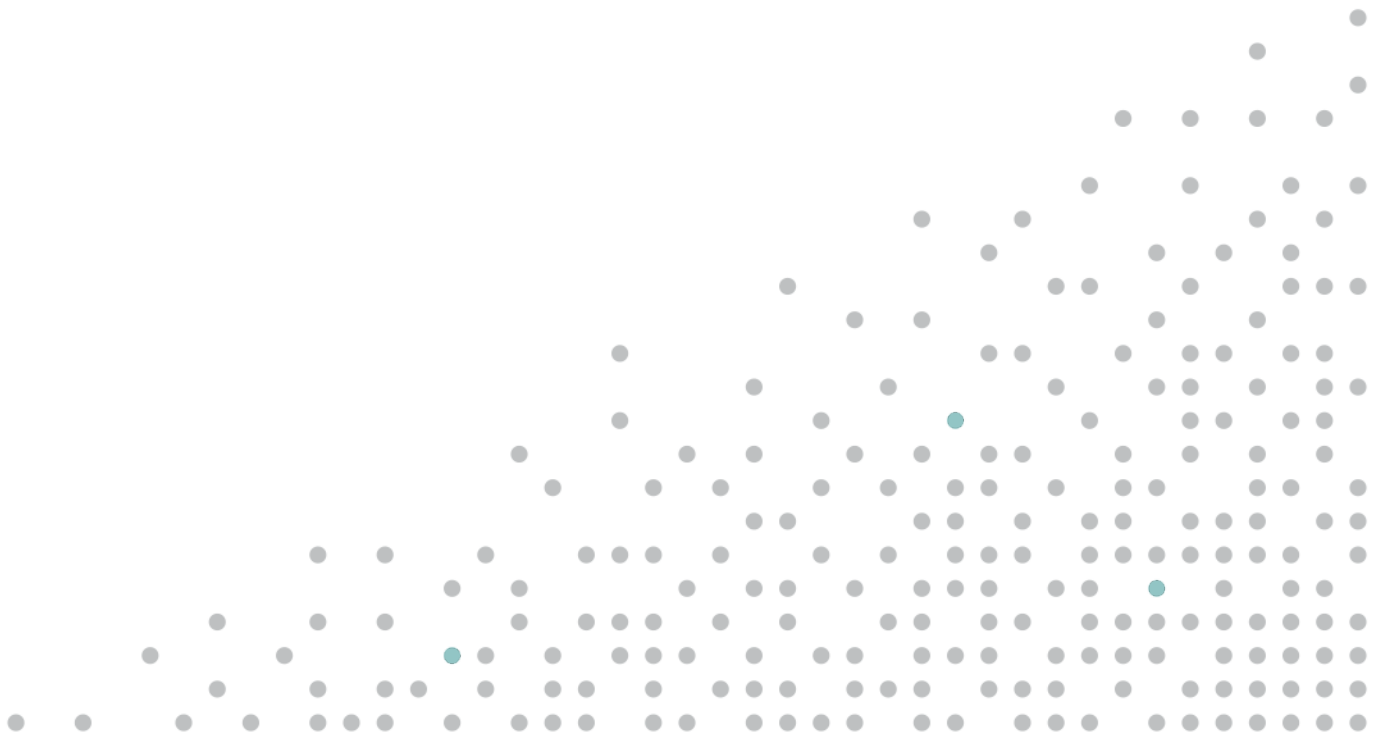




**Australian Government**  
**Department of Finance**



# Procurement Publishing and Reporting Obligations

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# Audience

This guide is relevant to:

- officials in non-corporate Commonwealth entities (NCEs); and
- officials in prescribed corporate Commonwealth entities listed in S30 of the Public Governance, Performance and Accountability Rule 2014 (prescribed CCEs).

Officials from all other corporate Commonwealth entities (CCEs) do not need to apply this guide.

# Key points

This guide:

- sets out all of the publishing and reporting requirements for relevant entities under the Commonwealth Procurement Framework and other government policies;
- assists relevant entities to meet their publishing and reporting obligations;
- uses definitions from Appendix B of the [Commonwealth Procurement Rules \(CPRs\)](#);
- only applies to [procurement processes](#); and
- includes content previously published in Resource Management Guide No. 407 Restrictions on advertising for open Approaches to Market.

# Resources

This guide is available on the Department of Finance website at [www.finance.gov.au](http://www.finance.gov.au).

Other relevant legislation or publications are set out below.

## Procurement

- [Commonwealth Procurement Rules](#)
- [Resource Management Guide No. 411 Grants, Procurements and other financial arrangements](#)
- [Resource Management Guide No. 417 Supplier pay on-time or pay interest policy](#)
- [Finance web guidance: www.finance.gov.au/government/procurement](http://www.finance.gov.au/government/procurement)
- [AusTender: www.tenders.gov.au](http://www.tenders.gov.au)

## Other reporting obligations

- [Resource Management Guide No. 135 Annual report for non-corporate Commonwealth entities](#)
- [Resource Management Guide No. 136 Annual report for corporate Commonwealth entities](#)
- [Resource Management Guide No. 403 Meeting the Senate Order for Entity Contracts](#)

- [Resource Management Guide No. 408 Recruitment Advertising Policy](#)
- [Resource Management Guide No. 422 Handling complaints under the Government Procurement \(Judicial Review\) Act 2018](#)

### Master Media Agency

Non-Campaign Advertising

Phone: +61 7 3105 3103

Email: [ausgov.noncampaign@umww.com](mailto:ausgov.noncampaign@umww.com)

## Overview

1. The Australian Government is committed to ensuring accountability and transparency in its procurement activities.
2. The CPRs set out the Australian Government's requirements to publish key information relating to procurement and to report relevant contracts.
3. Under the devolved procurement framework, individual entities are responsible for conducting their own procurements, including publishing relevant information, and accurately reporting any resulting contracts on AusTender.
4. Officials from NCEs and prescribed CCEs **must** apply the CPRs. These entities are collectively referred to as relevant entities.
5. This Resource Management Guide (RMG) summarises the publishing and reporting requirements for relevant entities at major stages of the procurement process:
  - Part 1 outlines the requirements during the planning stage;
  - Part 2 outlines the requirements during the approach to market (ATM); and
  - Part 3 outlines the requirements after a process has concluded and a contract has been awarded.
6. Relevant entities have reporting requirements additional to those in the CPRs arising from annual reporting obligations and government policies. Further links and information are provided in Part 4 of this RMG.

