



Contract Negotiation

This guidance supports entities subject to the Commonwealth Procurement Rules (CPRs) in considering and undertaking contract negotiations, including considerations relevant to applying the negotiation provisions within Division 2 of the CPRs.

This guidance is intended to be read in conjunction with the [CPRs](#), Finance's Procurement Policy Website 'Buying for the Australian Government' and any other legislation, policies and guidance identified in the table below.

This general guidance does not replace specific procurement or legal advice. If you are uncertain what entity-specific requirements might be in place, contact your entity's Central Procurement Team.

Commonwealth Procurement Rules	Section 4 (Value for Money), paragraphs 6.1 - 6.6, 10.6 & 10.18 – 10.19
Legislation and Policies of the Australian Government	<i>Public Governance Performance and Accountability Act 2013</i>
Guidance	RMG 203 – General duties of officials Request documentation Ethics and Probity in Procurement Confidentiality throughout the Procurement Lifecycle Insurance and Liability Contract Management Guide
Other relevant resources, systems or tools	Commonwealth Contracting Suite (CCS)

What is Contract Negotiation?

Contract negotiation is a process between the buyer and potential supplier(s) that aims to validate the assumptions and understandings behind a supplier's offer. Contract negotiations also aim to improve value for money outcomes through discussion, while upholding the principles of accountability, transparency, and equitable treatment of potential suppliers.

Either party can propose an action, an offer or a concession to reach an agreement. These proposals must not compromise the integrity of the procurement process, or change the scope of the tender as originally outlined in the approach to market documentation.

Typically, negotiation occurs:

- after the market has been approached and following the evaluation (and shortlisting, including confirmation that essential requirements are met) of submissions
- before contract signature
- before contract variation, or
- whenever any issues arise during the operation of the contract as long as materially within scope of the original approach to market.

Negotiations in the CPRs

The CPRs, effective 17 November 2025, include provisions regarding negotiations for procurements at or above the relevant procurement threshold.

The relevant thresholds (inclusive of GST) are:

- a. For non-corporate Commonwealth entities - goods and services (excluding construction services): \$125,000
- b. For prescribed corporate Commonwealth entities - goods and services (excluding construction services): \$400,000
- c. For construction services: \$7.5 million.

CPR paragraphs 10.18 – 10.19

Negotiations

10.18 A *relevant entity* may conduct negotiations where:

- a. the *relevant entity* has indicated its intent to conduct negotiations in the *request documentation*, as outlined in paragraph 10.6(e); or
- b. following an evaluation, no single *tenderer* is assessed as providing best value for money, in accordance with the essential requirements and *evaluation criteria* specified in the *approach to market* and *request documentation*.

10.19 Where a *relevant entity* conducts negotiations, the *relevant entity* must:

- a. ensure that any elimination of a *tenderer* participating in negotiations is carried out in accordance with the essential requirements and *evaluation criteria* specified in the *approach to market* and *request documentation*; and
- b. provide a common deadline for the remaining participating *tenderers* to submit any revised *tenders*.

These provisions ensure the requirements around when and how negotiations may be conducted are clear for both entities and suppliers, including that request documentation should include information to indicate whether the entity has an intention to conduct negotiations.

Importantly, these paragraphs do not require an entity to undertake a negotiation. Whether a negotiation should take place is a decision for the evaluation team and delegate.

If an entity has not foreshadowed in the request documentation that negotiations may be undertaken, paragraph 10.18.b provides the ability for the entity to undertake negotiations, where no single tenderer is assessed as providing best value for money. Paragraphs 10.18 and 10.19 allow for negotiations to be undertaken with one or more suppliers.

Paragraph 10.19 sets the requirements for the conduct of negotiations, including where the negotiations allow for the elimination of suppliers through the negotiations. This may not be part of every negotiation. It is also possible that, where the ATM documentation or negotiation plan allows for the elimination of suppliers during negotiations, that this provision is not exercised.

Any negotiation, including elimination of suppliers, should be consistent with the procurement plan, or where relevant, the negotiation plan.

When conducting negotiations that involve seeking revised offers, all potential suppliers must be provided with the same deadline to submit the revised offers.

Why negotiate?

Achieving value for money is the core principle of the CPRs (CPRs Section 4). It ensures that public resources are used in an efficient, effective, ethical and economical manner (CPRs paragraphs 6.1 – 6.6).

While it is not a requirement to undertake negotiations as part of each procurement process, negotiations may be required to achieve the best value for money outcome. The aim is to reach a legally binding agreement that clearly identifies responsibilities and rights, allocates risks appropriately, and delivers mutual benefit and value.

