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Procurement Manual

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Program Managers' Toolkit

Departmental Procurement Manual

PART A - PRINCIPLES AND POLICY FRAMEWORK

1. Overview

1.1 Purpose

The purpose of this manual is to provide guidance on the Department's procurement practices. The manual is consistent with the Commonwealth Procurement Guidelines (CPGs), Chief Executive Instructions (CEIs) and Finance Business Rules (FBRs). Local procurement procedures must be consistent with these guidelines.

1.2 Audience

The target audiences for this manual are:

- delegates with procurement responsibilities,
- Project Officers,
- Finance Liaison Officers,
- all staff involved with spending public money, and
- other persons (eg. consultants, contractors, committee members) working with departmental staff.

1.3 Effective date

This manual takes effect from 1st July 2007. It is currently being revised. legislative requirements have been updated for currency.

1.4 Updates

From time to time, guidance and policies related to procurement are released and come into effect before they can be incorporated in this manual. Where this occurs, the Program Funding and Procurement Service (PFPS) section will release Procurement Bulletins to support this manual. These bulletins can be found on the PFPS intranet site. Officials embarking on new projects should consult this site.

1.5 Contacts

The list below contains contacts for procurement-related information

For information and advice on...	Contact...	Contact details
<ul style="list-style-type: none"> • Policy • Procedures • Best practice • Procurement Bulletins • Existing contracts or arrangements • Contract reporting requirements • Annual Procurement Plans 	Program Funding and Procurement Service	Telephone: (02) 6289 5921 Intranet: <u>Program Funding and Procurement Service (PFPS)</u>

<ul style="list-style-type: none"> ● Claiming Exemptions from Mandatory Procedures 		
<ul style="list-style-type: none"> ● Tender box management 	Tender Box Custodian	Telephone: (02) 6289 3945
<ul style="list-style-type: none"> ● SAP Fi transactions ● Recurring purchase order ● Milestone purchase order ● Asset management ● Reporting contracts awarded 	Financial Business Support	Telephone: (02) 6289 4900
<ul style="list-style-type: none"> ● Contract templates, ● Non-standard arrangements ● Matters arising out of existing contracts ● Purchase of external legal services 	Legal Services Branch	Telephone: (02) 6289 1777 <u>Legal Services Branch</u>
<ul style="list-style-type: none"> ● IT goods or services ● IT consultancy services 	ICT Services	Email: <u>IT Contracting</u>
<ul style="list-style-type: none"> ● Printing publications and graphics 	Business Group	Telephone: (02) 6289 5403 <u>Publications Production Unit</u>
<ul style="list-style-type: none"> ● Risk management and insurance 	Corporate Support Branch	Telephone: (02) 6289 1357 - Risk management Telephone: (02) 6289 4327 - Insurance

2. Introduction

This Manual is presented in three parts:

- Part 1 sets the framework for strategic procurement management.
- Part 2 provides practical guidance on the full cycle of procurement activities and is aligned with the Procurement Toolkit (also being updated).
- Part 3 outlines reporting requirements for the appropriate scrutiny of procurement and identifies the other policies and requirements affecting procurement.

Procurement encompasses the whole process of acquiring goods and services. It begins when the Department has identified a need and decided on its procurement requirement. Procurement continues through the processes of risk assessment, seeking and evaluating alternative solutions, contract award, delivery of and payment for the goods and services and, where relevant, the ongoing management of a contract and consideration of options within the contract and succession planning.

Please note: Consultancies are not discussed in depth in this manual; please refer to Finance Business Rule 6.5 - Consultants and Contractors.

The Department's financial management information system is SAP Fi. All procurement must be recorded in SAP Fi, and procedures to record this information can be found at SAP Courseware.

The Department must publish Annual Procurement Plans on 1st July each year and maintain the information published.

The Department must comply with a number of scheduled and unplanned contract reporting obligations. To support these requirements the SAP Contract Register has been established. All procurement contracts must be recorded in the SAP Contract Register when formed.

All local/business area procedural guides and manuals are to be consistent with this manual.

3. Procurement Framework

3.1 Commonwealth Procurement Guidelines

3.1.1 Introduction

The Commonwealth Procurement Guidelines (CPGs) are issued by the Minister for Finance under authority of the Financial Management and Accountability Act 1997. All Commonwealth procurement must be conducted in accordance with the CPGs.

The Commonwealth Procurement Guidelines (CPGs) may be accessed on-line from the Department of Finance and Deregulation website.

An official conducting procurement must be familiar with the detail of the CPGs. Below is an overview of the principles contained in the CPGs.