## AusTender

7. Many, but not all, of the publishing and reporting requirements are met through AusTender, the Australian Government's central procurement information system.
8. AusTender:
  - enables relevant entities to meet their procurement reporting and publishing obligations;

- notifies the market of planned and actual procurement processes, providing potential suppliers with an opportunity to participate;
  - provides the market and the broader community with transparency regarding the outcome of a procurement;
  - supports secure electronic tendering to deliver integrity and efficiency for relevant entities and potential suppliers; and
  - provides government buyers with a standard and streamlined approach to sourcing goods and services from panels through the Dynamic Sourcing for Panels (DS4P) functionality.
9. Relevant entities **must** use AusTender to publish:
- Annual Procurement Plans (APPs);
  - notification of open Approaches to Market (ATMs);
  - Contract Notices (CNs) and contract amendments; and
  - Standing Offer Notices (SONs).
10. Detailed information on how relevant entities should enter data into AusTender can be found in relevant AusTender user guides and onscreen help guidance. Entity AusTender users can download user guides relevant to their user roles.
11. AusTender does not, and is not intended to, reflect actual government expenditure. Rather, AusTender reports key details of a contract that has been awarded at the end of a procurement process, including the potential maximum value of the contract over its initial term. Reporting these details achieves two important objectives:
- it provides transparency to suppliers that the awarded contract is consistent with the representations that were made to the market in the ATM; and
  - it meets Australia's reporting obligations under various free trade agreements.
12. Key features of AusTender CNs:
- the value of the CN is the total value of the contract, including GST where applicable, excluding the estimated value of any options, extensions, renewals, or other mechanisms that may be exercised at a future date, which are subject to the same reporting rules at the time they are executed; and
  - CNs are managed by individual relevant entities, reflect the information available at a point in time, and can be subject to amendments, variations, cancellation and machinery of government changes.

## Selecting a United Nations Standard Products and Services Code (UNSPSC)

13. AusTender data is used to analyse Australian Government procurement activities. Each financial year AusTender data is used for procurement statistical reporting, which includes details around the top UNSPSC categories for the period.

14. Relevant entities are required to select a UNSPSC for Planned Procurements, ATMs, SONs or CNs. While an individual procurement may include a range of goods and services, the UNSPSC should reflect the most appropriate category that relates to the majority of the goods or services being sought. Relevant codes are available from the AusTender Customised UNSPSC Codeset on [data.gov.au](http://data.gov.au) and from the AusTender [Help](#) section.

**Note:** *When a business registers on AusTender, it may choose to nominate which UNSPSC codes it is interested in. When an ATM is published referencing that code, the business will receive an email notification advising that an opportunity exists.*



## Part 1 – Planning a procurement

### Annual Procurement Plans

#### Rule:

#### CPRs - Paragraphs 7.8 and 7.9

Relevant entities **must** maintain a current APP on AusTender to draw the market's early attention to potential procurement opportunities.

15. APPs provide information to the market on significant procurements that relevant entities plan to undertake through an open tender within the next twelve months. Early notice of upcoming procurement opportunities:
  - a) help relevant entities to identify cooperative procurement opportunities and facilitate early planning and;
  - b) enable collaboration between businesses that may not be in a position to bid on their own.
16. Relevant entities should not include planned procurements in their APPs which they intend to conduct through a limited tender, or procurements from existing arrangements such as established panels.
17. An Accountable Authority of an entity may choose not to publish a planned procurement or not to include details of a planned procurement in an APP.
18. APPs should include a concise strategic procurement outlook statement, which broadly discusses any key, major or strategic initiatives from which the entity expects procurements to arise. More than one strategic procurement outlook statement can be provided, for example, along business lines such as corporate, legal, and information and communications technology.
19. If a procurement is included in an APP as a planned procurement, the CPRs allow an entity to reduce the time limit for potential suppliers to lodge a submission for an open tender ATM. However, relevant entities are responsible for ensuring that procurement processes are transparent and that any shortened time frame does not detract from either the open competition aspect of the procurement process, the ability of potential suppliers to submit quality bids, or the outcome.
20. Factors an entity may wish to consider when deciding which planned procurements to include in the APP include:
  - information that would add value to the entity's relationship with industry, potential suppliers and contractors;
  - the level of meaningful information available;
  - whether the entity wishes to have the option to reduce time limits for submissions;
  - the likely significance of the planned procurement;
  - the likely value;

- the potential for multi-agency access;
  - the likelihood of the planned procurement actually occurring; and
  - the method of planned procurement.
21. Planned procurements listed in APPs are required to include details such as:
- the subject matter of the planned procurement;
  - the estimated quarter of the financial year of the planned ATM;
  - whether the planned procurement will potentially allow multi-entity access; and
  - the goods and services category code (UNSPSC code).
22. Publication of a planned procurement on an APP is not a commitment from a relevant entity that an ATM will be conducted.
23. As APPs are used as planning tools by relevant entities and business, every effort should be made to keep them up to date. It is appropriate for information contained in an APP to change in order to remain consistent with an entity's procurement needs.
- a) If an entity has no significant procurements planned in the next 12 months, they should publish an APP stating that no significant procurements are planned.

## Part 2 – Approaching the market

### Notifications to the market

**Rule:**

CPRs - Paragraphs 7.10 to 7.15

Relevant entities **must** publish open approaches to the market on AusTender. As far as practicable, relevant documentation should also be available for download from AusTender.

24. Where a relevant entity has published a planned procurement on their APP, the APP Agency Reference ID published on the APP should be referenced against the ATM.
25. In a multi-stage process, the first stage should be published on AusTender, and relevant entities should, to the extent practicable, use AusTender to make request documentation available in the subsequent stage/s.
26. A relevant entity may publish notices of an ATM elsewhere (for example on the relevant entity's website or official social media account) after the ATM has been published on AusTender. However, if a relevant entity chooses to do this, the notice **must** be the same as the ATM published on AusTender, and **must** direct the reader to go to AusTender for further information.
27. As a general rule, entities should not publish notices in the press. However, in limited circumstances, the Accountable Authority of a NCE (or an official who has been delegated by the Accountable Authority) may approve a request to publish the notice of an ATM in the press. The approval should be in the form of the Authority to publish template at [Appendix 7](#).
28. The signed Authority to publish letter should be provided to the Australian Government's Master Media Agency (MMA) at the time of placing the booking. Questions can be directed to the Procurement Management Branch: [advertising@finance.gov.au](mailto:advertising@finance.gov.au).
29. Subject to the approval of the Authority to publish letter, relevant entities seeking to advertise tender notices internationally; where the entity is within Australian territory but the notice is to appear outside Australian territory should use the Australian Government's MMA.
  - a) Advertised ATM notices placed by agencies located outside Australian territory to appear outside Australian territory are not required to use the Australian Government's MMA.