Effective negotiations should benefit both the buyer and the seller and should result in a stronger ownership of the negotiated outcome(s) by the parties than when the arrangements are forced. As a result, a negotiated agreement is more likely to be successful and enduring in operation. Beneficial outcomes could include:

- improved relationship and client satisfaction
- shorter delivery period
- a better targeted product or service
- no, or less, disputes
- reduced costs
- effective and appropriate allocation of risk.

When considering the extent of negotiations, potential risks, time, effort and cost of negotiations for both the Australian Government and the potential supplier/s should be considered. For example, a reduction in price may also require the buyer to accept a reduction in quality. Other factors, such as the probability of achieving the required outcomes, should also be considered. These issues should be presented and addressed as required in the value for money assessment of your procurement and any negotiation plan.

What can be negotiated?

Negotiation is generally about finalising a supplier and/or the contract details. It is **not** an opportunity to materially change the scope of the procurement or to give an advantage to any supplier.

Negotiations may not necessarily be about getting lower pricing, noting the objective is to improve the value for money outcome. This may be achieved by refining requirements, processes and service delivery which may provide efficiencies and saving through the contract term, or benefits in other financial and non-financial aspects of the entity's business requirements.

There may be opportunity to refine details of the submission, and proposed contract, such as:

- price, rates or fees
- schedule and delivery timeframe
- risk allocation
- where applicable, where partial compliance to contract terms and conditions was proposed
- levels of insurance/s
- service levels or key performance indicators, including quality standards
- intellectual property
- security requirements, and/or
- ICT integration.

It is important to remember that negotiations must not alter the scope of the initial procurement as set out in the approach to market documentation.

Where a bespoke form of contract has been offered, potential suppliers may have identified clauses they wish to change, including clauses that the supplier is not able to comply with. A risk assessment should be undertaken to determine what risks any non-compliance may present to your entity or the wider Australian Government, if the risks were to be accepted. It may be necessary to discuss with your central procurement or risk team or seek legal advice in this instance.

What should not (or can not) be negotiated?

Negotiations are not an opportunity to materially change the scope of the procurement. Conditions for participation and any other mandatory requirements that potential suppliers must have demonstrated in order to be able to participate in a procurement process, must not be negotiated. Negotiations must not change the scope of the tender but may make some changes to methodology.

Not all contract terms can be negotiated. For example, the CCS Contract Terms are non-negotiable, however Additional Contract Terms (included in an ATM) can be negotiated. Likewise, whole of Government panel arrangements will often have pre-agreed terms and conditions that cannot be changed. Further information should be sought from the panel manager.

Entities must not negotiate on matters that would contravene the law. Entities should not negotiate on any terms and conditions that could pose a risk to your entity or the Australian Government. For example, where changes could:

- breach entity policies or Australian Government policy requirements
- compromise data, information or personal security
- enable a potential supplier or participant within their supply chain, to benefit from access to sensitive or privileged information that would otherwise be preventable through appropriate contractual terms and conditions, or
- provide insufficient protection to the entity or Australian Government, through indemnity caps or inadequate levels of insurance. Further guidance is provided at: [Insurance Requirements](#).

Preparing to negotiate

Who can negotiate?

The Chair of the Tender Evaluation Panel or the person who will perform the role of Contract Manager are generally best positioned to conduct negotiations. However, this responsibility could also be assigned to another official provided they are well placed to understand the issues to be negotiated and have the authority to perform the role. The role of the negotiator, the authority to negotiate, and the matters to be negotiated should be clear – this may be outlined in the procurement plan, or for more complex negotiations, may be assigned through a formal negotiation plan.

You should ensure that you have appropriate expertise to advise the negotiator/negotiations. Consider whether you require subject matter experts to advise on any elements under negotiation. This may include legal experts (particularly if the terms of the contract are being negotiated), technical or financial experts, probity advisors, and/or a senior member of the Central Procurement Team.

Who can you negotiate with?

Entities may choose to negotiate with one or more potential suppliers, and such negotiations may cover different topics for each potential supplier. Suppliers may be eliminated before or during the negotiations. Entities may also wish to seek revised offers following the negotiations – this may be from one supplier, or multiple suppliers with these revised offers informing the selection of best value for money.

In instances where there is only one preferred tenderer, this information should generally not be disclosed to the tenderer as this may impact the entity's negotiation position.

