 Structure of this report

This report is structured as follows:

- Part 2 examines the departments' compliance with disclosure requirements.
 - Part 3 examines the disclosure controls.
-

2 Compliance with disclosure requirements

At a glance

Background

Financial Reporting Direction—FRD12A *Disclosure of Major Contracts* and other government contract disclosure policies, require entities defined as departments under the *Financial Management Act 1994* to disclose on the Victorian Government's Contract Publishing System (CPS) summary information about contracts over \$100 000 and to provide the text of contracts above \$10 million, subject to exclusion of certain material that falls within Freedom of Information exclusion criteria.

As at 1 January 2010, 18 government entities had disclosed around 1 900 contracts worth \$31 billion on the CPS either in summary detail or in full.

Findings

- As at 1 January 2010, six departments had not disclosed the text of 43 of the 144 contracts valued over \$10 million on the CPS, as required by the disclosure policies. The total value of these contracts was around \$3.0 billion, or 10 per cent of the value of such contracts.
- In three selected departments, only 12 instances were noted where summary details of contracts over \$100 000 had not been disclosed.
- At the Departments of Sustainability and Environment (DSE) and Treasury and Finance (DTF) there were deficiencies in processes to approve, explain and document decisions to excise information from published contracts.
- Disclosing procurement under standing offer agreements was not consistent across all departments.
- There is no legislative requirement for departments to disclose the assessment of a contractor's performance. None of the three selected departments had a requirement to provide contract performance data to the responsible minister, or a policy for disclosing contract performance data.

Recommendations

- The secretaries of departments should strengthen their processes for monitoring their compliance with contract disclosure requirements on the CPS and in their annual reports.
- DSE and DTF should develop and document protocols and procedures for approving decisions for excising contract information.
- DSE and DTF should develop a protocol and supporting processes regarding the future release of excised information.

2.1 Disclosure requirements

Financial Reporting Direction—FRD12A *Disclosure of Major Contracts* (FRD12A) and other government contract disclosure policies, require entities defined as departments under the *Financial Management Act 1994* to disclose on the Victorian Government’s Contract Publishing System (CPS) summary information about contracts over \$100 000 and to provide the text of contracts above \$10 million, subject to exclusion of certain material that falls within Freedom of Information exclusion criteria.

Figure 2A sets out the contract disclosure requirements for departments, as stipulated in the FRD12A, and in the earlier government policy on which the FRD is based.

Figure 2A
Summary of private sector contract disclosure requirements

Government Policy and Guidelines (Incorporating Victorian Government Purchasing Board’s (VGPB) guidelines)	Financial Reporting Direction— FRD12A
Operative on 11 October 2000	Operative on 1 July 2005
Applies to departments and agencies that are subject to the VGPB supply policies.	Applies to all entities defined as a department under Section 3 of the <i>Financial Management Act 1994</i> .
Contracts: \$100 000 to \$10 million	
Summary information is to be published on the CPS including: <ul style="list-style-type: none"> • description of goods or services sufficient to identify the nature and quantity of the procurement • for contracts and for variations, total estimated cost/value or liability • for Common Use Arrangements and standing offer agreements (SOA), the total estimated cost/value and period of offer • for each supplier, its name, postal address, post code, state, Australian Business Number • grounds for exclusion of any information. Contract details are to be reported on the CPS within 60 days of the award of the contract.	No specific reference.

Figure 2A
Summary of private sector contract disclosure requirements – *continued*

Government Policy and Guidelines (incorporating VGPB guidelines)	Financial Reporting Direction— FRD12A
Contracts: over \$10 million	
<p>In addition to the summary information, government contracts over \$10 million in value are to be published on the CPS, subject to Freedom of Information (FOI) principles to ensure that genuinely confidential business information is protected.</p> <p>Where a contract is written under the umbrella of a standing offer, the department is to disclose the value of the specific contract and not the gross value of contracts under the standing offer.</p> <p>Where a clause has been deleted from a published contract, a note is to be included explaining the scope of the excision and the grounds on which it has been made.</p> <p>Where major events and business attraction contracts cannot be disclosed, the minister will notify Parliament via the department's annual report and explain the reasons for non-disclosure.</p> <p>Only trade secrets or genuinely confidential business information will be withheld from voluntary disclosure, along with material which if disclosed would seriously harm the public interest.</p> <p>Agency heads are required to:</p> <ul style="list-style-type: none"> • consider contract excisions on a 'case-by-case basis' • document in writing that details of a contract or standing offer are exempt matters under the FOI Act 1982 • disclose on the CPS explanations as to why information has been excised. <p>Where a measure of confidentiality is agreed, this should be time limited where possible.</p>	<p>Prescribed disclosures:</p> <p>A department's annual report must include a statement by the accountable officer advising:</p> <ul style="list-style-type: none"> • that contracts entered into during the reporting period have been disclosed in part or in full, except for certain material that falls within one or more of the criteria contained in the FOI Act 1982 • brief details of the contractors and the purpose of contracts that have not been disclosed, and the date when it will be disclosed • where the details of contracts that have been disclosed are publicly available. <p>Guidance:</p> <p>The accountable officer is responsible for ensuring all contracts above \$10 million are appropriately disclosed in the annual report.</p> <p>Disclosures can be made in either the report of operations or the financial report.</p> <p>Departments are required to disclose the text of contracts above \$10 million on the CPS, subject to exclusion of certain material that falls within FOI exclusion criteria.</p>
Contractor performance	
<p>The relevant minister to review performance data currently collected and consider how and when it might be made public.</p> <p>Performance data will be published frequently and comprehensively, where appropriate with the agreement of the contractors concerned.</p>	<p>No reference to this policy requirement.</p>

Source: Victorian Auditor-General's Office, based on the Government Policy and Guidelines incorporating VGPB guidelines and FRD12A.

