Department of Finance
(Commercial & Government Services)

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Content

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1. Foreword

I am pleased to release the Commonwealth Procurement Rules to reflect the Australian Government’s policies and expectations of procuring officials.

The Australian Government is committed to building a stronger, more prosperous and resilient economy where Australian businesses can be competitive on a domestic and international level. With this in mind, we are focussed on reducing the cost of doing business with the Commonwealth by cutting red tape and enhancing government engagement with business, including small and medium business.

I have made these Commonwealth Procurement Rules under section 105B(1) of the Public Governance, Performance and Accountability Act 2013 (PGPA Act). The previous Commonwealth Procurement Rules - 20 April 2019 (F2019L00536) are repealed when this instrument commences on 14 December 2020.

The Commonwealth Procurement Rules are the keystone of the Government’s procurement policy framework. They are supported by a range of tools including the AusTender system, guidance material and templates developed and maintained by the Department of Finance to ensure accountability and transparency, and reduce the costs and complexity of conducting business with the Australian Government.

Achieving value for money is the core rule of the Commonwealth Procurement Rules as it is critical to ensuring that public resources are used in the most efficient, effective, ethical and economic manner. However, it is important to remember that price is not the only factor when assessing value for money, and officials are required to consider all relevant financial and non-financial costs and benefits, including environmental sustainability, associated with a procurement.

The Australian Government considers it is important to understand the economic implications of major contracts and therefore requires agencies to examine the value offered by different suppliers. Suppliers are encouraged to demonstrate the economic benefits of their proposals in procurements valued above $4 million (or $7.5 million for construction services).

There is sufficient flexibility in these rules to provide opportunities for innovation and for officials to design processes that appropriately reflect the size, scope and risk of the procurement. The framework reflects officials’ responsibilities, including under the PGPA Act and Australia’s international obligations, and factors that must be considered in meeting the core rule of achieving value for money.

Simon Birmingham
Minister for Finance
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2. Procurement framework

2.1 The Commonwealth Procurement Rules (CPRs) are issued by the Minister for Finance (Finance Minister) under section 105B(1) of the Public Governance, Performance and Accountability Act 2013 (PGPA Act).

2.2 Officials from non-corporate Commonwealth entities and prescribed corporate Commonwealth entities listed in section 30 of the Public Governance, Performance and Accountability Rule 2014 must comply with the CPRs when performing duties related to procurement. These entities will collectively be referred to as relevant entities throughout the CPRs.

2.3 Rules that must be complied with in undertaking procurement are denoted by the term must. Non-corporate Commonwealth entities must report non-compliance with the rules of the CPRs through the Commonwealth’s compliance reporting process. The term ‘should’ indicates good practice.

2.4 The CPRs are the core of the procurement framework, which also includes:

a. web-based guidance, developed by the Department of Finance (Finance) to assist entities to implement the procurement framework;

b. Resource Management Guides, which advise of key changes and developments in the procurement framework; and

c. templates, such as the Commonwealth Contracting Suite, which simplify and streamline processes, creating uniformity across Commonwealth contracts to reduce the burden on businesses when contracting with the Commonwealth.

2.5 An Accountable Authority may use Accountable Authority Instructions to set out entity-specific operational rules to ensure compliance with the rules of the procurement framework.

2.6 These CPRs do not apply to the extent that an official applies measures determined by their Accountable Authority to be necessary for the maintenance or restoration of international peace and security, to protect human health, for the protection of essential security interests, or to protect national treasures of artistic, historic or archaeological value.1

Procurement

2.7 Procurement is the process of acquiring goods and services. It begins when a need has been identified and a decision has been made on the procurement requirement. Procurement continues through the processes of risk assessment, seeking and evaluating alternative solutions, and the awarding and reporting of a contract.

2.8 In addition to the acquisition of goods and services by a relevant entity for its own use, procurement includes the acquisition of goods and services on behalf of another relevant entity or a third party.

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1 Where such measures are applied, because Divisions 1 and 2 do not apply in full to the procurement, this has the effect that the procurement is not covered procurement under the Government Procurement (Judicial Review) Act 2018; see section 6.
2.9 *Procurement* does not include:

a. grants (whether in the form of a *contract*, conditional gift or deed)\(^2\);

b. investments (or divestments);

c. sales by tender;

d. loans;

e. procurement of goods and services for resale or procurement of goods and services used in the production of goods for resale;

f. any property right not acquired through the expenditure of *relevant money* (for example, a right to pursue a legal claim for negligence);

g. statutory appointments;

h. appointments made by a Minister using the executive power (for example, the appointment of a person to an advisory board);

i. the engagement of employees, such as under the *Public Service Act 1999*, the *Parliamentary Services Act 1999*, a relevant entity’s enabling legislation or the common law concept of employment; or

j. arrangements between non-corporate Commonwealth entities where no other suppliers were approached.

2.10 Following the awarding of the *contract*, the delivery of and payment for the *goods* and services and, where relevant, the ongoing management of the *contract* and consideration of disposal of *goods*, are important elements in achieving the objectives of the *procurement*.

### Resource Management Framework

2.11 *Relevant entities* and *officials* operate in an environment of legislation and Commonwealth policy. Within that broad context, the Resource Management Framework consists of the legislation and policy governing the management of the Commonwealth’s resources. Figure 1 sets out the main elements of this environment related to *procurement*.

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\(^2\) As defined in the Commonwealth Grants Rules and Guidelines.
2.12 The procurement framework is a subset of the Resource Management Framework related to the procurement of goods and services.

2.13 Section 16 of the PGPA Act outlines an Accountable Authority’s duty to establish appropriate internal control systems for their relevant entity. The CPRs provide the necessary framework for Accountable Authorities when issuing Accountable Authority Instructions and operational requirements in relation to procurement. In the area of procurement, an Accountable Authority should provide a mechanism to:

a. apply the principles and requirements of the resource management and procurement frameworks, focusing on the relevant entity’s operations; and

b. provide primary operational instructions to relevant entity officials in carrying out their duties related to procurement, in a way that is tailored to a relevant entity’s particular circumstances and needs.

