



Disaggregation of large projects

Commonwealth Procurement Rules - Small and Medium Enterprises (paragraph 5.5)

1. Paragraph 5.5 of the Commonwealth Procurement Rules (CPRs) requires officials to apply procurement practices that do not unfairly discriminate against small and medium enterprises (SMEs) and provide appropriate opportunities for SMEs to compete in Government procurement.
2. To maximise competition and enhance opportunities for SMEs to participate in larger scale procurements, the CPRs require procuring officials to consider the disaggregation of large projects into smaller packages, where appropriate.
3. Some SMEs may not have the resource capacity necessary to competitively bid for a large project, however they may possess the capability and capacity to compete for one or more project components. The disaggregation of large projects into smaller packages, where appropriate, allows SMEs to compete to deliver elements of a larger project. By widening the field of potential suppliers, this enhances the opportunity to consider a wider range of solutions.
 - a. Disaggregation allows more SMEs to bid for Government work, builds sovereign capability and strengthens commercial relationships.

CPR Paragraph 5.5	<p>To ensure that <i>Small and Medium Enterprises (SMEs)</i> can engage in fair competition for Australian Government business, <i>officials</i> should apply procurement practices that do not unfairly discriminate against <i>SMEs</i> and provide appropriate opportunities for <i>SMEs</i> to compete. <i>Officials</i> should consider, in the context of value for money:</p> <ol style="list-style-type: none">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; andd. the potential benefits of having a larger, more competitive supplier base, including the disaggregation of large projects into smaller packages, where appropriate, that maximise competition.
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What is disaggregation?

4. Disaggregation in this context means to divide a large project into smaller components or packages that allow a *potential supplier* to submit a response against one or more components.
5. Disaggregation does not mean that a *procurement* can be separated into parts to avoid conducting an *open tender*.
 - a. For example, if the estimated value of a procurement for *construction services*, over the life of that procurement, is expected to be \$14 million, that procurement must not be separated into two \$7 million procurements solely to avoid the \$7.5 million *procurement threshold* and the requirement to publish an open approach to market on AusTender.
 - b. This is a requirement stemming from both the CPRs and Australia's international obligations.

CPR Paragraph 9.5	A <i>procurement</i> must not be divided into separate parts solely for the purpose of avoiding a relevant <i>procurement threshold</i> .
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How do procuring officials put CPR paragraph 5.5.d. into practice?

6. A project can be disaggregated in two ways:
 - a. a large project is broken into multiple small packages (representing smaller project components of the larger project). In this scenario, each package represents a separate approach to market with one or more contracts awarded; or
 - b. a single approach to market that allows an entity to award a contract to one or more suppliers against one or more components within the larger procurement.

Designing procurement for a disaggregated project

7. All procurements, including those that have been disaggregated, must represent value for money and be conducted in accordance with the CPRs.
 - a. Note that the below paragraphs do not represent a definitive list of actions when considering disaggregation of projects.
8. The CPRs have always contained the flexibility for disaggregation – this guidance provides entities with information to help guide decision making when determining when disaggregation may be appropriate and how to do so in accordance with the CPRs.

9. When designing a procurement process, identify whether the nature of the goods or services being procured are suitable to be delivered as separate components. Procuring officials (officials) should consider, for example:
- a. how risks will be managed, by both the supplier/s and the Commonwealth. Officials should ensure that disaggregation does not introduce unmitigated risks for either party
 - b. cost impacts and/or efficiencies
 - c. resource implications on both the supplier/s and the Commonwealth;
 - d. any potential increase in regulatory burden for suppliers
 - e. ability to meet overall project and/or component delivery timeframes
 - f. impact on insurance and warranties
 - g. interdependencies and interface risk between the delivery of multiple components and multiple suppliers (including who will be responsible for coordination) and
 - h. supply chain logistics.
10. Entities should consider conducting market research/consultation to develop an informed understanding of the nature of the market, its capability and capacity to respond to and participate in procurement activities, and how this might inform the drafting of the approach to market and contract documentation.
- a. Early and effective engagement with the market can also provide entities with knowledge about innovation in the sector which may support improved procurement outcomes.
11. Estimate the value of the procurement. The expected value must be estimated before a decision on the procurement method is made.
- a. Where a large project is broken into smaller packages and each package involves a separate approach to market, the value of each package should be used to determine the appropriate procurement method.
 - b. Where a single approach to market is undertaken with the possibility of multiple contracts awarded, the total value of the procurement as though a single contract was awarded should be used to determine the procurement method.

