



Express law *fast track information for clients*

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Cessation of the Endorsed Supplier Arrangement

Agencies are no longer restricted in acquiring major office machines (MOM) and information communications technology (ICT) goods and services from endorsed suppliers.

The Australian Government Endorsed Supplier Arrangement (ESA) ceased operation on 29 November 2006 as a result of an announcement by Senator the Hon. Richard Colbeck, Parliamentary Secretary to the Minister for Finance and Administration, revoking the mandatory use of endorsed suppliers for the provision of ICT and MOM goods and services to the Australian Government.

Existing ICT and MOM endorsed suppliers have become members of a new ICT Multi Use List administered by the Department of Finance and Administration, however use of this list is not mandatory.

Effect on requests for tender and other procurement processes

Approaches to the market in preparation

Agencies preparing requests for tender and other documentation to be used in approaches to the market should ensure that they do not contain any condition for participation or other requirement that tenderers be an endorsed supplier.

The ICT Multi Use List provides an opportunity for suppliers to state their credentials and for agencies to identify suitable suppliers. Agencies may also use the list for select tender processes.

Approaches to the market that have been released

Where an agency has released an approach to the market that includes a requirement that tenderers must be an endorsed supplier either at the time of submission of their tender or prior to contract, the agency will need to consider the appropriate course of action it should take.

As a matter of process, one of the most important considerations will be compliance with the Commonwealth Procurement Guidelines, particularly in terms of obtaining value for money. Accordingly, if the nature of the services is such that it is likely that greater value for money will be obtained by cancelling the approach to the market process, then it would be in the public interest to do so. However, if an assessment is made which suggests that there would be little or no significant change in value for money by cancelling and re-issuing the approach

to the market or if significant costs have been incurred by the suppliers and the agency, then it may be contrary to the public interest to cancel and re-issue the approach to the market. This is a matter which would have to be assessed on a case by case basis depending on the circumstances of each case.

If an agency has a preferred supplier who was not ESA endorsed, and was therefore excluded from the tendering process, the agency should approach the ESA contact at the Department of Finance and Administration for assistance in facilitating inclusion.

Where an approach to the market has not yet closed, agencies should immediately consider issuing an addendum to remove any endorsed supplier requirements. This would be an appropriate course of action to take even where the agency is still in the process of considering whether the process should be cancelled.

A form of addendum suggested by the Department of Finance and Administration is contained in the advice to procurement officers issued by Finance on 29 November 2006 (see attached).

Effect on financial, insurance and guarantee requirements

Agencies should note that they can no longer rely on the ESA to ensure that mandatory levels of insurance are in place with suppliers that were endorsed.¹ Any requirement an agency has with respect to minimum insurance levels or to guarantees or financial undertakings must be included in documentation and related contracts when making an approach to the market.

Effect on contract management

Agencies should review existing contracts to identify what action may be necessary as a result of the cessation of the ESA. For example, contracts that contain a requirement that the contractor must at all times be an endorsed supplier should be amended so that the contractor is not in breach because it is no longer possible for them to comply with this requirement.

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See also:

http://www.parlsecfinance.gov.au/media/2006/mr_052006.html

<http://www.finance.gov.au/ictmul/>

Note

- 1 Existing endorsed suppliers are permitted to use the ESA logo and promote the fact of their endorsement until the end of 2007, but the obligations under the former ESA Head Agreement ceased on 29 November 2006.

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