2.14 Non-compliance with the requirements of the Resource Management Framework, including in relation to procurement, may attract a range of criminal, civil or administrative remedies including under the Public Service Act 1999 and the Crimes Act 1914.
International obligations

2.15 Australia is party to a range of free trade arrangements. These arrangements are implemented domestically by legislation and/or Commonwealth policy. Relevant international obligations have been incorporated in these CPRs. Therefore, an official undertaking a procurement is not required to refer directly to international agreements.

3. How to use the Commonwealth Procurement Rules

3.1 The CPRs set out the rules that officials must comply with when they procure goods and services. The CPRs also indicate good practice. The CPRs have been designed to provide officials with flexibility in developing and implementing procurement processes that reflect their relevant entity’s needs.

3.2 Achieving value for money is the core rule of the CPRs. This requires the consideration of the financial and non-financial costs and benefits associated with procurement.

3.3 Further information and guidance on applying the CPRs are available on Finance’s procurement policy website at www.finance.gov.au/procurement.

3.4 Relevant entities may have additional rules, guidance, templates or tools that apply when conducting procurements.

Compliance with the two divisions of the CPRs

3.5 Officials of non-corporate Commonwealth entities must comply with the ‘rules for all procurements’ listed in Division 1, regardless of the procurement value. Officials must also comply with the ‘additional rules’ listed in Division 2 when the estimated value of the procurement is at or above the relevant procurement threshold and when an Appendix A exemption does not apply.

3.6 Officials of corporate Commonwealth entities prescribed in section 30 of the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) as having to comply with the CPRs must comply with the ‘rules for all procurements’ listed in Division 1 and the ‘additional rules’ listed in Division 2 when the expected value of the procurement is at or above the relevant procurement threshold and when an Appendix A exemption does not apply.

3.7 Despite being prescribed corporate Commonwealth entities, Australian Digital Health Agency, Australian Human Rights Commission, National Portrait Gallery of Australia, Old Parliament House, and Regional Investment Corporation, must apply a procurement threshold and reporting threshold of $80,000 for procurements other than the procurement of construction services. They may opt-in to coordinated procurements and must only comply with those policies of the Commonwealth that specify compliance by corporate Commonwealth entities.

3.8 Despite being a corporate Commonwealth entity, the Commonwealth Superannuation Corporation, in regards to its administrative functions only, must apply a procurement threshold of $80,000 and a reporting threshold of $10,000 for procurements other
than the procurement of construction services. They may opt-in to coordinated procurements and must only comply with those policies of the Commonwealth that specify compliance by corporate Commonwealth entities.

Using Appendix A exemptions

3.9 When an Appendix A exemption applies, the additional rules of Division 2 for procurements at or above the relevant procurement threshold do not apply to the procurement, but the relevant entity must still comply with the rules for all procurements (Division 1), excluding paragraphs 4.7, 4.8 and 7.26. This does not prevent a relevant entity from voluntarily conducting the procurement for goods or services covered by an Appendix A exemption in accordance with some or all of the processes and principles of Division 2.
Division 1: Rules for all procurements

4. Value for money

Considering value for money

4.1 A thorough consideration of value for money begins by officials clearly understanding and expressing the goals and purpose of the procurement.

4.2 When a business requirement arises, officials should consider whether a procurement will deliver the best value for money. It is important to take into consideration:

a. stakeholder input;

b. the scale and scope of the business requirement;

c. the relevant entity’s resourcing and budget;

d. obligations and opportunities under other existing arrangements;

e. relevant Commonwealth policies; and

f. the market’s capacity to competitively respond to a procurement.

4.3 When a relevant entity determines that procurement represents the best value for money, these considerations will inform the development and implementation of the procurement.

Achieving value for money

4.4 Achieving value for money is the core rule of the CPRs. Officials responsible for a procurement must be satisfied, after reasonable enquires, that the procurement achieves a value for money outcome. Procurements should:

a. encourage competition and be non-discriminatory;

b. use public resources in an efficient, effective, economical and ethical manner that is not inconsistent with the policies of the Commonwealth3;

c. facilitate accountable and transparent decision making;

d. encourage appropriate engagement with risk; and

e. be commensurate with the scale and scope of the business requirement.

4.5 Price is not the sole factor when assessing value for money. When conducting a procurement, an official must consider the relevant financial and non-financial costs and benefits of each submission including, but not limited to the:

a. quality of the goods and services;

b. fitness for purpose of the proposal;

c. potential supplier’s relevant experience and performance history;

3 See sections 15 and 21 of the PGPA Act.
d. flexibility of the proposal (including innovation and adaptability over the lifecycle of the procurement);

e. environmental sustainability of the proposed goods and services (such as energy efficiency, environmental impact and the use of recycled products)

i. recognising the Australian Government’s commitment to sustainable procurement practices, entities are required to consider the Australian Government’s Sustainable Procurement Guide where there is opportunity for sustainability or use of recycled content;

ii. the Sustainable Procurement Guide is available from the Department of Agriculture, Water and the Environment’s website; and

f. whole-of-life costs.

4.6 Whole-of-life costs could include:

a. the initial purchase price of the goods and services;

b. maintenance and operating costs;

c. transition out costs;

d. licensing costs (when applicable);

e. the cost of additional features procured after the initial procurement;

f. consumable costs, including the environmental sustainability of consumables; and

g. decommissioning, remediation and disposal costs (including waste disposal).

Broader benefits to the Australian economy

4.7 In addition to the value for money considerations at paragraphs 4.4 – 4.6, for procurements above $4 million (or $7.5 million for construction services) (except procurements covered by Appendix A and procurements from standing offers), officials are required to consider the economic benefit of the procurement to the Australian economy.