CPR Paragraph 9.4	When a <i>procurement</i> 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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12. When developing the approach to market documentation, entities should ensure it:
- a. clearly communicates to the market the intention to deliver the project in smaller components and sets out the requirements for how the potential supplier is to respond to the request, how submissions will be evaluated and how contracts may be awarded (i.e. the procuring entity may choose, depending on the outcome of the evaluation process, to award a contract to a single supplier who can deliver the entire project or multiple contracts awarded to multiple suppliers for different work components).
 - b. allows for the procuring entity to evaluate value for money for each separate component and, where a single approach to market is being adopted for multiple contracts, across all components as a whole.
13. In addition to the value for money considerations in the CPRs, the tender evaluation process should be designed to identify any interface risks that might arise through the engagement of multiple suppliers.
14. Officials should consider how the delivery of multiple components by multiple suppliers may need to be managed contractually. These considerations should be factored into the planning for the procurement process. For example:
- is there a requirement for suppliers to work collaboratively to deliver certain project components?
 - will there be dependencies that need to be managed?
 - who will decide or mediate sequencing of work by different suppliers?
 - how will risks be shared/allocated?
 - are there reporting obligations, such as performance reporting, that need to be met jointly by suppliers?
 - are there intellectual property rights that need to be considered?

Publishing and Reporting Requirements

15. Entities should consider publishing disaggregated procurements on their entities' Annual Procurement Plan (APP) (refer Resource Management Guide 423 – Procurement Publishing and Reporting Obligations).
16. All procurements must be published, and contracts reported, in accordance with the CPRs and with consideration to [Resource Management Guide 423 – Procurement Publishing and Reporting Obligations](#).
17. The way in which procurements for a disaggregated project are published and how they are reported on AusTender will depend on how they have been disaggregated.

Publishing procurements for disaggregated projects on AusTender

18. Where a single approach to market will be undertaken with the possibility of multiple contracts awarded, a single Approach to Market (ATM) is published on AusTender, with one ATM identifier.

19. Where a large project will be broken into multiple smaller procurements (representing smaller project components of the larger project) each procurement will be published as an individual ATM on AusTender, each with a separate ATM identifier.
20. If the planned procurement was published on the entities' APP, link the ATM to the relevant Planned Procurement from the APP, in AusTender.

Reporting disaggregated contracts on AusTender

21. Where a single approach to market has been undertaken with multiple contracts awarded, all contracts that are at or above the relevant *reporting threshold* will need to be published as a separate Contract Notice on AusTender and all reference/link the same ATM Number.
22. Where a large project has been broken into multiple smaller procurements (representing smaller project components of the larger project), each contract awarded that is at or above the relevant *reporting threshold* will need to be published as a separate Contract Notice on AusTender and reference/link the ATM identifier that was used when the ATM for that procurement was published.

Practical Examples

The following examples are provided to assist officials to understand and put into practice CPR Paragraph 5.5(d).

Example One - a single approach to market that allows an entity to award a contract to one or more suppliers against one or more components within the larger project.

A Commonwealth entity, who is required to provide medical assessments for Commonwealth officials stationed across multiple locations across Australia, is about to go out to market for healthcare services.

When designing the procurement, the entity determines that the medical assessments do not need to be carried out by a single supplier. Each location could in fact be serviced by a different supplier providing each supplier has the capability and capacity to deliver the services in that location, can do so within budget and their engagement represents an appropriate level of mitigated risk.

The entity decides that a single approach to market will be drafted that allows potential suppliers to submit responses to deliver services to one or more of the locations. The ATM clearly details the intention of the entity to award one or more contracts and includes the evaluation criteria and methodology the entity will use to evaluate submissions.

The procurement is published on AusTender as an open approach to market and the entity receives responses that include a number of potential suppliers who claim they can service all locations across Australia and a number of responses that indicate the potential supplier can service only one or two locations. The submissions are evaluated against the evaluation criteria in the ATM and the entity shortlists a single potential supplier who can service all locations and a number of potential suppliers who, between them, can cover all the locations.

The entity assesses the risks and costs associated with both options (the single supplier verses multiple suppliers) and considers that the option of multiple service providers

represents the best value for money, including the ability to manage risk locally. While the single service provider had the capability and capacity to deliver the services, the entity determined that multiple service providers provided the best value for money outcome for the entity.

Example Two - a large project is broken into multiple small procurements (representing smaller project components of the larger project).

A Commonwealth entity is undertaking a refurbishment of a Government owned building which is in need of a number of repairs including restoration of the heritage listed façade.

The entity identifies there are a number of different activities that will need to be performed to complete the project, many of which require specific professions and qualifications, including licences and qualifications to work on heritage listed sites.

Market research indicates there are a number of businesses who appear to have the right skills to perform components of the work but few who appear to have the capability and capacity to deliver the entire project.

The entity determines that the best course of action will be to disaggregate the project into smaller packages matched to the capabilities and capacities of the relevant supply markets. This will involve undertaking a number of separate procurements that will be undertaken at different times throughout the project.

As the project has been broken into smaller packages, with each package representing a separate approach to market, the entity estimates the value of each package. Two of the three package's estimated value are above the relevant *procurement threshold* for the entity, so an open approach to market (ATM) must be undertaken for those two packages. The third package is below the relevant *procurement threshold* and therefore can be undertaken as a limited tender, should the entity choose to do so.

There will be a requirement for suppliers to work collaboratively to deliver certain project components as well as a number of dependencies that will need to be managed. These requirements are specified in the ATM documentation and reflected in the draft contract.

The entity publishes each of the individual ATMs on AusTender, evaluates the submissions and awards contracts to the preferred suppliers. Each of the contracts are published on AusTender as separate Contract Notices with reference to the corresponding ATM identifier.