2.2 Conclusions

Summary details of contracts above \$100 000 are being disclosed with high rates of compliance.

However, the levels of non-compliance, across the 11 departments, with the requirement to disclose the text of contracts greater than \$10 million, are more significant, diminishing transparency.

The attestation of departmental secretaries in annual reports as to compliance with contract disclosure has been inaccurate. This is concerning. It defeats the purpose of FRD12A, it diminishes transparency and it calls into question the rigor of departmental compliance procedures.

2.3 Disclosure of contracts above \$10 million

As at 1 January 2010, the CPS recorded that 18 government entities had disclosed contract details. Overall, around 1 900 contracts, worth \$31 billion in total, were on the CPS either in summary detail or in full.

However, as Figure 2B shows, six departments—Department of Infrastructure (DOI) is now Department of Transport (DOT)—had not disclosed on the CPS the text of 43 of the 144 contracts valued over \$10 million, as required by the disclosure policies. The total value of these contracts was around \$3.0 billion, ranging in value from \$10.4 million to \$495.7 million.

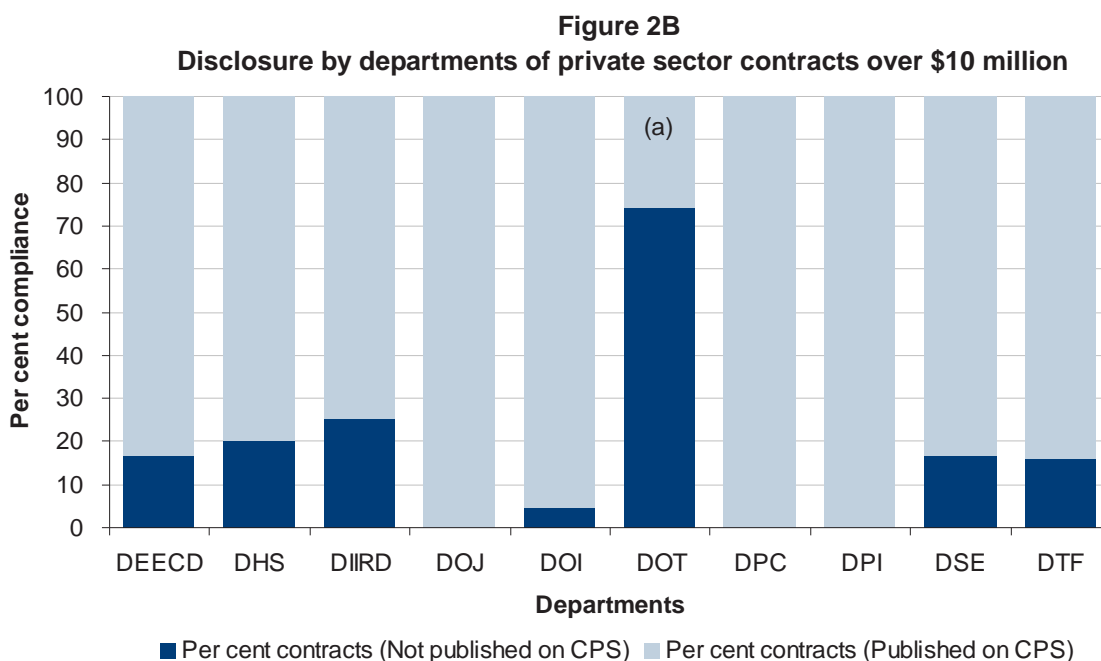


Figure 2B
Disclosure by departments of private sector contracts over \$10 million –
continued

Contracts	DEECD	DHS	DIIRD	DOJ	DOI	DOT	DPC	DPI	DSE	DTF
Total number	12	30	4	10	21	39	1	2	6	19
Value \$'000s	1 085	2 496	398	1 767	6 657	8 081	10	138	5 902	2 691

Note: The Departments of Health and Planning and Community Development are not included because there were no contracts greater than \$10 million recorded on the CPS at 1 January 2010.

(a) Refer to end of Section 2.3 for explanation of this finding.

Source: Victorian Auditor-General's Office.

Departmental explanations for these omissions were not examined in-depth as part of the audit. However, they indicate that the administration of this disclosure requirement has been ineffective. Given the few contracts that must be disclosed, compliance should be simple to achieve and to monitor.

Department of Education and Early Childhood Development

Summary details for two of the 12 contracts, with a combined value of \$35.4 million, were posted, however, the contracts were not published.

The Department of Education and Early Childhood Development (DEECD) advised:

- one contract worth \$24.9 million not posted; details now uploaded
- a contract originally for \$8.8 million was subject to variations, which increased the contract value to \$10.5 million and not posted to the CPS; details now uploaded.

DEECD also advised that it intends to review protocols to ensure contracts over \$10 million are disclosed, and as part of this will examine its procedure manual to confirm disclosure protocols and update if necessary.

Department of Human Services

Summary details for six of 30 contracts, with a combined value of \$85.6 million, were posted, however, the contracts were not published.

The Department of Human Services advised:

- three of these contracts with start dates ranging from May 2005 to May 2009 will be published in May 2010
- three contracts were terminated in June 2008 following the establishment of a Department of Treasury and Finance (DTF) state purchase contract for procurement of security services.

Department of Innovation, Industry and Regional Development

The summary detail for a contract valued at \$34.7 million was posted, however, the contract was not published on the CPS.

The Department of Innovation, Industry and Regional Development (DIIRD) advised that this contract had been posted to the CPS but did not explain why it had since been withdrawn.