4.8 The policy operates within the context of relevant national and international agreements and procurement policies to which Australia is a signatory, including free trade agreements and the Australia and New Zealand Government Procurement Agreement.

Procurement-connected policies

4.9 Procurement-connected policies are policies of the Commonwealth for which procurement has been identified as a means of delivery. To assist relevant entities in complying with policies of the Commonwealth, Finance maintains a list of procurement-connected policies, which can be found at www.finance.gov.au/procurement.

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4 The Sustainable Procurement Guide includes information on what procurements are appropriate.
4.10 Generally, procurement-connected policies are the responsibility of entities other than Finance. The relevant policy-owning entity is responsible for administering, reviewing and providing information on the policy as required.

Coordinated procurement

4.11 Coordinated procurement refers to whole-of-government arrangements for procuring goods and services. A list of coordinated procurements can be found at www.finance.gov.au/procurement.

4.12 Non-corporate Commonwealth entities must use coordinated procurements. Exemptions from coordinated procurements can only be granted jointly by the requesting non-corporate Commonwealth entity’s Portfolio Minister and the Finance Minister when a non-corporate Commonwealth entity can demonstrate a special need for an alternative arrangement. Prescribed corporate Commonwealth entities may opt-in to coordinated procurements.

Cooperative procurement

4.13 Cooperative procurements involve more than one relevant entity as the buyer. Relevant entities can procure cooperatively by approaching the market together or by joining an existing contract of another relevant entity.

4.14 If a relevant entity intends to join an existing contract of another relevant entity, the initial request documentation and the contract must have already specified potential use by other relevant entities.

4.15 Relevant entities joining an existing contract must ensure that:
   a. value for money is achieved;
   b. the goods and services being procured are the same as provided for within the contract; and
   c. the terms and conditions of the contract are not being materially altered.

Contract end dates

4.16 When a contract does not specify an end date it must allow for periodic review and subsequent termination of the contract by the relevant entity, if the relevant entity determines that it does not continue to represent value for money.

Third-party procurement

4.17 Procurement by third parties on behalf of a relevant entity can be a valid way to procure goods and services, provided it achieves value for money.

4.18 Relevant entities must not use third-party arrangements to avoid the rules in the CPRs when procuring goods and services.

5 Or when the coordinated procurement specifies an alternative approach for obtaining exemptions.
5. Encouraging competition

5.1 Competition is a key element of the Australian Government’s procurement framework. Effective competition requires non-discrimination and the use of competitive procurement processes.

5.2 Participation in procurement imposes costs on relevant entities and potential suppliers. Those costs should be considered when designing a process that is commensurate with the scale, scope and risk of the proposed procurement.

Non-discrimination

5.3 The Australian Government’s procurement framework is non-discriminatory.

5.4 All potential suppliers to government must, subject to these CPRs, be treated equitably based on their commercial, legal, technical and financial abilities and not be discriminated against due to their size, degree of foreign affiliation or ownership, location, or the origin of their goods and services.

Small and Medium Enterprises

5.5 To ensure that Small and Medium Enterprises (SMEs) can engage in fair competition for Australian Government business, officials should apply procurement practices that do not unfairly discriminate against SMEs and provide appropriate opportunities for SMEs to compete. Officials should consider, in the context of value for money:

a. the benefits of doing business with competitive SMEs when specifying requirements and evaluating value for money;

b. barriers to entry, such as costly preparation of submissions, that may prevent SMEs from competing;

c. SMEs’ capabilities and their commitment to local or regional markets; and

d. the potential benefits of having a larger, more competitive supplier base.

5.6 The Australian Government is committed to non-corporate Commonwealth entities sourcing at least 10 per cent of procurement by value from SMEs.

5.7 In addition, the Government has a target of non-corporate Commonwealth entities procuring 35 per cent of contracts, by value, with a value of up to $20 million from SMEs.

5.8 The Australian Government recognises the importance of paying suppliers on time, particularly small and medium businesses. Non-corporate Commonwealth entities must make all payments to a supplier under a contract valued up to A$1 million (GST inclusive) within the maximum payment terms, following the acknowledgement of the satisfactory delivery of goods or services and the receipt of a correctly rendered invoice.

6 The Commonwealth payment times are set out in the Government’s Supplier Pay On-Time or Pay Interest Policy.
6. Efficient, effective, economical and ethical procurement

6.1 The Australian Government promotes the proper use and management of public resources. Proper means efficient, effective, economical and ethical. For non-corporate Commonwealth entities, this would also include being not inconsistent with the policies of the Commonwealth.7

6.2 Efficient relates to the achievement of the maximum value for the resources used. In procurement, it includes the selection of a procurement method that is the most appropriate for the procurement activity, given the scale, scope and risk of the procurement.

6.3 Effective relates to the extent to which intended outcomes or results are achieved. It concerns the immediate characteristics, especially price, quality and quantity, and the degree to which these contribute to specified outcomes.

6.4 Economical relates to minimising cost. It emphasises the requirement to avoid waste and sharpens the focus on the level of resources that the Commonwealth applies to achieve outcomes.

6.5 Ethical relates to honesty, integrity, probity, diligence, fairness and consistency. Ethical behaviour identifies and manages conflicts of interests, and does not make improper use of an individual’s position.

Ethical behaviour

6.6 In particular, officials undertaking procurement must act ethically throughout the procurement. Ethical behaviour includes:

a. recognising and dealing with actual, potential and perceived conflicts of interest;

b. dealing with potential suppliers, tenderers and suppliers equitably, including by
   i. seeking appropriate internal or external advice when probity issues arise, and
   ii. not accepting inappropriate gifts or hospitality;

c. carefully considering the use of public resources; and

d. complying with all directions, including relevant entity requirements, in relation to gifts or hospitality, the Australian Privacy Principles of the Privacy Act 1988 and the security provisions of the Crimes Act 1914.