### Example:

A NCE plans to publish an open ATM on AusTender for the procurement of a service provider to conduct surveys with traditional landowners in rural Australia. The NCE has conducted extensive market research and has identified that, due to the nature and delivery location of the services, it is unlikely that relevant service providers will be familiar with AusTender so will not be aware of the release of the ATM.

In order to reach the relevant market and make potential suppliers aware of the opportunity, the NCE proposes to place a notice in a local newspaper (in addition to promoting the release of the ATM on the NCE's website and the entity's official social media account).

The entity obtains approval from their Accountable Authority or an official at the appropriate level of seniority by completing and having signed the Exemption Letter Template.

The notice states that:

- the NCE is seeking a service provider to conduct surveys with traditional landowners in rural Australia.
- the ATM details and supporting information, including contact details for the ATM can be found at: [tenders.gov.au](https://tenders.gov.au).

## Publication of public interest certificates

30. Under [Resource Management Guide No. 422 Handling complaints under the Government Procurement \(Judicial Review\) Act 2018](#), public interest certificates may be issued by an Accountable Authority of a relevant entity stating that it is not in the public interest for a specified procurement to be suspended while the complaint is investigated. RMG No. 422 contains more information on the publication and notification requirements for each stage of the procurement process.

## Part 3 – Contracting and reporting

### Arrangements not to be reported on AusTender (not considered procurement)

**Rule:**

CPRs - Paragraph 2.9

Details what is not considered a procurement in the context of the CPRs.

31. Only contracts resulting from the 'procurement' of goods or services are to be reported on AusTender. Resource Management Guide No. 411 Grants, Procurements and other financial arrangements provides detailed information on how to distinguish between grants, procurements and other financial arrangements.
32. Examples of arrangements NOT to be reported on AusTender can be found at paragraph 2.9 of the CPRs.
33. Additionally, if a **NCE has acquired goods and services directly from another NCE** without approaching other suppliers, this should be treated as an 'other' financial arrangement and should not be reported as a procurement on AusTender.
  - a) If a Commonwealth entity has undertaken a competitive process, in accordance with the CPRs, that results in the awarding of a contract to a Commonwealth entity, then it **must** be reported on AusTender.

| Type of Entity to Entity Engagement   | Commonwealth entity engaged directly | Competitive process undertaken in accordance with the CPRs |
|---|--------------------------------------|--|
| You are a <b>NCE</b> who has contracted <b>with another NCE</b>                           | Do not report                        | Report   |
| You are a <b>NCE</b> who has contracted <b>with any other type of Commonwealth entity</b> | Report                               | Report   |
| You are a <b>CCE</b> who has contracted <b>with any type of Commonwealth entity</b>       | Report                               | Report   |

## Reporting Standing Offer Arrangements

### Rule:

#### CPRs - Paragraph 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 SON, such as supplier details and the names of other relevant entities participating in the arrangement, **must** be reported and kept current.

34. Where an entity has entered into a standing offer arrangement that is available for access by other entities, the entity that established the standing offer is the only entity that should report the standing offer arrangement on AusTender.
  - a) Relevant entities responsible for the management of a standing offer are required to report amendments to standing offer arrangements, for example, when supplier details are amended or where an extension option is exercised.
35. Where multiple suppliers are on a standing offer arrangement, only one SON is to be reported. A SON will not have a value reported against it.
36. Individual contracts under standing offer arrangements must be reported on AusTender, as outlined in the next section.

## Reporting Contracts

### Rule:

#### CPRs - Paragraph 7.16 to 7.20

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

#### CPRs - Paragraph 9.11

When conducting a limited tender above the relevant threshold, the relevant exemption or limited tender condition **must** be reported on AusTender.

37. For the purposes of the CPRs, contracts include any arrangement under section 23(2) of the PGPA Act that results from a procurement of goods and/or services. On this basis, a contract can include, but is not limited to, any of the following:
  - a Commonwealth contract, including a verbal agreement, for the provision of goods and/or services;
  - an entity agreement (including for example, a memorandum of understanding with another jurisdiction or resulting from a procurement process);
  - a deed of standing offer (with one or multiple suppliers); and
  - a work order issued under a deed of standing offer.

38. Paragraph 7.19 states that any such contract over the relevant reporting threshold **must** be reported through a CN on AusTender. The reporting thresholds, including GST, are:
- a. \$10,000 for non-corporate Commonwealth entities; and
  - b. For corporate Commonwealth entities:
    - i. \$400,000 for procurements other than procurements of construction services; or
    - ii. \$7.5 million for procurements of construction services.
39. A CN **must** include a range of key information, including:
- entity details;
  - supplier details;
  - contract details:
    - contract value;
    - description;
    - UNSPSC code;
    - start and end dates;
    - procurement method;
    - consultancy information (NCEs only); and
    - confidentiality information (NCEs only).
40. For each contract reported, the relevant entity **must** report the total value of the initial term of the contract (including GST where applicable). This does not take into account the value of any options, extensions, renewals, or other mechanisms that may be exercised at a future date to increase the value of the contract.
- a. Options, extensions or renewals that are valued over the relevant reporting threshold should be reported as an amendment to the original CN at the time that they are entered into.
41. Individual credit card transactions, invoices and purchase orders valued at or above the relevant reporting threshold **must** be reported, but only if they have not been previously reported as part of an overarching contract.
42. Relevant entities should report the start date identified in the contract. If there is no start date identified, relevant entities should report the date that the contract was signed. If there is no written contract, the date of the first provision of goods or services under the contract should be reported.
43. For the purpose of reporting on AusTender, the end date is the date that performance of the contract is expected to be completed. It does not take into account any options, extensions, renewals, or other mechanisms that may be exercised at a future date to extend the period of the contract. The date does not take into account possible late performance or breach of contract.

44. In cases where the end date is not specified, relevant entities will need to estimate the expected date of receipt of the final instalment of goods or services.
45. Where an open tender ATM has been undertaken, the ATM ID should be referenced against all reportable contracts that are subsequently awarded.
46. Where a multi-stage open tender ATM has been undertaken, the ATM ID for the initial open ATM should be referenced against all reportable contracts that are subsequently awarded.
47. CNs on AusTender should not disclose information that would contravene legislative requirements, such as those set out in the [Privacy Act 1988](#) or information that may pose a risk to national security.
48. Standing offer arrangements are reported as SONs on AusTender.