DIIRD further advised that it had recently undertaken a review of its contract management processes and procedures that specifically deal with issues around contract registration and other issues raised by the Victorian Auditor General's Office, and that it intends undertake a reconciliation of all contracts on the CPS before the end of the financial year.

Department of Transport/Infrastructure

Summary details for 30 of 60 contracts, collectively valued at \$2,717 million, were posted, however, the text of the contracts were not published on the CPS as at 1 January 2010. Twenty-nine of these contracts totalling \$2 705 million were for provision of metropolitan bus services.

The Department of Transport (DOT) advised:

- The metropolitan bus contracts were published in accordance with government requirements. They were subsequently taken down in 2009 while claims about disclosure of confidential information by the bus contractors were resolved. Confidentiality issues have now been resolved and all the contracts have been republished.
- A contract for \$12 million for provision of legal services was made pursuant to a whole-of-government Legal Services Panel contract, hosted by the Department of Justice (DOJ). DOT understood that the text of the contract had been published by DOJ. This is not the case.

2.4 Disclosure by the three selected departments

The departments examined were largely complying with contract disclosure requirements. However, the Departments of Sustainability and Environment (DSE) and DTF also had contracts above \$10 million that were not disclosed as required.

While the instances of non-compliance detected at DSE and DTF do not point to systemic failure, their processes to excise information require strengthening. DSE also needs to be more vigilant of the potential for inappropriate division of contracts.

2.4.1 Disclosing contracts above \$100 000

We reviewed the CPS for disclosure of contracts over \$100 000 and the text of contracts over \$10 million for the three departments.

The disclosure requirements were met for the majority of the selected contracts. However, we again noted non-compliance and partial compliance as summarised in Figure 2C.

Figure 2C
Compliance with disclosure requirements

Disclosure criteria	DPCD	DSE	DTF
Contracts recorded on CPS (number)	43	202	162
Disclosures on CPS as at 1 January 2010			
• Summary details of contracts over \$10 million posted but the text of contracts not posted	n/a	1	3
• Contracts \$100 000 to \$10 million that were not listed but subsequently posted	nil	5	7
• Contracts not posted within 60 days	2	4*	4
• Contracts that do not specify a value or had a \$0 value	nil	2	2
• Scope and grounds for excisions from published contracts were not disclosed	n/a	2	1
Disclosure in 2008–09 Annual Reports			
• Disclosures about compliance included in reports	Yes	Yes	Yes

Note: *Included in contracts that were not listed but subsequently posted.

Source: Victorian Auditor-General's Office.

The instances of non-compliance and reasons provided for non-compliance are discussed below.

Department of Treasury and Finance

As at 1 January 2010, the CPS recorded 162 current contracts between DTF and the private sector worth a total of \$3.2 billion, including 43 whole-of-government contracts.

The text of three contracts worth more than \$10 million had not been disclosed on the CPS. DTF advised that:

- the contracts were not published due to an administrative oversight
- one contract has since been published.

Summary details for seven contracts over \$100 000 had not been posted on the CPS. DTF advised that procurement managers did not notify the Contract Resourcing Unit about five of these contracts. Two payments for \$163 880 and \$200 485 made in 2008–09 had not been entered into the procurement register or posted on the CPS. DTF could not provide explanations for these omissions.

Department of Sustainability and Environment

As at 1 January 2010, the CPS recorded 202 DSE current contracts with private sector providers worth a total of \$6.2 billion. This amount includes one contract valued at \$5.7 billion for the construction of the desalination plant.

The non-compliance is attributed to three causes:

- confusion about disclosing SOAs
- breakdown in operation of the controls used to initially identify contracts
- using multiple contracts, with individual values below disclosure thresholds, to procure the same services.

Standing Offer Agreement

A contract worth \$15.9 million for the provision of legal advisory services was signed on 24 December 2008. While summary details were posted on the CPS, the contract was not published. As was the case for DOT, DSE advised that the contract was written under the SOA for which DOJ was the lead agency. The SOA is listed under DOJ contracts on the CPS, but it provides only a brief description of legal services to be procured and the 'upper limit' expenditure budget of \$400 million.

The disclosure policy requires that where a contract worth more than \$100 000 is written under the umbrella of an SOA, the department is to disclose the value of their specific contract. DSE has complied with this disclosure requirement.

However, the text of this contract has not been posted to the CPS by either DOJ or DSE as required by government contract disclosure policy.

Summary details not disclosed

Summary details of five contracts over \$100 000 had not been posted on the CPS. DSE advised that contract managers had not sought the approval of the department's accredited purchasing unit (APU) for four of these contracts. The APU support unit identified these 'breaches' in a subsequent periodic check of the payments system. These payments were acknowledged by the APU and posted to the CPS.

Multiple contracts for the one procurement type

Analysis of payments over a six month period was used to identify possible tender splitting. Two instances were subsequently investigated where a contractor had entered into separate contracts for what appeared to be the same procurement type.

Details were:

- **Provision for water quantity and quality monitoring services**—Four separate contracts collectively totalling \$11.9 million were entered into on the same day, for a similar time period and to provide identical services, that is provision of water quantity and quality monitoring services in the north of the state. These contracts, individually, were under the \$10 million threshold for disclosure on the CPS. Summary details were posted on the CPS. DSE advised that a separate tender process was undertaken for each of the four contracts. However, these contracts have subsequently been reduced to one.
- **Engineering services to design/construct bridges**—Three separate contracts were arranged under a panel arrangement with an engineering firm to design and construct bridges in Victoria's Goulburn and Ovens Districts. Each contract provided for the same service in a similar time frame. The contract amounts were \$105 000, \$99 900 and \$60 000. As two of these contracts were under \$100 000, they did not require APU approval and there was no requirement to enter summary details on the CPS. The contract for \$105 000 was not on the CPS. DSE advised that these arrangements were separated as the service was to be provided in different geographical locations and to meet the department's required timelines.