6.7 Relevant entities must not seek to benefit from supplier practices that may be dishonest, unethical or unsafe. This includes not entering into contracts with tenderers who have had a judicial decision against them (not including decisions under appeal) relating to employee entitlements and who have not satisfied any resulting order. Officials should seek declarations from all tenderers confirming that they have no such unsettled orders against them.

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7 See sections 15 and 21 of the PGPA Act.
6.8 If a complaint about procurement is received, relevant entities must apply timely, equitable and non-discriminatory complaint-handling procedures, including providing acknowledgement soon after the complaint has been received. Relevant entities should aim to manage the complaint process internally, when possible, through communication and conciliation.

Judicial Review

6.9 For the purposes of paragraph (a) of the definition of relevant Commonwealth Procurement Rules in section 4 of the Government Procurement (Judicial Review) Act 2018, the following paragraphs of Division 1 of these CPRs are declared to be relevant provisions: paragraphs 4.18, 5.4, 7.2, 7.10, 7.13 – 7.18, 7.20, and 9.3 – 9.6.

Commonwealth Contracting Suite

6.10 Non-corporate Commonwealth entities must use the Commonwealth Contracting Suite for contracts under $200,000. Corporate Commonwealth entities are encouraged to apply the suite of templates.

7. Accountability and transparency

7.1 The Australian Government is committed to ensuring accountability and transparency in its procurement activities. Accountability means that officials are responsible for the actions and decisions that they take in relation to procurement and for the resulting outcomes. Transparency involves relevant entities taking steps to enable appropriate scrutiny of their procurement activity. The fundamental elements of accountability and transparency in procurement are outlined in this section.

Records

7.2 Officials must maintain for each procurement a level of documentation commensurate with the scale, scope and risk of the procurement.

7.3 Documentation should provide accurate and concise information on:
   a. the requirement for the procurement;
   b. the process that was followed;
   c. how value for money was considered and achieved;
   d. relevant approvals; and
   e. relevant decisions and the basis of those decisions.

7.4 Relevant entities must have access to evidence of agreements with suppliers, in the form of one or a combination of the following documents: a written contract, a purchase order, an invoice or a receipt.

7.5 Documentation must be retained in accordance with the Archives Act 1983.

Further information is provided in Resource Management Guide No. 420 – Mandatory use of the Commonwealth Contracting Suite for procurement under $200,000.
AusTender

7.6 AusTender, the Australian Government’s procurement information system, is a centralised web-based facility that publishes a range of information, including relevant entities’ planned procurements, open tenders and key details of contracts awarded. It also supports secure electronic tendering to deliver integrity and efficiency for relevant entities and potential suppliers.

7.7 AusTender is the system used to enable relevant entities to meet their publishing obligations under the CPRs. It also enables relevant entities to monitor and review their AusTender-based procurements, including approaches to market, publication of contracts, and amendments to contracts.

Annual procurement plans

7.8 In order to draw the market’s early attention to potential procurement opportunities, each relevant entity must maintain on AusTender a current procurement plan containing a short strategic procurement outlook.

7.9 The annual procurement plan should include the subject matter of any significant planned procurement and the estimated publication date of the approach to market. Relevant entities should update their plans regularly throughout the year.

Notifications to the market

7.10 Relevant entities must use AusTender to publish open tenders and, to the extent practicable, to make relevant request documentation available.

7.11 Relevant entities may use AusTender to publish limited tender approaches to market and make relevant request documentation available.

7.12 Relevant entities should include relevant evaluation criteria in request documentation to enable the proper identification, assessment and comparison of submissions on a fair, common and appropriately transparent basis.

7.13 In any additional notification through other avenues, such as printed media, the details selected for inclusion in the notification must be the same as those published on AusTender.

7.14 When a relevant entity provides request documentation or any other document, already published on AusTender in any other form (for example, a printed version) that documentation must be the same as that published on AusTender.

7.15 The initial approach to market for a multi-stage procurement must include, for every stage, the criteria that will be used to select potential suppliers, and if applicable, any limitation on the number of potential suppliers that will be invited to make submissions.

* AusTender is available at www.tenders.gov.au.
Providing information

7.16 Officials must, on request, promptly provide, to eligible potential suppliers, request documentation that includes all information necessary to permit the potential supplier to prepare and lodge submissions.

7.17 Following the rejection of a submission or the award of a contract, officials must promptly inform affected tenderers of the decision. Debriefings must be made available, on request, to unsuccessful tenderers outlining the reasons the submission was unsuccessful. Debriefings must also be made available, on request, to the successful supplier(s).

Reporting arrangements

7.18 Relevant entities must report contracts and amendments on AusTender within 42 days of entering into (or amending) a contract if they are valued at or above the reporting threshold.

7.19 The reporting thresholds (including GST) are:
   a. $10,000 for non-corporate Commonwealth entities; and
   b. for prescribed corporate Commonwealth entities,
      i. $400,000 for procurements other than procurement of construction services,
      or
      ii. $7.5 million for procurement of construction services.

7.20 Regardless of value, standing offers must be reported on AusTender within 42 days of the relevant entity entering into or amending such arrangements. Relevant details in the standing offer notice, such as supplier details and the names of other relevant entities participating in the arrangement, must be reported and kept current.

Subcontractors

7.21 Relevant entities must make available on request, the names of any subcontractor(s) engaged by a contractor in respect of a contract.

   a. Relevant entities must require contractors to agree to the public disclosure of the names of any subcontractors engaged to perform services in relation to a contract.

   b. Contractors must be required to inform relevant subcontractors that the subcontractor’s participation in fulfilling a contract may be publicly disclosed.

Treatment of confidential information

7.22 When conducting a procurement and awarding a contract, relevant entities should take appropriate steps to protect the Commonwealth’s confidential information. This includes observing legal obligations, such as those under the Privacy Act 1988, and statutory secrecy provisions.