### Contracts entered into under Standing Offer Arrangements

49. Contracts that result from a standing offer arrangement and that are valued at or above the reporting threshold **must** be reported through a CN on AusTender.
50. The CN **must** reflect the procurement method used to establish the standing offer and reference the relevant SON ID

#### Example:

A relevant entity undertakes an open tender to establish a panel for the purchase of office furniture, with four tenderers evaluated as providing value for money.

The relevant entity will report one SON (SON1234) that lists the four successful tenderers that were evaluated as providing value for money. The SON will not have a reported value, as subsequent purchases from the panel will be reported individually as CNs.

As relevant entities procure from the panel, if a resultant contract is valued at or above the reporting threshold, the relevant entity must report the individual contract (or work order) on AusTender through a new CN, which must include the relevant SON identifier.

Additionally, irrespective of the number of suppliers on the panel that were approached to quote, the CN must reflect the procurement method listed on the SON (in this case, open tender).

**Note:** *Dynamic Sourcing for Panels (DS4P) provides government buyers with information and search tools to better access the Commonwealth's existing panels. DS4P builds on AusTender's reach and integration across agencies to deliver a standard and streamlined approach to panel buying. Relevant entities should use the DS4P functionality on AusTender for SONs that are flagged as panels and/or providing multi-agency access.*

### Coordinated procurement contracts

51. Each Whole of Australian Government coordinated arrangement has its own reporting requirements. Relevant entities should follow the process that is stipulated by the arrangement. Any questions on reporting requirements should be directed to the panel manager of the relevant arrangement.



## Cooperative procurement contracts

52. Cooperative Procurement is where more than one entity approaches the market together (i.e. clustering) or where an entity accesses another entity's established contract or standing offer (i.e. panel) arrangement (i.e. piggybacking). Cooperative procurement can enable relevant entities to reduce expenditure by sharing administration costs and utilising their combined economies of scale.
53. Reporting a cooperative procurement should be based on the contractual arrangement. Where more than one relevant entity is a signatory to a contract, each relevant entity should separately report only its commitment under the contract.
54. Where an entity has approached the market and entered into a contract which includes the needs of other entities (i.e. purchasing on behalf of those entities) the lead entity is responsible for reporting the entire value of the contract on AusTender, with participating entities not reporting their contributions separately.

### Example:

Four relevant entities decide to approach the market together for a common good or service. The total estimated value of the procurement is \$1,600,000. It is anticipated that the cost will be split equally across the four relevant entities.

One entity is identified as the 'lead entity' and will be responsible for publishing the ATM on AusTender. The approach to the market results in four separate contracts (one per entity).

Each entity is required to report the resultant contract (where valued at or above the reporting threshold) on AusTender as a separate CN. Each CN reported would reference the ATM ID used to approach the market, and the value reported would be specific to the contract of the entity (in this instance, \$400,000 each).

**Note:** *If the value of one entity's commitment did not meet the relevant reporting threshold (for example it is valued under \$10,000), there would be no requirement for that entity to report their portion of the contract.*

## Limited tenders at or above the procurement thresholds

### Rule:

#### CPRs – Paragraph 2.6

The 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.

#### CPRs – Paragraph 10.3

A relevant entity must only conduct a procurement at or above the relevant procurement threshold through limited tender in certain circumstances.

#### Appendix A: Exemptions from Division 2 of the CPRs

Certain kinds of goods and services are exempt from the rules of Division 2 in the CPRs, and from paragraphs 4.7, 4.8 and 7.26 of Division 1.

55. In addition to the internal record keeping required under the CPRs, when a relevant entity undertakes a limited tender (i.e. not an open tender) valued at or above the relevant threshold, the justification for the limited tender **must** also be reported on the AusTender CN. The selections available are:

- limited tender condition – refer *paragraph 10.3 of the CPRs*;
- exemptions from Division 2 – refer *Appendix A: Exemptions from Division 2 of the CPRs*;
- when the estimated value of the procurement (determined prior to selecting the procurement method) was below the threshold, however the resulting contract was valued at or above the threshold;
- if *paragraph 2.6 of the CPRs* was applied in some part; or
- the procurement is for construction services valued at or above \$80,000 but below the construction threshold of \$7.5 million.

## Consultancies

56. NCEs are required to identify on AusTender all contracts where the primary purpose of the contract is to procure consultancy services.

57. A consultancy is defined as the engagement of temporary services that:

- involves the development of an intellectual output that assists with decision making; and
- the intellectual output represents the independent view of the service provider.

58. In order to determine if a consultancy must be identified on AusTender:

- the contract needs to meet **both** of the elements of paragraph 57; and

- the independent intellectual output must be sole majority element of the contract in terms of relative value or importance.

**Note:** *If a contract **does not** meet the requirements of paragraphs 57 and 58, the contract should not be identified as a consultancy on AusTender.*

59. A workflow for identifying whether a contract is a consultancy for the purposes of AusTender reporting is provided at [Appendix 4](#).
60. Consultancy contracts typically involve the supplier working independently and substantially retaining direction and control over the work that is performed to develop the independent intellectual output. Key features can include:
- the consultant retaining discretion regarding the performance and delivery of the services;
  - development of independent output occurs without the entity's direct supervision or direction; and
  - the output is expected to reflect the independent views or findings of the individual or organisation delivering the services.
61. While they are not definitive, the following resources may assist entities to determine if a contract is a consultancy:
- [Appendix 2](#) provides a table that outlines the characteristics of a consultancy contract.
  - [Appendix 3](#) provides some common examples of consultancy engagements.
62. Where an entity has determined that a contract is a consultancy for AusTender reporting purposes, the reason for the consultancy **must** be reported in the CN on AusTender. The potential reasons for using a consultancy are:
- need for independent research or assessment;
  - need for specialised or professional skills; or
  - skills currently unavailable within agency.
63. Only one reason as to why a contract is a consultancy can be selected. If there are multiple reasons, the most appropriate (or significant) reason should be selected.

**Example:**

An entity has engaged a supplier to deliver two outcomes.

The first is to undertake a review of internal business functions and develop a report with recommendations on how to transform the entity's service delivery using process automation. The second outcome is to provide additional short term support to deliver the agreed transformation initiatives, under direction from the entity's senior management.

As the first outcome of the contract will lead to the development of an intellectual output that will represent the views of the contracted provider and assist with the entity's decision-making, this outcome meets the definition of a consultancy in paragraph 57. The second

outcome will lead to the delivery of services under direction, and does not meet the definition of a consultancy in paragraph 57.