In both instances, in substance if not in their legal form, these contracts represent a single procurement with the one contractor, for the amounts of \$11.9 million and \$264 900 respectively.

Structuring procurements by dividing contracts is inconsistent with the intent of the VGPB procurement principles and policies, as contract disclosure thresholds can be avoided.

Department of Planning and Community Development

As at 1 January 2010, the CPS recorded 43 Department of Planning and Community Development (DPCD) current contracts with private sector providers worth a total of \$20.6 million. There were no contracts worth more than \$10 million.

All contracts over \$100 000 were fully disclosed in accordance with DPCD internal protocols, FRD12A and government policy and guidelines. However, two contracts were not posted within the required 60 days of the award of the contract due to administrative oversight. These have since been posted.

2.4.2 Dealing with contract excisions

Part 4 of the *Freedom of Information Act 1982* (FOI Act 1982) sets out criteria for exempting information from public disclosure. The criteria include matters that are considered commercial-in-confidence.

Policy guidelines require agency heads to:

- consider contract excisions on a 'case-by-case' basis
- document that details of a contract or standing offer are exempt matters under the FOI Act 1982
- disclose why information has been excised.

To give effect to these requirements each department should have a FOI protocol with a formal process for excising information from published contracts in accordance with FOI exclusion criteria. The decisions approved by the departmental secretary should be fully documented.

We found that all three departments had a FOI protocol. However, at DSE and DTF there were deficiencies in processes to approve, explain and document decisions to excise information from published contracts. DPCD had not entered into any contracts over \$10 million and therefore was not required to publish or excise any information on their contracts.

Department of Treasury and Finance

DTF do not have written procedures for excising information from published contracts. Standard practice is to apply a 'blanket approach' to excise all details considered commercial-in-confidence from all contracts. Therefore DTF does not assess individual contracts against FOI criteria when considering excisions. This is inconsistent with the policy guidelines which require excisions to be considered on a case-by-case basis.

In the sample of contracts examined, we noted two contracts where key performance indicator information had been excised. DTF:

- could not demonstrate that this resulted from a documented excision process
- did not document reasons for excising information and did not disclose explanations of excisions from contracts published on the CPS
- did not have a protocol to provide for the timely release of previously excised information.

Department of Sustainability and Environment

DSE's FOI protocol gives the departmental secretary authority to exempt contract details published on the CPS. However, DSE did not have written procedures for excising information from published contracts.

In the sample of contracts, we identified two contracts that had information excised.

- **Victorian Desalination Construction Project (DESAL Contract)**—Sixty-five items were proposed by the service provider to be 'redacted', or excised. DSE responded by indicating how this request would be approached. DSE also considered whether there were any other sections of the project documents that should not be disclosed, having regard to Partnerships Victoria policy which states that 'Victorian [Public Private Partnership] contracts are to be published in full with limited exceptions from disclosure, guided by the criteria of the *Victorian Freedom of Information Act 1982*'. The process to excise information also included consultation with the Minister for Water, the Victorian Civil and Administrative Tribunal and the Privacy Commissioner. DSE also sought independent legal advice. The secretary endorsed and the Minister for Water approved 45 excisions deemed commercially sensitive.

Examples of specific excisions related to:

- calculation of early termination payments for the supply of electricity
- annual minimum quantity of electronic tradeable renewable energy certificates
- details of annual supply of water volume
- compensation for relevant intervening events.

Decisions and explanations for the excisions were appropriately documented.

- **Supply of Crawler Dozers**—Unit prices were excised from this published contract. DSE advised that pricing information was a matter of commercial-in-confidence and was removed at the discretion of the contract manager.

DSE did not:

- go through a documented excision process
- obtain the approval of the departmental secretary for this contract excision as required by the policy.

DSE did not provide its reasons on the CPS for the excisions for either of these contracts as required by the contract disclosure policy. However, DSE advised that the DESAL Contract was executed on 30 July 2009 with financial close on 2 September 2009 and that explanations for excisions would appear in the department's annual report for 2009–10.

DSE does not have a protocol to provide for the timely release of previously excised information. Consequently, there has been no consideration by the department as to when this excised information might be made public in future.

2.4.3 Disclosure in annual reports

Each departmental secretary had included in their 2008–09 annual reports attestations that they had complied with the disclosure requirements for all contracts greater than \$10 million in value.

Given the instances of non-compliance found by this audit, the compliance processes supporting these attestations are clearly not effective.

2.5 Disclosing standing offer agreements

The audit found confusion and a lack of coordination across departments about the disclosure of SOAs, also known as 'common use agreements'. These are the most common method of procurement by departments.

An SOA is an agreement for commonly used goods and services, and is used to provide more effective and efficient procurement. It covers a set period, and usually imposes no obligation on the state to purchase a particular quantity of the goods or services from the supplier. As a group it includes state purchase contracts, open state purchase contracts and departmental standing offer agreements, and software licence enterprise agreements for software licences and associated services.

Disclosure of the value of contracts entered into by departments under SOAs is not consistent across departments. Some departments report the total value of the SOA, others have reported a zero figure. Some departments have done both. The following demonstrate the differing approaches and interpretations:

- Even though SOAs had been established with an approved expenditure budget, some departments reported a zero value on the CPS, reasoning that at the time the arrangement was put in place there was no financial commitment. As summarised in Figure 2C, DTF and DSE had each disclosed two SOAs on the CPS with zero values.
- Contracts subsequently written under an SOA were not disclosed because the department considered they had already been disclosed through the original SOA entry. This is illustrated by the instances found where both DOI and DSE had failed to publish legal services contracts entered into under the DOJ's Legal Services Panel Standing Offer Agreement.