7.23 Submissions must be treated as confidential before and after the award of a contract. Once a contract has been awarded, the terms of the contract, including parts of the
contract drawn from the supplier’s submission, are not confidential unless the relevant entity has determined and identified in the contract that specific information is to be kept confidential in accordance with the ‘confidentiality test’ set out in the guidance on Confidentiality Throughout the Procurement Cycle at https://www.finance.gov.au/procurement.

7.24 The need to maintain the confidentiality of information should always be balanced against the public accountability and transparency requirements of the Australian Government. It is therefore important for officials to plan for, and facilitate, appropriate disclosure of procurement information. In particular, officials should:

a. include provisions in request documentation and contracts that alert potential suppliers to the public accountability requirements of the Australian Government, including disclosure to the Parliament and its committees;

b. when relevant, include a provision in contracts to enable the Australian National Audit Office to access contractors’ records and premises to carry out appropriate audits; and

c. consider, on a case-by-case basis, any request by a supplier for material to be treated confidentially after the award of a contract, and enter into commitments to maintain confidentiality only when such commitments are appropriate.

7.25 When confidential information is required to be disclosed, for example following a request from a parliamentary committee, reasonable notice in writing must be given to the party from whom the information originated.

Contract management/Standard verification

7.26 For procurements valued at or above the relevant procurement threshold, where applying a standard for goods or services, relevant entities must make reasonable enquiries to determine compliance with that standard, including:

a. gathering evidence of relevant certifications; and

b. periodic auditing of compliance by an independent assessor.

Other obligations

7.27 Other reporting and disclosure obligations apply to officials undertaking procurement, including:

a. disclosure of procurement information for relevant entity annual reporting purposes;

b. disclosure of non-compliance with the CPRs through the Commonwealth’s compliance reporting process;

c. disclosure to the Parliament and its committees, as appropriate, in line with the Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters;

d. disclosure of information consistent with the Freedom of Information Act 1982;

e. disclosure of discoverable information that is relevant to a case before a court; and
f. reporting requirements under the *Modern Slavery Act 2018*.

### 8. Procurement risk

8.1 Risk management comprises the activities and actions taken by a *relevant entity* to ensure that it is mindful of the risks it faces, that it makes informed decisions in managing these risks, and identifies and harnesses potential opportunities\(^\text{10}\).

8.2 *Relevant entities* must establish processes to identify, analyse, allocate and treat risk when conducting a *procurement*. The effort directed to risk assessment and management should be commensurate with the scale, scope and risk of the *procurement*. *Relevant entities* should consider risks and their potential impact when making decisions relating to value for money assessments, approvals of proposals to spend *relevant money* and the terms of the *contract*.

8.3 *Relevant entities* should consider and manage their procurement security risk, including in relation to cyber security risk, in accordance with the *Australian Government’s Protective Security Policy Framework*.

8.4 As a general principle, risks should be borne by the party best placed to manage them; that is, *relevant entities* should generally not accept risk which another party is better placed to manage. Similarly, when a *relevant entity* is best placed to manage a particular risk, it should not seek to inappropriately transfer that risk to the *supplier*.

### 9. Procurement method

9.1 Australian Government *procurement* is conducted by *open tender* or *limited tender*. These methods are detailed in this section.

#### Requirement to estimate value of procurement

9.2 The expected value of a *procurement* must be estimated before a decision on the procurement method is made. The expected value is the maximum value (including *GST*) of the proposed *contract*, including options, extensions, renewals or other mechanisms that may be executed over the life of the *contract*.

9.3 The maximum value of the *goods* and services being procured must include:

   a. all forms of remuneration, including any premiums, fees, commissions, interest, allowances and other revenue streams that may be provided for in the proposed *contract*;

   b. the value of the *goods* and services being procured, including the value of any options in the proposed *contract*; and

   c. any taxes or charges.

9.4 When a *procurement* is to be conducted in multiple parts with *contracts* awarded either at the same time or over a period of time, with one or more *suppliers*, the expected value of the *goods* and services being procured must include the maximum value of all of the *contracts*.

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\(^\text{10}\) Department of Finance, Comcover *Commonwealth Risk Management Policy*.  

Commencing 14 December 2020
9.5 A **procurement must** not be divided into separate parts solely for the purpose of avoiding a relevant **procurement threshold**.

9.6 When the maximum value of a **procurement** over its entire duration cannot be estimated the **procurement must** be treated as being valued above the relevant **procurement threshold**.

### Procurement thresholds

9.7 When the expected value of a **procurement** is at or above the relevant **procurement threshold** and an exemption in Appendix A is not applied, the rules in Division 2 **must** also be followed. The **procurement thresholds** (including GST) are:

a. for **non-corporate Commonwealth entities**, other than for **procurements of construction services**, the **procurement threshold** is $80,000;

b. for prescribed **corporate Commonwealth entities**, other than for **procurements of construction services**, the **procurement threshold** is $400,000; or

c. for **procurements of construction services by relevant entities**, the **procurement threshold** is $7.5 million.

### Procurement methods

#### Method 1 – Open tender

9.8 **Open tender** involves publishing an open approach to market and inviting **submissions**. This includes **multi-stage procurements**, provided the first stage is an open approach to market.

#### Method 2 – Limited tender

9.9 **Limited tender** involves a **relevant entity** approaching one or more **potential suppliers** to make **submissions**, when the process does not meet the rules for open tender.

9.10 For **procurements** at or above the relevant **procurement threshold**, **limited tender** can only be conducted in accordance with paragraph 10.3, or when a **procurement** is **exempt** as detailed in Appendix A.

9.11 When conducting a limited tender in accordance with paragraph 9.10, the relevant exemption or limited tender condition **must** be reported on AusTender.
Procurement from existing arrangements

Procurements from standing offers

9.12 *Procurements* from an existing *standing offer* are not subject to the rules in Division 2 of these CPRs. However, these procurements **must** comply with the rules in Division 1.

9.13 *Officials* should report the original *procurement* method used to establish the *standing offer* when they report procurements from *standing offers*. 
10. Additional rules

10.1 The rules set out in Division 2 are additional to those in Division 1 and must not be interpreted or applied in a manner that diminishes or negates Division 1.