As the entity determines that the first outcome is the most significant outcome of the contract and will represent the majority of the costs, the contract should be flagged as a consultancy contract on AusTender.

64. Officials need to assess the nature of each contract involving the provision of services on a case-by-case basis to determine whether it involves a consultancy for the purposes of AusTender reporting.

**Note:** *It is important to remember that just because the supplier describes itself as a consultancy firm, it does not necessarily mean that the contract meets the definition of a consultancy.*

## Confidentiality

### Rule:

#### CPRs - Paragraph 7.22

In order for a supplier's commercial information to be considered confidential, it **must** meet all of the four criteria of the 'Confidentiality Test' set out in Appendix 5.

**Criterion 1: The information to be protected is specifically identified.**

**Criterion 2: The information is commercially 'sensitive'.**

**Criterion 3: Disclosure would cause unreasonable detriment to the owner of the information or another party.**

**Criterion 4: The information was provided under an understanding that it would remain confidential.**

Further guidance on the criteria is available on the Finance website.

**Note:** *if a supplier's commercial information does not meet the confidentiality test, there is no requirement to report 'confidentiality' as part of the CN on AusTender.*

65. NCEs **must** identify on AusTender whether a contract includes confidentiality provisions. NCEs **must** separately identify whether the requirements are to maintain the confidentiality of:

- contract clauses or other information contained in the contract, such as a description of the methodology to be used by a contractor which reveals confidential intellectual property; and/or
- information obtained or generated as a result of performance of the contract, such as a consultancy report which contains information that is protected as its disclosure would be contrary to the public interest.

66. Relevant entities **must** report requirements to maintain the confidentiality of information obtained or generated as a result of performance of the contract only where a contractual clause has sought to protect specific information.
67. In assessing the need for confidentiality in procurement and in contracts, relevant entities should balance the need to keep information transparent to meet reporting and disclosure requirements, with the need to protect the confidentiality of information that might genuinely damage the Australian Government's interests or the commercial interests of suppliers.
68. Genuine reasons for confidentiality include the protection of the public interest, intellectual property and other commercial confidentiality.
69. The Australian Government cannot provide an absolute guarantee of confidentiality within a contract.
70. The table at [Appendix 5](#) details the appropriate options for how confidentiality should be reported on AusTender.
71. Some case studies on confidentiality reporting are provided at [Appendix 6](#).

## Amendments to contracts

### Rule:

#### [CPRs - Paragraph 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.

72. Paragraph 7.18 requires relevant entities to report amendments which are valued at or above the reporting threshold. Amendments may include options that have been exercised, contract extensions or renewals.
  - a) Relevant entities are not required to report amendments that are valued under the relevant reporting threshold, although they may choose to.
  - b) Relevant entities are not required to report amendments that decrease the value of a contract, although they may choose to where an entity has varied the contractual arrangement to reduce the value.
  - c) Relevant entities are not required to report amendments to contract term, although they may choose to. This includes instances where the term of a contract is amended with no impact to contract value.

### Example:

A NCE enters into a contract valued at \$20,000, which is reported on AusTender. Over the next year, it makes three amendments valued at \$4,000 each. Whilst the CPRs do not require each individual amendment to be reported on AusTender, the NCE chooses to report the amendments once the cumulative value adds up to an amount of \$10,000 or more.

## Third-party procurement

### Rule:

#### CPRs - Paragraph 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.

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

73. In meeting AusTender reporting requirements for third party procurements, the overriding principle is ensuring transparency and accountability of entity procurement practices. The 42-day reporting requirement applies to all third party procurements.
74. Where a supplier has subcontracted all or part of the responsibilities under a contract, that arrangement is **not** considered a third party procurement. Subcontracting arrangements are **not** reportable on AusTender.

### Where a Commonwealth entity has procured on behalf of a third party

75. When a relevant entity procures on behalf of a third party which results in a commitment from the Commonwealth, the entity **must** report the total value of the Commonwealth's commitment only. The total value of the third party's commitment should be included in the CN description.
  - a) Where there is no commitment from the Commonwealth, the entity is not required to report the contract on AusTender.

### Example:

A relevant entity conducts a non-construction services procurement on behalf of a third party (for example, a state government entity) with a total contract value of \$1 million, \$400,000 of which is the responsibility of the relevant entity. The relevant entity would report, as a CN on AusTender, a contract value of \$400,000. The relevant entity would include, in the description of the CN, the total value of the third party's commitment (in this case, \$600,000).

### Where a third party has procured on behalf of a Commonwealth entity

76. When a third party procures on behalf of a relevant entity, the third party may procure in one of two ways, either:
  - a) the relevant entity will contract directly with the preferred supplier; or
  - b) the third party will enter into a contract with the preferred supplier on behalf of the relevant entity.
77. Where the contracts are valued at or above the relevant reporting threshold, the relevant entity **must** report, on AusTender, a separate CN for:
  - any fees payable to the third party; and

- any contracts entered into with the preferred supplier (regardless of whether the third party entered into them directly or on behalf of a Commonwealth entity).

**Example: A third party approaches the market and enters into a contract with the preferred supplier on behalf of the entity**

An entity engages a software developer to manage the delivery of a new ICT project build, including any necessary testing to deliver the final product. The developer is responsible for approaching the market and entering into an agreement with a testing service provider on behalf of the entity. The testing service provider invoices the software developer, who pays the testing service provider. The software developer in turn invoices the entity to be reimbursed for the cost of paying the testing service provider.

The entity reports the fees payable to the software developer for their management services as a separate CN on AusTender. Where the value of the contract with the software developer is valued at or above the reporting threshold, a separate CN is published on AusTender. The supplier details published on AusTender for all CNs are the software developer's name, address and ABN.

**Example: A third party approaches the market and the entity contracts directly with the preferred supplier**

An entity engages a software developer to manage the delivery of a new ICT project build, including any necessary testing to deliver the final product. The software developer is responsible for approaching the market, however the entity enters into a contract directly with the testing service provider.

In this circumstance there would be two CNs published on AusTender. One for the engagement of the software developer for their management services and one for the testing service provider. The supplier details for the testing service provider's CN is the testing services provider's name, address and ABN.

## Part 4 – Other reporting obligations

### Procurement-connected policies

**Rule:**

*CPRs - Paragraph 4.9 to 4.10*

Procurement-connected policies are policies of the Commonwealth for which procurement has been identified as a means of delivery.