Not disclosing the value of these agreements breaches the policy requirement that the total estimated cost/value and period of offer for such contracts be disclosed.

2.6 Disclosing contractor performance

The government's policy statement required that, where possible, the government should improve and expand the public reporting of information about the performance of major contractors. The policy states that 'performance-related information is arguably even more important to open government than the details of the contract itself, in that it helps to determine whether and to what extent the contract is working successfully'.

Under the policy, ministers are asked to review contractor performance data and to consider how and when it might be made public.

However, unlike the disclosure requirements prescribed in FRD12A, this policy has not been supported by any legislative requirement for departments to disclose their assessments of contractor performance.

None of the three selected department's own protocols require them to provide contract performance data to the responsible minister, or to disclose contract performance data. A review of each department's annual report for 2008–09 and individual websites indicated that contractor performance data was not disclosed.

Recommendations

1. The secretaries of departments should strengthen their processes for monitoring their compliance with contract disclosure requirements on the Contract Publishing System and in their annual reports.
 2. The Departments of Sustainability and Environment and Treasury and Finance should develop and document protocols and procedures for approving and documenting decisions for excising contract information.
 3. The Departments of Sustainability and Environment and Treasury and Finance should develop a protocol and supporting processes regarding the future release of excised information.
-

3 Contract disclosure controls

At a glance

Background

Departmental secretaries are accountable for producing reliable information in their annual reports and for complying with legislative reporting requirements.

The Victorian Government Purchasing Board (VGPB) is the body responsible for independent scrutiny of departmental contracts and is required to maintain the Contract Publishing System (CPS).

Findings

The Departments of Planning and Community Development (DPCD), Sustainability and Environment (DSE) and Treasury and Finance (DTF) had up-to-date internal protocols and guidelines for recording and disclosing their contracts.

DPCD and DSE had adequate contract information systems, and associated controls over completeness and accuracy of contract information. DTF's systems and controls should be strengthened.

VGPB had not monitored whether departments were complying and had not provided guidance on disclosure requirements.

The limited functionality of the CPS inhibits proper disclosure and accessibility.

Recommendations

- DTF should establish a process to monitor the department's payment system to identify payment activities that trigger a disclosure requirement.
- VGPB should issue additional guidance on disclosure requirements, particularly in regard to:
 - which government entities should comply with the contract disclosure requirements
 - conventions for contract descriptions, values and titling.
- VGPB should improve the CPS functionality to allow:
 - for an improved search function
 - variations to be recorded against the original contract
 - entries to record procurement under standing offer agreements.

3.1 Introduction

Departmental secretaries are accountable for producing reliable information in their annual reports, for complying with legislative reporting requirements and establishing internal controls to gain assurance in these respects.

In terms of compliance with contract disclosure requirements the important elements of internal control required are:

- comprehensive and current policies and procedures that are well understood
- reliable information systems, based on a contract register
- checking routines that prevent non-compliance or that detect and correct it when it does occur.

At the central agency level, the Victorian Government Purchasing Board (VGPB) is charged with 'the primary role as the body responsible for independent scrutiny of departmental contracts and is required to maintain the Contract Publishing System (CPS)'.

VGPB promulgates over-arching purchasing policies and guidelines, and scrutinises compliance with these procurement policies primarily through the Annual Supply Reports submitted to it by departments at the end of each financial year.

In this part we examine the effectiveness of the internal control systems established by departments, and the role of the VGPB in supporting and monitoring compliance.

3.2 Conclusions

The Departments of Planning and Community Development (DPCD) and Sustainability and Environment (DSE) have adequate contract information systems, and associated controls over completeness and accuracy of contract information. The Department of Treasury and Finance's (DTF) systems and controls should be strengthened.

Greater clarity is required for disclosure requirements, including which agencies are required to comply with the VGPB disclosure policies and with Financial Reporting Direction—FRD12A *Disclosure of Major Contracts* (FRD12A).

The functionality of the CPS should be improved to facilitate reporting and improve the accessibility of the information it records.

3.3 Departmental controls

3.3.1 Contract disclosure policies and procedures

VGPB policy states that 'public-sector agencies are required to have regard to the government's overall disclosure policy and to document their own procurement and disclosure policies accordingly, as outlined in the Premier's policy statement'.

We found that:

- DPCD, DSE and DTF had up-to-date policies and guidelines for recording and disclosing their contracts. Contract disclosure policies were comprehensive, well documented and consistent with FRD12A and the government's contract disclosure policies. Internal policies and guidelines were available on each department's intranet. However, at DTF there were instances where these policies were not complied with.

3.3.2 Contract registers and disclosure controls

To facilitate complete and accurate recording and reporting of contracts, departments need:

- an up-to-date contract register that captures important information on all contracts, including contract variations
- controls designed to:
 - initially record all key contract details accurately
 - process and record approved contract variations accurately
 - verify the accuracy of information after it is posted to the CPS.

Contract registers

The contract registers at DPCD and DSE were up-to-date. They contained sufficient information to facilitate adequate reporting of contract details.

DPCD registers all contracts over \$25 000. DSE register all contracts over \$50 000 and other contracts below this threshold considered medium risk or higher. These lower thresholds facilitate detection of possible contract splitting and help to identify variations to contracts that take them above disclosure thresholds.

At both departments information entered into the contract registers was independently checked for completeness and accuracy.