The policies and principles contained in the CPGs apply to all procurement. However a class of procurement known as "covered procurement" (where the potential value of the procurement is not known or has a potential to reach \$80,000 or more in value) must comply with mandatory processes (division 2 of the CPGs).

Useful information regarding making commitments to spend public money (including the administration of the Financial Management and Accountability Regulations) can also be found in Finance Circular 2011/01 - Commitments to spend public money (FMA Regulations 7 to 12)

3.1.2 Value for Money

Value for money is the core principle governing Australian Government procurement and must be viewed within the context of the governing policies and principles. This principle requires a comparative analysis of all relevant costs and benefits of each compliant proposal throughout the whole procurement cycle (whole-of-life costing).

Value for money takes into consideration factors such as:

- fitness for purpose
- performance history of each prospective supplier,
- relative risk of each proposal,
- flexibility to adapt to possible change over the lifecycle of the goods or services,
- financial considerations including all relevant direct and indirect benefits and costs over the whole procurement cycle, and
- evaluation of contract options.

3.1.3 Encouraging Competition

Encouraging competition is achieved by:

- applying non-discriminatory principles to the invitation to and selection of a supplier including encouraging and facilitating the participation of small to medium enterprises (SMEs); and
- applying competitive procurement processes.

3.1.4 Efficient, Ethical and Economic Use of Resources

Efficient procurement is aided by conducting a transparent, fair and appropriately competitive process of a scale commensurate

with the size and risk profile of the particular project.

Effectiveness can be achieved by ensuring that the goods or services being sought will make the maximum possible contribution to the relevant outcome. This entails correctly identifying the need, accurately drafting specifications, rigorously assessing the responses and establishing and diligently managing the contract. Comprehensive monitoring and review at all stages of the procurement process further contributes to effectiveness.

Effective risk management is integral to efficiency and effectiveness, enabling the Department to proactively identify, evaluate and manage risks, opportunities and issues arising out of procurement related activities.

Procurement must be conducted ethically to enable purchasers and suppliers to deal with each other on the basis of mutual trust and respect. Adopting an ethical, transparent approach enables business to be conducted fairly, reasonably and with integrity. Refer to the [Ethics and Probity information sheet \(Word 32 KB\)](#) for more information.

Ethical behaviour also enables procurement to be conducted in a manner that enables participating suppliers to compete on an equal basis.

Economic use of resources relates directly to the issue of value for money outlined above.

3.1.5 Accountability and Transparency

Accountability means that officials are responsible for the actions and decisions they take in relation to procurement and for the resulting outcomes.

Transparency involves the Department taking steps to support appropriate scrutiny of procurement activity. Officials must make transparency an inherent characteristic of all procedures, plans, actions and decisions relating to procurement. Therefore proper maintenance of records and documentation of decisions is essential as is reporting contracts, providing feedback to tenderers and dealing promptly with complaints.

Clause 7.13 of the [CPGs](#) contains a table indicating the documentation required at different stages of the procurement process.

As an aid to transparency the Department is required to publish Annual Procurement Plans.

3.1.6 Other policies

In addition to the general policies and principles, the [CPGs](#) specifically address:

- Mandatory procurement procedures which apply to "covered procurement", ie where the procurement is not exempt and the potential value is not known or will reach \$80,000 or more. Staff undertaking covered procurement must be familiar with Division 2 of the [CPGs](#) which provides guidance on Mandatory Procurement Procedures (MPPs).
- Exemptions from Mandatory Procurement Procedures. For example an exemption from the MPPs is available for businesses that primarily exist to provide the services of persons with a disability, where they represent value for money. For more information on this specific exemption refer to the [disability services and procurement intranet page](#).
- Policies that interact with procurement as set out in Guidance on [Complying with Legislation and Government Policy in Procurement](#). (Further information is provided in PART C which includes Departmental Policies.)

The Department also engages in many infrastructure projects, therefore if you are undertaking a procurement activity that involves capital works (construction), you may be required to comply with the following legislation:

- Australian Government Building and Construction OHS Accreditation Scheme (Accreditation Scheme); and
- Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry (Code and Guidelines).

For more information refer to the Department's [Capital Works Guidance \(Word 43 KB\)](#) or contact the [Program Funding and](#)

reported as "Open Tender" as this is the point where value for money is determined, but any refined bids from a panel established on the basis of a select approach would be reported as "Select Tender").

4. Other Issues

4.1 Conflict of Interest

Conflict of interest arises where an official or adviser (i.e. staff member, committee member or contractor) has an affiliation either directly or indirectly (e.g. partner/family member or close family friend) or interest that might prejudice, or be seen to prejudice, his or her impartiality. This definition also applies to committee members, including those who are not employed by the department.