78. Procurement-connected policies may include reporting obligations for relevant entities. A list of current policies is provided on the Finance website for further information.

### Payment terms

79. Each year relevant entities **must** report to the Department with responsibility for Small Business regarding their performance under the Government's *Supplier Pay On-Time or Pay Interest policy*, which specifies the minimum payment terms that entities must provide for all contracts up to the value of \$1 million (GST inclusive).

### Senate Order on Entity Contracts

80. Relevant entities and CCEs are required to meet the Senate Order on Entity Contracts, also known as the Murray Motion, and provide information on contracts valued at or above \$100,000 (GST inclusive), along with details relating to each of those contracts.
81. Finance guidance provides further information on the types of contracts captured by the Senate Order and what Accountable Authority assurances are required (refer to *Resource Management Guide No. 403 Meeting the Senate Order on Entity Contracts*).
82. Finance reports relevant procurement contracts on behalf of NCEs, using CNs published on AusTender that meet Senate Order reporting parameters.
83. The Senate Order also requires relevant entities to identify if there are any confidentiality provisions in a contract, and what type. See paragraphs 65-71 above for more information.

### Annual Reports

84. Relevant entities have additional reporting obligations that **must** be published in their Annual Reports. More information can be found in *Resource Management Guide No. 135 and 136* (Annual report requirements for non-corporate and corporate Commonwealth entities - respectively).



## Part 5 – Exemptions from reporting

### Paragraph 2.6 of the CPRs

85. Contract details do not generally need to be reported on AusTender when an Accountable Authority applies [paragraph 2.6](#) of the CPRs (in whole or in part) because of measures 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.
86. However, if a relevant entity chooses to report such contracts on AusTender, all standard contract information is required to be included.

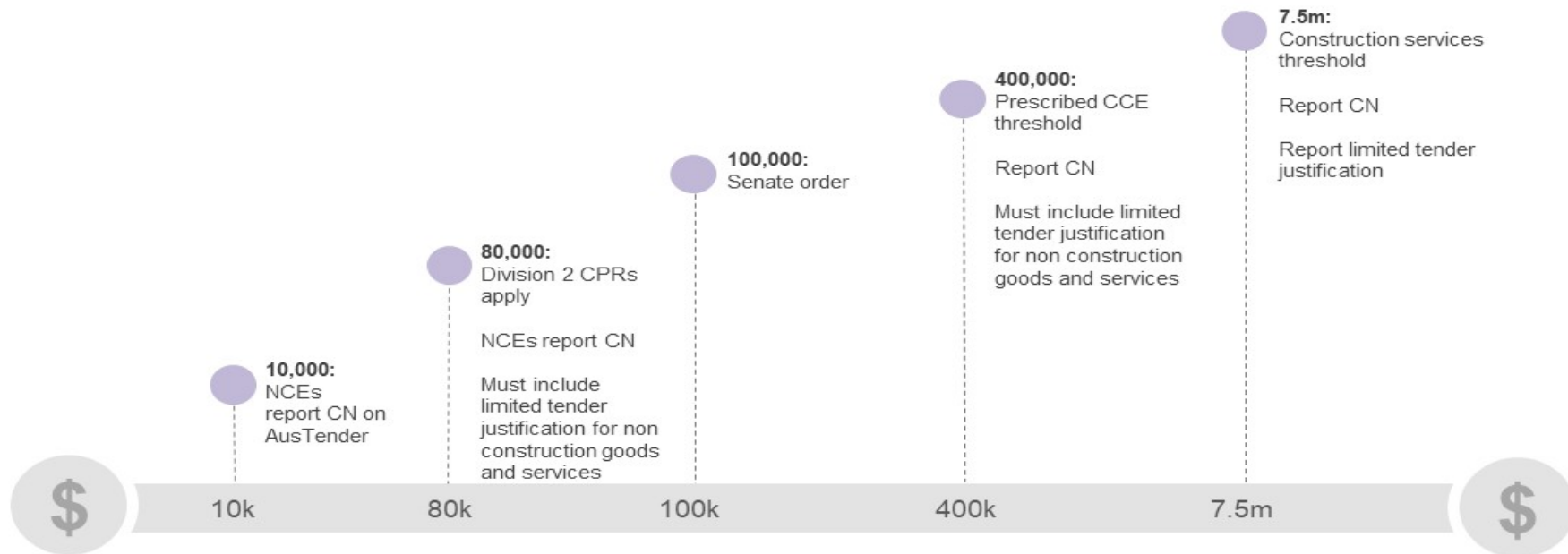
### Freedom of Information

87. An Accountable Authority may direct officials in writing that contract details are not to be reported on AusTender if they would be subject to an exemption under the *Freedom of Information Act 1982 (FOI Act)* and the Accountable Authority considers that the information is genuinely sensitive and harm is likely to be caused by its disclosure.
88. There are nine categories of exemptions under the FOI Act:
  1. documents affecting national security, Defence or international relations;
  2. Cabinet documents;
  3. documents affecting enforcement of law and protection of public safety;
  4. documents to which secrecy provisions in other legislation apply;
  5. documents subject to legal professional privilege;
  6. documents containing material obtained in confidence;
  7. documents whose disclosure would be in contempt of Parliament or in contempt of court;
  8. documents disclosing trade secrets or commercially valuable information; and
  9. electoral rolls and related documents.
89. Another eight categories of document are conditionally exempt under the FOI Act. Fact Sheets on FOI exemptions and additional information is available from the Australian Government Office of the Australian Information Commissioner (<http://www.oaic.gov.au/>).
90. Contracts that have been exempted under the FOI Act by an Accountable Authority for AusTender reporting purposes may still need to be documented in annual reports (refer [subsection 17AG\(9\) of the PGPA Rule](#)).

## Part 6 – Quality Assurance

91. Relevant entities are responsible for the quality and content of the data that they publish and report on AusTender. In order to effectively meet their publishing and reporting obligations, relevant entities should implement appropriate measures to quality assure any data published on AusTender for completeness and accuracy.
92. For example, an entity may consider:
- establishing a fit-for purpose quality assurance review process to ensure that data is created and reviewed by separate resources prior to publication on AusTender;
  - providing guidance and training to assist procurers to understand their publishing and reporting obligations; and/or
  - conducting regular quality assurance reviews of their AusTender data.
93. If a relevant entity has a devolved internal procurement environment, it may consider requiring that a line area conducting a procurement should refer to the central procurement team for advice/clearance before reporting certain types of contracts.
94. Relevant entities may consider prioritising the review of certain CNs. For example, entities may check that:
- consultancies are identified correctly;
  - confidentiality provisions are accurately reflected;
  - where a contract has been entered into under a SON, the correct SON ID is identified;
  - open tender CNs reference the correct ATM ID;
  - the relevant Appendix A exemption or limited tender condition has been reported for limited tender procurements at or above the relevant procurement threshold;
  - significant changes to contracts are reflected accurately on AusTender; and
  - UNSPSC categories selected are appropriate.
95. The Department of Finance also assists relevant entities by:
- checking for anomalies in data published on AusTender; and
  - regularly reminding relevant entities of their reporting obligations and to review their data ahead of major reporting deadlines such as the end of financial year reporting and Senate Order reporting processes.