DTF maintains a register of applications for procurements over \$100 000. There were instances where details in the register differed from corresponding details on CPS, including reference numbers, contract values, title and end dates. Examples included:

- a contract listed in the register at a value of \$825 000 could not be located on the CPS
- a contract in the register with an approved expenditure of \$1.6 million was listed on the CPS with a value of \$1.3 million and a different provider
- a contract with an approved expenditure of \$70 million was listed on the CPS at 1 January 2010 at \$0.00 value. This amount was subsequently increased to \$220 million on the CPS. The register has not been updated for this variation of the contract value.

DTF could not demonstrate that they undertake any cross checking to verify the completeness and accuracy of contract information in the register.

Whole-of-government contracts

State-wide, whole-of-government contracts are managed by the DTF's Government Services Division (GSD), and are approved directly by the VGPB. GSD manages 43 state contracts.

GSD advises that it uses the CPS as a central repository of contract data. However, the CPS has limited functionality for recording whole-of-government contracts, variations and for contract searching, limiting its usefulness as an alternative to an internal contract register.

Contract disclosure controls

The three departments each had processes with associated controls to facilitate complete and accurate recording of contract information over \$100 000. The common features were:

- For all procurements over \$100 000, contract managers are required to complete a *procurement process report*, which forms the basis for approval of the contract by the departmental accredited purchasing unit (APU).
- Once the contract is approved by the APU, the contract manager completes a *CPS new entry form*, which is used to post contract details to the CPS.
- Each department's APU meets regularly (usually fortnightly) to approve contracts over \$100 000 and to monitor the status of contracts yet to be finalised.
- Contracts are allocated a unique reference number.
- In-built 'system alerts' were in place to advise contract managers when contracts are due to expire or when they are fully expended.

DPCD and DSE also had 'detective' controls to verify that contract disclosures were made on the CPS. These controls included:

- APU support staff periodically reviewed accounts payments records to detect any payments in excess of \$100 000 made without the prior knowledge or approval by the APU and which had not been disclosed on the CPS. These ad hoc breaches were recorded in the departments' annual supply reports to the VGPB as required.
- To verify the accuracy of information entered into contract registers and disclosures on the CPS, independent checks of all contracts are required.

DTF does not monitor payment records to verify that all payments over \$100 000 are identified and recorded. Procurement registers are not independently checked to verify the completeness and accuracy of contract information, and there was no independent checking to verify the completeness and accuracy of contract information posted to the CPS.

3.4 Central oversight and administration

3.4.1 Guidance

In addition to the issues identified relating to the disclosure of standing offer agreements (SOA) we detected a range of other inconsistent disclosures of contract details posted by departments on the CPS. This reflects a level of confusion by departmental staff regarding the relevance of some contract information, how one contract may relate to another and what information is required to be disclosed. To illustrate:

- Variations to the original contracts were posted as a separate entry, or posted with no link to the original contract. They appear therefore to be separate contracts.
- Variations which raise contract values above the disclosure threshold have not been published.
- Postings which do not disclose that the contract was written under an SOA.
- Inconsistent approaches to naming and classifying contracts.

VGPB, in its primary role, should clarify these issues via policy guidance.

3.4.2 Scope of disclosure policies and legislation

It is not clear whether administrative offices should comply with the contract disclosure requirements. Presently they do not comply.

The VGPB annual report for 2008–09 states that ‘for the purposes of reporting procurement activity by departments, administrative offices are defined as departments in accordance with the *Financial Management Act 1994*. These offices therefore are subject to the VGPB supply policies.

FRD12A states that it applies to all entities defined as a department under section 3 of the *Financial Management Act 1994*. Administrative offices are classified under both the *Financial Management Act 1994* and the *Public Administration Act 2004* as ‘departments’.

However, DTF advised that FRD12A was issued for the direction of government departments and it was not intended that the disclosure requirements of the FRD extend to administrative offices. This is at odds with the wording of the FRD, and with the intent of the earlier policy on which it is based. Such apparently contradictory advice contributes to the confusion about the application of the disclosure policy.

3.4.3 Functionality of the Contracts Publishing System

The CPS presents the user with a list of contracts under each department but its functionality is limited particularly in regard to making a proper record and locating a specific contract. In attempting to locate contracts we observed that accessibility of information on the CPS is limited due to:

- lack of mandatory contract titling conventions or categorisation of contracts
- the absence of a 'key word' search capacity
- procurements under SOAs are not able to be linked to their respective SOA
- variations are not able to be linked to the original contracts.

These limitations hamper efficient and effective searching and create difficulties in determining whether a contract is an SOA, procurement under an SOA, or a variation to an existing contract.

VGPB advised that in early 2010, a number of system functionality enhancements to the CPS were identified. Work is currently underway to develop and implement the following:

- the publishing of contract variation details
- alignment of CPS terminology with VGPB policy terminology to improve consistency.

VGPB further advised that these enhancements form part of a series of enhancements to be implemented over the course of 2010.

Recommendations

4. The Department of Treasury and Finance should establish a process to monitor the department's payment system to identify payment activities that trigger a disclosure requirement.
5. The Victorian Government Purchasing Board should issue additional guidance on disclosure requirements, particularly in regard to:
 - which government entities should comply with the contract disclosure requirements
 - conventions for contract descriptions, values and titling.
6. The Victorian Government Purchasing Board should improve the Contract Publishing System functionality to allow:
 - for an improved search function
 - variations to be recorded against the original contract
 - entries to record procurement under standing offer agreements.

Appendix A.

Audit Act 1994 section 16— submissions and comments

Introduction

In accordance with section 16(3) of the *Audit Act 1994* a copy of this report was provided to the Victorian Government Purchasing Board and the departments of Education and Early Childhood Development; Human Services; Innovation, Industry and Regional Development; Planning and Community Development; Sustainability and Environment; Transport and Treasury and Finance with a request for comments or submissions.