The responsibility to identify and report a Conflict of Interest, or the potential for the appearance of a Conflict of Interest is always the responsibility of the individual officer. See also the:

- [APS Code of Conduct](#)
- [Corporate Business Rule 4 - Conflict of Interest](#)
- [Guidance on Ethics and Probity in Government Procurement](#)
- [Ethics and Probity Information Sheet \(Word 34 KB\)](#)
- [Code of Ethics in Procurement](#)

The Expenditure Approver is to ensure that people who are not employees of the Department and are assisting in procurement projects, sign a Deed of Confidentiality and are aware of their responsibility to declare any conflict of interest. In addition, these people will not be permitted to participate as a potential supplier (or sub-contractor of a supplier) to that project.

A conflict of interest will be considered to exist where the contractor will be unable (or is likely to be unable) to carry out his/her responsibilities as a contractor in an objective and balanced way, because of other professional involvements or interests.

Example:

1. An advertising agency whose existing clients include a tobacco company would not be acceptable for a consultancy to develop an anti-smoking campaign because of the clear conflict of interest.
2. A consulting firm retained by a funded organisation or group of organisations would not normally be engaged to recommend measures affecting the same funded organisation(s).
3. An organisation that developed a methodology to deliver a program should not be engaged to evaluate the success of that program.

The possibility and the consequences of a conflict of interest should be discussed in the request for offer documents so those potential contractors can decide whether to invest resources in the development of a proposal. Including the draft contract in the tender documents, which include a conflict of interest clause, will also draw suppliers' attention to this issue.

Non-departmental personnel involved in the development of requirements or reviewing the requirements must be aware, when they accept involvement in the process, that their parent organisations cannot be involved in tendering and that they may not offer themselves as consultants to potential tenderers. Non-departmental personnel must be engaged through a contract specifying these conditions or by use of a deed of confidentiality and declarations of conflict of interest. [Corporate Business Rule 4 - Conflict of Interest](#)

All personnel involved as assessors, advisers and Project Officers providing secretariat services to the evaluation committee must declare any conflicts or potential conflicts of interest and need to have read the Code of Ethics in Procurement. Non-APS participants in the process are also required to sign deeds of confidentiality before their involvement commences. This is because they may have close associations with the industry providing tenders.

4.2 Insurance and Indemnities

4.2.1 Indemnity

The Commonwealth policy regarding indemnities is that the Commonwealth should seek appropriate indemnities from a supplier in relation to the procurement. The Commonwealth may also provide an indemnity to a supplier in rare and exceptional circumstances only after a rigorous risk assessment has been undertaken.

Commonwealth policy on the granting of indemnities to a supplier is contained in [Finance Circular 2003/02 Guidelines for Issuing and Managing Indemnities, Guarantees, Warranties, and Letters of Comfort](#). This document summarises when the Commonwealth will give an indemnity, the reporting and disclosure requirements and risk management considerations and obligations.

[FMA Regulation 10](#) approval is required prior to [FMA Regulation 9](#) approval for all proposed contracts containing indemnities. See also: [What potentially triggers Regulation 10?](#)

4.2.2 Insurance and Indemnities

The Department insures against many risks through the Commonwealth's self managed insurance scheme known as Comcover (general insurance).

The scheme insures the Department's own losses and liabilities. Suppliers are not covered under Comcover. If a supplier requires insurance for its own potential losses and liabilities it must obtain its own insurance.

Comcover expects the Department to act prudently when entering into agreements with suppliers. The Department should, as a general rule, require suppliers to provide indemnities in respect of losses and liabilities incurred by the Department as a result of the supplier's own acts or omissions or the act or omissions of those for whom the supplier is responsible. This requirement is covered by standard clauses in the Department's contract and funding agreement templates.

It is the Department's policy to allocate risks to the party best able to control that risk. Contractors/consultants, engaged by the Department, or participants receiving funding, are therefore required to:

- Indemnify the Commonwealth against loss; and
- Maintain appropriate levels of insurance Public Liability (PL) and Professional Indemnity (PI) insurance. Consequently, contracts or funding agreements between the Department and organisations must specify the type(s) and level(s) of insurance they must have in place at the time of the contract or agreement being approved by the delegate.

Further information is available at:

- [Corporate Business Rule 12 - Insurance](#)
- [Public Liability & Professional Indemnity Insurance in Contracts Guidelines](#)
- [Public Liability & Professional Indemnity Guidelines for Funding Agreements](#)