## Appendix 1 - Reporting thresholds



## Appendix 2 - Consultancy contract characteristics

| Criteria  | Consultancy Characteristic   |
|---|--|
| <p><b>What is the nature of the work required?</b></p>                    | <p>Consultants are individuals, partnerships or corporations engaged to provide professional, independent and expert advice or services.</p> <p>The work involves the application of specialist professional knowledge or expertise that cannot be obtained in-house.</p> <p>It involves the development of an intellectual output, such as research, evaluation, advice or recommendations, to assist the entity in making decisions.</p> <p>It involves a one-off task, a set of tasks or irregular tasks (meaning that it is ill-suited to the engagement of permanent staff).</p> <p>The work that will be performed is an accessory to the entity's business.</p> |
| <p><b>Under what direction or control will the work be performed?</b></p> | <p>Performance of the services is largely left to the discretion and professional expertise of the consultant.</p> <p>Performance is undertaken without the entity's direct supervision.</p>   |
| <p><b>Who will own the contract outputs?</b></p>                          | <p>The output reflects the independent views or findings of the individual or the consultant's organisation.</p> <p>The output is being produced for the entity.</p> <p>The output may not belong to the entity. However, the contract may specifically require the transfer of ownership of relevant intellectual property.</p>   |
| <p><b>Will the contracted party use entity resources?</b></p>             | <p>The Consultant may provide their own equipment.</p> <p>The consultant may work from their own premises for some or all of the assignment*.</p>  |

\*Where highly classified work is being undertaken, it is reasonable to expect that a consultant might work at the entity's premises, using the entity's equipment/supplies.

## Appendix 3 - Common examples of consultancy services

### Finance and accounting

- A person or firm engaged primarily to advise on the financial viability of a government business enterprise **would be a consultant.**
- A person or firm engaged primarily to provide routine auditing or routine accounting services **would not be a consultant.**

### Information Technology

- A person or firm engaged to develop an information technology strategic plan and/or to develop specifications for the systems and/or to provide advice on implementation **would be a consultant.**
- A person or firm engaged to undertake routine implementation under direction and in accordance with specifications, for example, supplying or writing the software and constructing the systems, **would not be a consultant.**

### Program Evaluations

- A person or firm engaged primarily to provide independent high-level policy advice on the outcomes of a government program and to make recommendations **would be a consultant.**
- A person or firm engaged to collect and analyse data regarding a program under the direction of an entity **would not be a consultant.**

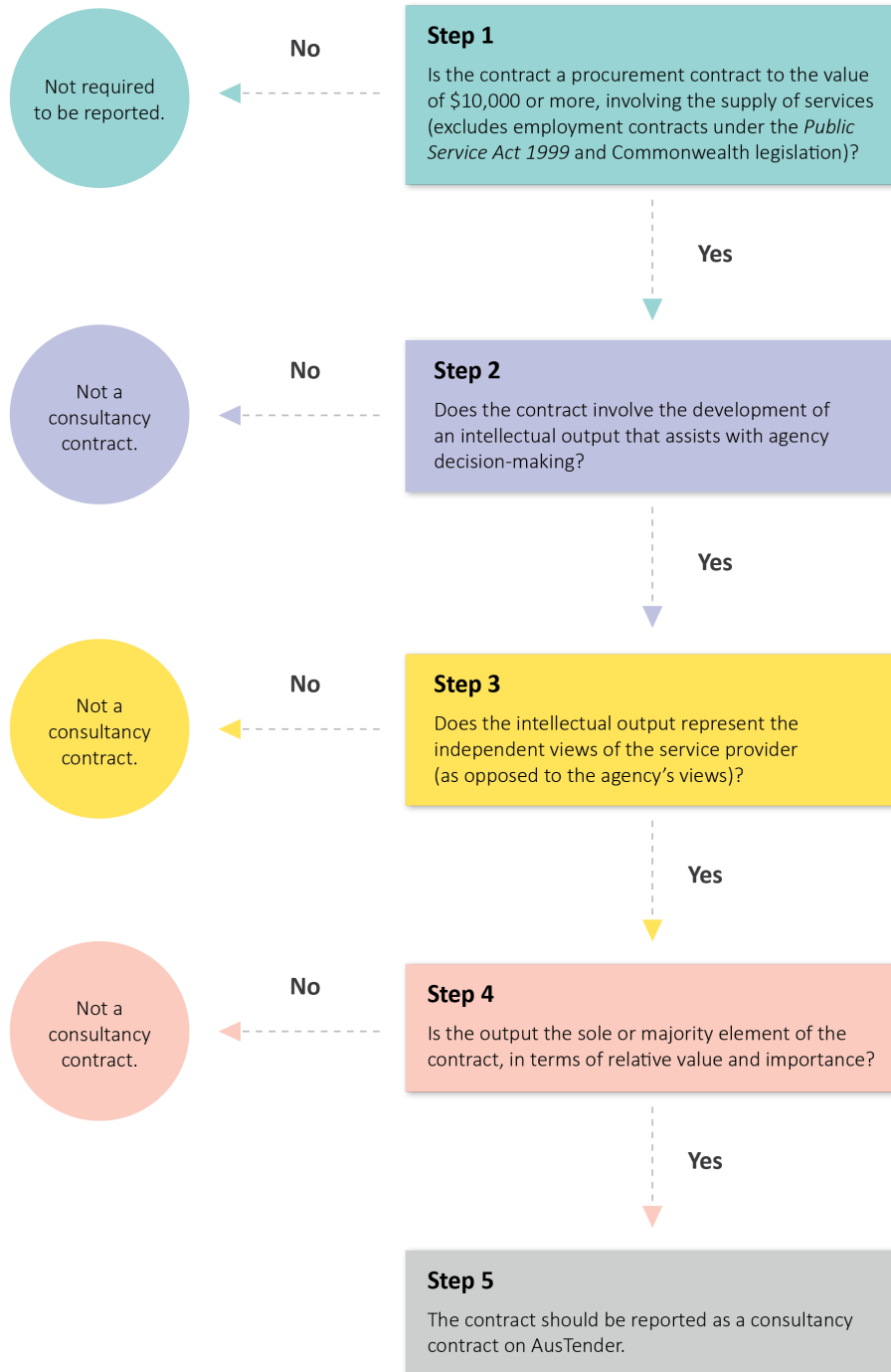
### Training

- A person or firm engaged to provide advice on training needs and to develop training programs **would be a consultant.**
- A person or firm engaged to provide the routine training **would not be a consultant.**