The comments and submissions provided are not subject to audit nor the evidentiary standards required to reach an audit conclusion. Responsibility for the accuracy, fairness and balance of those comments rests solely with the agency head.

Submissions and comments received

RESPONSE provided by the Secretary, Department of Education and Early Childhood Development



Department of Education and Early Childhood Development

Office of the Secretary

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SEC 20520

Mr D D R Pearson
Auditor-General
Victorian Auditor-General's Office
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Dear ^{Des} Mr Pearson

Thank you for your letter of 01 June 2010 inviting management comments on the proposed report for the performance audit of *Managing the Requirements for Disclosing Private Sector Contracts*.

I note reference in the report to two Department of Education and Early Childhood Development contracts for which contract details have now been uploaded to the Contracts Publishing System and thank you for bringing this matter to the Department's attention.

As already noted in the report, the Department intends to review its protocols to ensure contracts over \$10 million are disclosed and our procedure manual is up to date.

I have no further management response I wish to be included in the report for tabling.

Should you wish to further discuss this matter, please contact Mr James Kelly, General Manager, Portfolio Governance and Improvement Division, on 9637 3158.

Yours sincerely

Prof. Peter Dawkins
Secretary



RESPONSE provided by the Secretary, Department of Human Services



Department of Human Services

Secretary

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OUR REF: E1961758

YOUR REF: FILE NO: 26443-01

Mr D D R Pearson
Auditor-General
Level 24, 35 Collins Street
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Dear Mr Pearson

**Audit Act 1994, s16(3) – Proposed Audit Report
Managing the Requirements for Disclosing Private Sector Contracts**

Thank you for your letter of 1 June 2010, in which you provide the opportunity for the department to provide submissions or comments for inclusion in the report, if we wish to do so.

The department does not wish to provide further submissions or comments on the report.

We confirm that the facts contained in the report, as *related* to the Department of Human Services and the Department of Health, are accurate.

Should you wish to further discuss this matter, please contact Bob Venables, Manager Strategic Procurement on 9096 2637.

Yours sincerely

Gill Callister
Secretary
Department of Human Services

Lance Wallace
Acting Secretary
Department of Health



RESPONSE provided by the Secretary, Department of Sustainability and Environment



**Department of
Sustainability and Environment**

Ref: SEC006780

File:



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Dear Mr Pearson

**PROPOSED AUDIT REPORT - MANAGING THE REQUIREMENTS FOR
DISCLOSING PRIVATE SECTOR CONTRACTS**

Thank you for your report "*Managing the Requirements for Disclosing Private Sector Contracts*" that examined whether contract disclosure requirements had been complied with.

The Department of Sustainability and Environment (DSE) accepts the recommendations and will implement within the next year strengthened policies and procedures for excising contract information and a protocol with supporting processes regarding the future release of excised information.

However, while supportive of the advice given, I believe the report may have benefited from the clarification of some matters that were raised by my department during the audit process. These items, referred to in Chapter 2 of the report, are discussed below.

Chapter 2.4.1 - Multiple contracts for the one procurement type (p. 12)

DSE believes the two instances indicated in the report of possible tender splitting are not supported by evidence. The department is confident that full details of the procurement strategies pursued by DSE were provided to your Office and these demonstrated that multiple tenders were sought and bids were independently assessed. These processes would not preclude a firm being successful on more than one occasion.

Chapter 2.4.2 - Contract excisions (p.14)

The department believes that the description used in the examples of the excisions for the Victorian Desalination Plant of "details of annual supply of water volume" can be seen as ambiguous. The Government has not entered into arrangements to take a minimum

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RESPONSE provided by the Secretary, Department of Sustainability and Environment – continued

quantity of water. It is required to place orders for water annually and can do so for any amount up to 0, 50, 75,125 or150 gigalitres.

The department would like to point out again that Financial Reporting Direction FRD12A does not require the reasons for excision to be published on the Contract Publishing System. In the case of the Victorian Desalination Plant, an explanation will be contained, as required, in the department's forthcoming Annual Report. The Victorian Desalination Plant is being delivered as a public-private partnership and has fully complied with the disclosure requirements of the Partnerships Victoria Framework.

Chapter 2.4.3 - Disclosure in Annual Report (p.15)

The attestation for the majority of contracts examined by the audit and referred to in this part of the report will be in the forthcoming annual report.

As indicated above, I am very supportive of the advice your office has provided but suggest the report would have benefited from the clarification of the above points. As provided for in your letter of 1 June 2010, I would appreciate the inclusion of these comments in the report and I would be pleased to discuss the report's conclusions with you at any time.

Yours sincerely



Greg Wilson
Secretary

RESPONSE provided by the Secretary, Department of Transport



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Our Ref: FOL/08/19214
File: DOC/10/331194

Mr D D R Pearson
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Dear Mr ^{De} Pearson

PROPOSED REPORT- *MANAGING THE REQUIREMENTS FOR DISCLOSING PRIVATE SECTOR CONTRACTS*

I refer to the above report enclosed with your letter of 1 June 2010 and accept recommendation 1 as it relates to the Department.

In your report, you note that the Department had not disclosed the text of the contract for \$12m for provision of legal services pursuant to a whole-of-government Legal Services Panel contract. As the contract is hosted by the Department of Justice, it is considered appropriate that the reporting obligations rest with that Department. However, I note recommendation 5 seeks the VGPB issue additional guidance on disclosure requirements in these circumstances.

In respect of one of your conclusions concerning the consequences of non-disclosure and the relevant statements made by Secretaries in their departmental annual reports, I advise that I have met my obligations in this regard.