10.2 A procurement, except a procurement that is specifically exempt in accordance with Appendix A, is subject to the rules contained in Division 2 if the expected value of the procurement is at, or above, the relevant procurement threshold.

Conditions for limited tender

10.3 A relevant entity must only conduct a procurement at or above the relevant procurement threshold through limited tender in the following circumstances:

a. when, in response to an open approach to market
   i. no submissions, or no submissions that represented value for money, were received,
   ii. no submissions that met the minimum content and format requirements for submission as stated in the request documentation were received, or
   iii. no tenderers satisfied the conditions for participation,
   and the relevant entity does not substantially modify the essential requirements of the procurement; or
b. when, for reasons of extreme urgency brought about by events unforeseen by the relevant entity, the goods and services could not be obtained in time under open tender; or

c. for procurements made under exceptionally advantageous conditions that arise only in the very short term, such as from unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy, or receivership, and which are not routine procurement from regular suppliers; or

d. when the goods and services can be supplied only by a particular business and there is no reasonable alternative or substitute for one of the following reasons
   i. the requirement is for works of art,
   ii. to protect patents, copyrights, or other exclusive rights, or proprietary information, or
   iii. due to an absence of competition for technical reasons; or
e. for additional deliveries of goods and services by the original supplier or authorised representative that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services, or installations, when a change of supplier would compel the relevant entity to procure goods and services that do not meet requirements for compatibility with existing equipment or services; or

f. for procurements in a commodity market; or

g. when a relevant entity procures a prototype or a first good or service that is intended for limited trial or that is developed at the relevant entity’s request in the course of, and for, a particular contract for research, experiment, study, or original development; or

h. in the case of a contract awarded to the winner of a design contest, provided that
   i. the contest has been organised in a manner that is consistent with these CPRs, and
   ii. the contest is judged by an independent jury with a view to a design contract being awarded to the winner.

10.4 A procurement at or above the relevant procurement threshold conducted by limited tender is not required to meet the rules in paragraphs 10.6 - 10.8 (Request documentation), 10.20 - 10.31 (Minimum time limits), or 10.35 (Awarding contracts).

10.5 In accordance with the general rules for accountability set out in these CPRs, for each contract awarded through limited tender, an official must prepare and appropriately file within the relevant entity’s records management system a written report that includes:
   a. the value and type of goods and services procured;
   b. a statement indicating the circumstances and conditions that justified the use of limited tender; and
   c. a record demonstrating how the procurement represented value for money in the circumstances.

Request documentation

10.6 Request documentation must include a complete description of:
   a. the procurement, including the nature, scope and the quantity of the goods and services to be procured or, where the quantity is not known, the estimated quantity, and any requirements to be fulfilled, including any technical specifications, conformity certification, plans, drawings, or instructional materials;
   b. any conditions for participation, including any financial guarantees, information and documents that potential suppliers are required to submit;
   c. any minimum content and format requirements;
   d. evaluation criteria to be considered in assessing submissions and, if applicable to the evaluation, the relative importance of those criteria;
   e. any dates for the delivery of goods or supply of services, taking into account the complexity of the procurement; and
f. any other terms or conditions relevant to the evaluation of submissions.

10.7 However, relevant entities are not obligated to release confidential information, information sensitive to essential security or information that may impede competition.

10.8 Relevant entities must ensure that potential suppliers and tenderers are dealt with fairly and in a non-discriminatory manner when providing information leading to, or following, an approach to market. Relevant entities must promptly reply to any reasonable request from a potential supplier for relevant information about a procurement, and when responding to such enquiries must avoid a potential supplier, or group of potential suppliers, gaining an unfair advantage in a competitive procurement process.

Specifications

10.9 A relevant entity must not use specifications or prescribe any conformity assessment procedure in order to create an unnecessary obstacle to trade.

10.10 In prescribing specifications for goods and services, a relevant entity must, where appropriate:

a. set out the specifications in terms of performance and functional requirements; and

b. base technical specifications on international standards, when they exist and apply to the relevant procurement, except when the use of international standards would fail to meet the relevant entity’s requirements.

10.11 Where an Australian standard is applicable for goods or services being procured, tender responses must demonstrate the capability to meet the Australian standard, and contracts must contain evidence of the applicable standards (see paragraph 7.26).

10.12 A specification must not require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer, or supplier, unless there is no other sufficiently precise or intelligible way of describing the requirement. In an exceptional circumstance when this type of specification is used, words such as ‘or equivalent’ must be included in the specification.

10.13 A relevant entity may conduct market research and other activities in developing specifications for a particular procurement and allow a supplier that has been engaged to provide those services to participate in procurements related to those services. Relevant entities must ensure that such a supplier will not have an unfair advantage over other potential suppliers.

Modification of evaluation criteria or specifications

10.14 When, during the course of a procurement, a relevant entity modifies the evaluation criteria or specifications set out in an approach to market or in request documentation, or amends or reissues an approach to market or request documentation, it must transmit all modifications or amended or reissued documents:
a. to all the potential suppliers that are participating at the time the information is amended, if known, and, in all other cases, in the same manner as the original information; and

b. in adequate time to allow potential suppliers to modify and re-lodge their submissions, if required.

Conditions for participation

10.15 Relevant entities may specify conditions for participation that potential suppliers must be able to demonstrate compliance with in order to participate in a procurement or, if applicable, class of procurement. Conditions for participation must be limited to those that will ensure that a potential supplier has the legal, commercial, technical and financial abilities to fulfil the requirements of the procurement.

10.16 Conditions for participation may require relevant prior experience when that experience is essential to meet the requirements of the procurement but must not specify, as a requirement, that potential suppliers have previous experience with the relevant entity or with the Australian Government or in a particular location.