### Legal

- A legal firm engaged by the entity to advise on how to design a new policy program **would be a consultant.**
- A legal firm engaged to develop a suite of contractual templates to support a new policy program **would not be a consultancy.**

# Appendix 4 - Process for identifying consultancies for AusTender reporting



## Appendix 5 - Reporting confidentiality

|  | <b>AusTender “Contract”:<br/>Protecting information<br/>contained in the contract</b>  | <b>AusTender “Outputs”:<br/>Protecting<br/>information obtained or generated in<br/>performing the contract</b>  |
|--|--|--|
| Where there are general confidentiality provision/s only   | Report “No”  | Report “No”  |
| Where there are specific provision/s protecting information in the contract and information obtained or generated in performing the contract | Report “Yes”   | Report “Yes”   |
| Where there are specific provision/s protecting information in the contract only   | Report “Yes”   | Report “No”  |
| Where there are specific provision/s protecting information obtained or generated in performing the contract only                            | Report “No”  | Report “Yes”   |
| Reasons available where a contract is reported as “yes”  | <ul style="list-style-type: none"> <li>• Costing/profit information</li> <li>• Intellectual Property</li> <li>• Privacy Act</li> <li>• Public Interest</li> <li>• Secrecy Provisions</li> <li>• Other</li> </ul> | <ul style="list-style-type: none"> <li>• Artistic, literary, cultural secrets</li> <li>• Intellectual Property</li> <li>• Privacy Act</li> <li>• Public Interest</li> <li>• Secrecy Provisions</li> <li>• Other</li> </ul> |

## Appendix 6 - Case studies on confidentiality reporting

### **Contract containing a general confidentiality clause – no protection of specific information.**

1. Department of Q entered into a contract for the provision of internal audit services that contained a clause saying that the contractor could not, except in certain circumstances, disclose any confidential information without prior approval. There was no specific information listed as confidential and no requirement to maintain the confidentiality of any of the contract's provisions.
2. The confidentiality clause in this contract would be regarded as a general confidentiality clause described within the overarching statement in AusTender that most contracts contain general confidentiality provisions. Accordingly, this contract would be reported as not containing provisions protecting information contained in the contract (on AusTender Contract = No) and not containing confidentiality provisions in relation to "information obtained or generated in performing the contract" (on AusTender Outputs = No). This clause was not considered sufficient to enable the contract to be listed as protecting "information obtained or generated in performing the contract" because the information to be protected was not specifically identified, but was only defined in general terms.

### **Contract protecting specific information in the contract with a general confidentiality clause.**

1. Department of Z is preparing to report a contract that contains a clause that requires the parties to keep confidential the information listed in the schedule and other information that the parties ought to know is confidential.
2. Several clauses of the contract are listed in the schedule. These clauses contain details of the supplier's original business methodology and the price of certain individual items. There is no other information listed in the schedule.
3. This contract would be reported in AusTender as a contract containing clauses protecting specific information contained in the contract (on AusTender Contract = Yes) specifying "intellectual property" and "internal costing/profit information" as the reasons. The contract would be reported as not protecting specific information obtained or generated in performing the contract (on AusTender Outputs = No). The other general confidentiality obligations imposed by the clause would be covered by the overarching statement provided in AusTender.

### **Contract protecting specific information generated in performing the contract with a general confidentiality clause.**

1. Department of J is preparing to report a consultancy contract that contains a clause that requires the parties to keep confidential the information listed in the schedule and other information that the parties ought to know is confidential.
2. The schedule lists the consultant's final report as information to be kept confidential. The report is expected to make recommendations on a number of sensitive issues and the entity has determined that releasing the report would disclose matters contrary to the public interest. There is no other information listed in the schedule.
3. This contract would be reported in AusTender as a contract not containing clauses protecting specific information contained in the contract (on AusTender Contract = No). It would, however be reported as protecting "information obtained or generated in performing the contract" since it identifies specific information generated in performing the contract (on AusTender Outputs = Yes). The reason would be reported as "public interest". The clause also imposes general confidentiality obligations as outlined in the overarching statement provided in AusTender.



## Appendix 7 - Authority to publish template

*[Drafters Notes: This example Authority to publish letter must be provided to Universal McCann at, or at the same time that, the signed Media Booking Authority is provided to Universal McCann. Notices will not be booked prior to the receipt of a signed Authority to publish letter. This letter does not need to be provided to the Department of Finance for approval.]*

[Insert Universal McCann contact name]

Universal McCann  
100 Chalmers Street  
Surry Hills  
NSW 2010

### **AUTHORITY TO PUBLISH THE NOTICE OF AN APPROACH TO MARKET (ATM) IN THE PRESS**

As the Accountable Authority of a NCE (or an official who has been delegated the authority by the Accountable Authority) I approve the publication of a notice of an ATM in the press.

In reaching this decision, I have considered [insert justification].

I have taken into account my obligation under Section 15(1) of the *Public Governance, and Performance and Accountability Act 2013*, and I am satisfied that this expenditure represents proper use of Commonwealth resources.

The tender notice will be advertised on [insert date e.g. Saturday 24 August and Saturday 31 August 2020] in the [insert name/s of the newspaper e.g. The Canberra Times and The Sydney Morning Herald].

Details of the ATM are as follows:

**ATM ID:** [insert the ATM ID published on AusTender]

**ATM Title:** [insert the title of the ATM as it appears on AusTender]

**ATM Description:** [insert a short description of the ATM as it appears on AusTender]

**Further Information and Interest:** Details of this ATM and how to lodge a submission can be viewed on AusTender at tenders.gov.au.

The [insert entity] contact in relation to this notice is [insert name] at [insert email address] or phone [insert phone number].

Yours sincerely

[Insert name]  
[Insert position]  
[Insert work area]  
[Insert entity]  
[Insert date]