Yours sincerely


JIM BETTS
Secretary

9 / 6 / 2010




RESPONSE provided by the Secretary, Department of Treasury and Finance



Department of Treasury and Finance

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Mr Des Pearson
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Dear Mr Pearson

RESPONSE TO PROPOSED AUDIT REPORT - MANAGING THE REQUIREMENTS FOR DISCLOSING PRIVATE SECTOR CONTRACTS

Thank you for providing me the opportunity to provide formal comments on the proposed Auditor-General's Report *Managing the Requirements for Disclosing Private Sector Contracts*, prior to its finalisation and transmission to Parliament this month.

I wish to provide the following formal response for inclusion at the end of the Audit Summary.

The Department of Treasury and Finance (DTF) thanks the Auditor-General's Office for its work and welcomes the report Managing the Requirements for Disclosing Private Sector Contracts. DTF notes the recommendations made by the Auditor-General in the report and provides the following specific responses:

Recommendation 1: The Secretaries of departments should strengthen their processes for monitoring their compliance with contract disclosure requirements on the CPS and in their annual reports.

Response: DTF has reviewed its current processes and has now taken steps to ensure adequate advice to, and follow up with, Contract Managers in relation to ongoing Contract Publishing System (CPS) requirements.

Recommendation 2: DSE and DTF should develop and document protocols and procedures for approving and documenting decisions for excising contract information.

Recommendation 3: DSE and DTF should develop a protocol and supporting processes regarding the future release of excised information.



RESPONSE provided by the Secretary, Department of Treasury and Finance – continued

Response: DTF accepts recommendations 2 and 3. DTF will develop a process for determining what will and will not be published on the Contract Publishing System. Such process will demonstrate and record how decisions to withhold information are arrived at, with reference to the relevant exemptions under the Freedom of Information Act 1994. This process will also consider the appropriate future release of such information.

Recommendation 4: DTF should establish a process to monitor the department's payment system to identify payment activities which trigger a disclosure requirement.

Response: DTF has established a process to monitor the Department's payment system for all payments that would trigger a CPS disclosure requirement.

Recommendation 5: The VGPB should issue additional guidance on disclosure requirements, particularly in regard to:

- which government entities should comply with the contract disclosure requirements
- conventions for contract descriptions, values and titling.

Response: The VGPB recently wrote to all departments outlining their obligations under the VGPB's Disclosure of Contracts > \$100,000 policy. The VGPB is committed to its role in monitoring compliance with its policies and will continue to identify, where applicable, opportunities to optimise understanding and compliance.

Recommendation 6: The VGPB should improve the CPS functionality to allow:

- for an improved search function
- variations to be recorded against the original contract
- entries to record procurement under standing offer agreements.

Response: In early 2010, a number of system functionality enhancements to the CPS were identified. Work is currently underway to develop and implement the following:

- The publishing of contract variation details
- Alignment of CPS terminology with VGPB policy terminology to improve consistency

If you require further information or would like to discuss the content of this letter, please contact Sue Eddy, Director, Budget & Financial Management Division on 9651 5921.

Yours sincerely



Grant Hehir
Secretary

Auditor-General's reports

Reports tabled during 2009–10

Report title	Date tabled
Local Government: Results of the 2008–09 Audits (2009–10:1)	November 2009
Public Hospitals: Results of the 2008–09 Audits (2009–10:2)	November 2009
Towards a 'smart grid'— <i>the roll-out of Advanced Metering Infrastructure</i> (2009–10:3)	November 2009
Responding to Mental Health Crises in the Community (2009–10:4)	November 2009
Management of the Community Support Fund (2009–10:5)	November 2009
Auditor-General's Report on the Annual Financial Report of the State of Victoria, 2008–2009 (2009–10:6)	November 2009
Water Entities: Results of the 2008–09 Audits (2009–10:7)	November 2009
Maintaining the Integrity and Confidentiality of Personal Information (2009–10:8)	November 2009
Vehicle Fleet Management (2009–10:9)	November 2009
Managing Offenders on Community Corrections Orders (2009–10:10)	November 2009
Portfolio Departments and Associated Entities: Results of the 2008–09 Audits (2009–10:11)	December 2009
Making Public Transport More Accessible for People Who Face Mobility Challenges (2009–10:12)	December 2009
Use of Development Contributions by Local Government (2009–10:13)	December 2009
The Effectiveness of Student Wellbeing Programs and Services (2009–10:14)	February 2010
Tendering and Contracting in Local Government (2009–10:15)	February 2010
Management of Concessions by the Department of Human Services (2009–10:16)	February 2010
Irrigation Water Stores: Lake Mokoan and Tarago Reservoir (2009–10:17)	March 2010
Management of Safety Risks at Level Crossings (2009–10:18)	March 2010
Fees and Charges—cost recovery by local government (2009–10:19)	April 2010
Performance Reporting by Departments (2009–10:20)	May 2010
Tertiary Education and Other Entities: Results of the 2009 Audits (2009–10:21)	May 2010

Auditor-General's reports

Reports tabled during 2009–10

Report title	Date tabled
Managing Teacher Performance in Government Schools (2009–10:22)	May 2010
Control of Invasive Plants and Animals in Victoria's Parks (2009–10:23)	May 2010
Partnering with the Community Sector in Human Services and Health (2009–10:24)	May 2010
The Community Building Initiative (2009–10:25)	May 2010
Administration of the Victorian Certificate of Education (2009–10:26)	June 2010
Hazardous Waste Management (2009–10:27)	June 2010
Personal Safety and Security on the Metropolitan Train System (2009–10:28)	June 2010
Irrigation Efficiency Programs (2009–10:29)	June 2010
Access to Social Housing (2009–10:30)	June 2010
Management of Major Rail Projects (2009–10:31)	June 2010
Managing the Requirements for Disclosing Private Sector Contracts (2009–10:32)	June 2010

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