10.17 In assessing whether a tenderer satisfies the conditions for participation, a relevant entity must:

a. evaluate financial, commercial, and technical abilities on the basis of the tenderer’s business activities, wherever they have occurred; and

b. base its determination solely on the conditions for participation that the relevant entity has specified in either the approach to market or the request documentation.

10.18 A relevant entity may exclude a tenderer on grounds such as bankruptcy, insolvency, false declarations, or significant deficiencies in performance of any substantive requirement or obligation under a prior contract.

10.19 Officials must make reasonable enquiries that the procurement is carried out considering relevant regulations and/or regulatory frameworks, including but not limited to tenderers’ practices regarding:

a. labour regulations, including ethical employment practices;

b. workplace health and safety; and

c. environmental impacts.

Minimum time limits

10.20 Potential suppliers must be required to lodge submissions in accordance with a common deadline.

10.21 Relevant entities must provide sufficient time for potential suppliers to prepare and lodge submissions in response to an approach to market. Time limits discussed in this section represent minimum time limits to lodge submissions and should not be treated as default time limits.
10.22 The time limit for potential suppliers to lodge a submission must be at least 25 days from the date and time that a relevant entity publishes an approach to market for an open tender.

10.23 The 25 day period referred to in paragraph 10.22 must be extended by five days for each of the following circumstances:
   a. when a relevant entity does not make request documentation available electronically from the date that a relevant entity publishes an approach to market; and/or
   b. when a relevant entity does not accept submissions electronically.

10.24 A relevant entity may establish a time limit that is less than 25 days but no less than 10 days under the following circumstances:
   a. when the relevant entity has published details of the procurement in an annual procurement plan on AusTender, at least 40 days and not more than 12 months in advance, and those details include a description of the procurement, the timing of the approach to market and the procedure to obtain request documentation;
   b. when the relevant entity procures commercial goods and services (unless the relevant entity does not accept the submissions electronically, in which case the minimum time limit must be no less than 13 days); or
   c. when a genuine state of urgency renders the normal time limit impracticable.

10.25 In the case of a multi-stage procurement, each approach to market must comply with the time limits stated in paragraph 10.22 - 10.24.

10.26 When a relevant entity intends to specify conditions for participation that require potential suppliers to undertake a separate registration procedure, the relevant entity must state the time limit for responding to the registration in the approach to market. Any such conditions for participation must be published in sufficient time to enable all potential suppliers to complete the registration procedures within the time limit for the procurement.

10.27 When a relevant entity extends the time limit for registration or submission, or when negotiations are terminated and potential suppliers are permitted to lodge new submissions, the new time limit must apply equitably.

Late submissions

10.28 Late submissions must not be accepted unless the submission is late as a consequence of mishandling by the relevant entity. A relevant entity must not penalise any potential supplier whose submission is received after the specified deadline if the delay is due solely to mishandling by the relevant entity.

10.29 Relevant entity mishandling does not include mishandling by a courier or mail service provider engaged by a potential supplier to deliver a submission. It is the responsibility of the potential supplier to ensure that the submission is dispatched in sufficient time for it to be received by the relevant entity by the deadline.

10.30 Late submissions should be returned unopened to the potential supplier who submitted them, to:
a. ensure that they are not evaluated or compared with *submissions* which were submitted by the due time and date;

b. demonstrate to other *tenderers* that the process for receiving submissions is fair and impartial; and

c. eliminate scope for any suggestion that the *submission* was rejected for any reason other than because it was late.

10.31 It may be necessary to open a late *submission* if there is no return address or any indication of which *approach to market* the *submission* relates. When a *submission* has been opened under such circumstances the *potential supplier* should be advised that the *submission* was rejected due to lateness and advised of the reason it was opened.

**Receipt and opening of submissions**

10.32 Procedures to receive and open *submissions* must guarantee fairness and impartiality and *must* ensure that *submissions* are treated in confidence.

10.33 When a *relevant entity* provides *tenderers* with opportunities to correct unintentional errors of form between the opening of *submissions* and any decision, the *relevant entity* *must* provide the opportunity equitably to all *tenderers*.

10.34 Further consideration *must* be given only to *submissions* that meet *minimum content and format requirements*.

**Awarding contracts**

10.35 Unless a *relevant entity* determines that it is not in the public interest to award a *contract*

11, it *must* award a *contract* to the *tenderer* that the *relevant entity* has determined:

a. satisfies the *conditions for participation*;

b. is fully capable of undertaking the *contract*; and

c. will provide the best value for money, in accordance with the essential requirements and *evaluation criteria* specified in the *approach to market* and *request documentation*.

10.36 A *relevant entity* *must* not use options, cancel a *procurement*, or terminate or modify an awarded *contract*, so as to avoid the rules of Division 2 of these CPRs.

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11 Public interest grounds generally arise in response to unforeseen events or new information that materially affects the objectives or reasons underlying the original procurement requirement as specified in the request document.
**Appendix A: Exemptions**

Procurements of the following kinds of goods and services are exempt from the rules of Division 2 of the CPRs, and from paragraphs 4.7, 4.8 and 7.26 of Division 1:

1. *procurement* (including leasing) of land, existing buildings or other immovable property or any associated rights (note: the procurement of construction services is not exempt);

2. *procurement of goods* and services from another Commonwealth entity, or a state, territory or local government entity;

3. procurements funded by international grants, loans or other assistance, when the provision of such assistance is subject to conditions inconsistent with this document;

4. procurements funded by grants and sponsorship payments from non-Commonwealth entities;

5. procurement for the direct purpose of providing foreign assistance;

6. procurement of research and development services, but not the procurement of inputs to research and development;

7. the engagement of an expert or neutral person, including engaging counsel or barristers, for any current or anticipated litigation or dispute;

8. procurement of goods and services (including construction) outside Australian territory, for consumption outside Australian territory;

9. acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt;

10. procurement by the Future Fund Management Agency of investment management, investment advisory, or master custody and safekeeping services for the purposes of managing and investing the assets of the Future Fund;

11. procurement of blood plasma products or plasma fractionation services;

12. procurement of government advertising services;

13. procurement of goods and services by, or on behalf of, the Defence Intelligence Organisation, the Australian Signals Directorate, or the Australian Geospatial-Intelligence Organisation;

14. contracts for labour hire;

15. procurement of goods and services from a business that primarily exists to provide the services of persons with a disability; and

16. procurement of goods and services from an SME with at least 50 per cent Indigenous ownership.

17. procurement of goods and services from an SME for procurements valued up to $200,000 (note: the requirements under the Indigenous Procurement Policy must first be satisfied before this exemption is applied).

12 This includes information and advertising services for the development and implementation of information and advertising campaigns.
Appendix B: Definitions

The following definitions apply for the purposes of these CPRs:

**Accountable Authority** – as defined in section 8 of the PGPA Act.

**Annual procurement plan** – a document published on AusTender through which relevant entities provide a short summary of their strategic procurement outlook for the coming year and information on significant procurements they plan to undertake.

**Approach to market** – any notice inviting potential suppliers to participate in a procurement which may include a request for tender, request for quote, request for expression of interest, request for information or request for proposal.

Note: the acronym ‘ATM’ is used on AusTender and other procurement documents to reference an approach to market.

**AusTender** – the central web-based facility for the publication of Australian Government procurement information, including business opportunities, annual procurement plans and contracts awarded.

**Commercial goods and services** – commercial goods and services are of a type that are offered for sale to, and routinely purchased by, non-government buyers for non-government purposes, including any modifications common in the commercial marketplace and any minor modifications not common in the commercial marketplace.

**Commodity market** – a recognised exchange dealing in generic, largely unprocessed, goods that can be processed and resold.

**Commonwealth entity** – as defined in section 8 of the PGPA Act.

**Conditions for participation** – minimum conditions that potential suppliers must demonstrate compliance with, in order to participate in a procurement process or for submissions to be considered. This may include a requirement to undertake an accreditation or validation procedure.

**Construction services** – procurements related to the construction of buildings and procurements of works as defined by the Public Works Committee Act 1969.

**Contract** – an arrangement, as defined by section 23(2) of the PGPA Act, for the procurement of goods and/or services under which relevant money is payable or may become payable. Note: this includes standing offers and panels.

**Contracts for labour hire** – a contract under which a relevant entity engages an individual to provide labour, when the individual is engaged either directly or through a firm which primarily exists to provide the services of only that individual. This includes the appointment of an eminent individual to a special role by an Accountable Authority, or the appointment of a person or persons by an Accountable Authority to a governance committee (for example, an audit committee, ethics committee or steering committee), but does not include the engagement of consultants.

**Corporate Commonwealth entities** – as defined in section 8 of the PGPA Act.
Days – means calendar days.

End date (in a contract) – can be defined by reference to a specific date or by reference to a specific event.

Evaluation criteria – the criteria that are used to evaluate the compliance and/or relative ranking of submissions. Evaluation criteria must be clearly stated in the request documentation.

Goods – every type of right, interest or thing which is legally capable of being owned. This includes, but is not restricted to, physical goods and real property as well as intangibles such as intellectual property, contract options and goodwill.


Indigenous Procurement Policy – a procurement-connected policy as defined in paragraphs 4.9 and 4.10.

Limited tender – involves a relevant entity approaching one or more potential suppliers to make submissions, when the process does not meet the rules for open tender.

Minimum content and format requirements – criteria that a tenderer’s submission is required to meet, when responding to an approach to market, to be eligible for further consideration in a procurement process.

Multi-stage procurement – involves an initial approach to market followed by one or more subsequent approaches to market (for example, inviting expressions of interest followed by a request for tender).

Non-corporate Commonwealth entities – as defined in section 8 of the PGPA Act.

Officials – as defined in section 8 of the PGPA Act.

Open approach to market – any notice inviting all potential suppliers to participate in a procurement which may include a request for tender, request for quote, request for expression of interest, request for information and request for proposal.

Open tender – involves publishing an open approach to market and inviting submissions. This includes multi-stage procurements, provided the first stage is an open approach to market.

Potential supplier – an entity or person who may respond to an approach to market.

Procurement – refer to paragraphs 2.7 to 2.9.

Procurement thresholds – refer to paragraph 9.7.

Public resources – as defined in section 8 of the PGPA Act.

Relevant money – as defined in section 8 of the PGPA Act.

Relevant entity – non-corporate Commonwealth entities and prescribed corporate Commonwealth entities (listed in section 30 of the PGPA Rule) that must comply with the CPRs when performing duties related to procurement.

Reporting thresholds – refer to paragraph 7.19.
Request documentation – documentation provided to potential suppliers to enable them to understand and assess the requirements of the procuring relevant entity and to prepare appropriate and responsive submissions. This general term includes documentation for expressions of interest, open tender and limited tender.

Research and development – research is described as systematic enquiry or investigation into a subject in order to discover facts or principles. Research includes surveys, market research, scientific research and educational research. Development applies to the function of creating/producing new and improved products, devices, processes or services. Development also extends to design, proof of concept and the production of prototypes.

Small and Medium Enterprises (SMEs) – an Australian or New Zealand firm with fewer than 200 full-time equivalent employees.

Specification – a description of the features of the goods and services to be procured.

Standards – means a document approved by a recognised body such as Standards Australia, the International Organization for Standardization, the International Electrotechnical Commission or the International Telecommunication Union that provides for common and repeated use, rules, guidelines or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory, unless the goods or services are subject to regulation by government.

Standing offer – an arrangement setting out the terms and conditions, including a basis for pricing, under which a supplier agrees to supply specified goods and services to a relevant entity for a specified period.

Submission – any formally submitted response from a potential supplier to an approach to market. Submissions may include tenders, responses to expressions of interest or responses to request for quote.

Supplier – an entity or person who has entered into a contract with the Commonwealth.

Tenderer – an entity or person who has responded with a submission to an approach to market.