Planning

The effort expended in your negotiations should be commensurate with the potential benefits. Activities that may assist when planning for contract negotiation include:

- ensuring all activities are carried out in accordance with any relevant procurement planning and evaluation documentation as well as internal processes, policies and/or systems
- obtaining relevant approvals and ensuring the delegate has agreed that negotiations are required. This may include a sign-off by a probity advisor, where one has been appointed
- ensuring you are familiar with the ATM document, draft form of contract and the potential supplier's submission
- understanding community sensitivities
- understanding your potential supplier and the market they operate in, including emerging conditions and constraints
- understanding what can and cannot be negotiated (for example, are there certain market specific terms and conditions that are non-negotiable, or are there timeframes that must be adhered to)
- considering the allocation of risk in the contract to the party best placed to manage it
- ensuring that negotiations are not one-sided - where appropriate be prepared to give a little and take a little. Remember, the objective is to improve the value for money outcome but not to the detriment of quality, standards and regulations or timeliness.

Individual entities may have additional rules, guidance, templates or tools that apply when conducting contract negotiations. If unsure, it is recommended that you engage your Central Procurement Team, or legal area.

Negotiations may be conducted via phone, email, face-to-face, or a combination depending on a number of factors, including what is convenient for you and the potential supplier, and the complexity and sensitivity of the matters to be negotiated.

It is important to ensure appropriate documentation is recorded prior to and upon completion of negotiations, commensurate with the scale, scope and risk of the procurement.

Negotiation Plan

Where negotiations are to be conducted, entities may wish to develop a negotiation plan or strategy, approved by the delegate. This may be particularly relevant in complex negotiations, or where the negotiation team includes new or additional people to the evaluation. Where considered appropriate, the negotiation plan should detail major information such as:

- an overview of the requirement for which the procurement is being undertaken
- the aims, objectives and constraints of the negotiations
- the members of the negotiation team and their roles, providing clear authority to a specific role to conduct negotiations
- timeframes for negotiation
- key issues for negotiation including, where relevant, anticipated costs and benefits for each party and, where possible, for each issue
- if negotiating with multiple potential suppliers, how this will be done, including whether suppliers will be eliminated during the negotiations, and if so, on what basis
- the preferred outcome, including how entity improved value for money will be measured
- an agreed fall-back position
- the negotiation team's view about the likely objectives and approaches of the tenderer with whom the negotiation takes places
- the resources available to support the negotiation (such as, facilities or external advisors)
- an alternative to a negotiated agreement - the walk away point. For example, this could be choosing to commence discussion with other potential suppliers or pursuing an alternative arrangement.

The negotiation plan must not change the scope of the procurement and must be able to be linked back to the essential requirements and evaluation criteria specified in the approach to market and request documentation.

Probity

The negotiation process must be transparent, documented and undertaken in a consistent, fair and equitable manner, particularly when negotiating with more than one potential supplier.

Members of a negotiating team must disclose any material personal interest that could lead to actual or perceived conflict of interest, prior to and during any negotiation. Appropriate actions should be taken to manage any conflicts (actual or perceived) including deciding if the conflict warrants a member being removed from the negotiating team. Further guidance is provided at: [Ethics and Probity in Procurement](#).

All negotiation matters are confidential and must be treated sensitively. Throughout the procurement process, the Australian Government's confidentiality interests and the confidentiality interests of potential suppliers must be protected. Potential suppliers should be reminded of their obligations to keep information confidential. This may include restrictions

on media announcements detailed in the approach to market documentation. Further guidance on confidentiality is provided at: [Confidentiality throughout the Procurement Cycle](#).

Officials involved in negotiations should not seek or accept gifts or benefits from a potential supplier or any other party associated with the negotiations. You should follow your entity's internal policies on the proper handling and recording of gifts and the procurement's probity plan, should a gift or benefit be offered or accepted during an approach to market or negotiation process.

Other Considerations

Other factors to consider for negotiations include:

- making a realistic assessment of the balance of power in the negotiation; for example, power between entities and large corporate suppliers tend to be more equal while the balance of power when entities deal with small and medium enterprises tends to favour the entities
- being the powerful party in a negotiation is neither good or bad, ethical or unethical, however entities must ensure that any market power they may have is not misused to damage, eliminate or exclude competitors from the market
- seeking assurance that the representatives of the potential supplier will have the authority to make representations and decisions
- preparing an agenda for all parties that identifies the issues to be discussed at the negotiation meeting to avoid surprises, and to address probity matters
- arranging a suitable location and/or technology for the negotiation meeting to be held. Consider what facilities may be required and if there are suitable breakout rooms for both parties. Consideration should also be given as to whether face-to-face is best, or if online negotiations would be adequate.

Negotiating

Tips when carrying out a contract negotiation include:

- ensuring all parties understand that any resulting contract will be in the form identified in the approach to market. Verbal agreements should not be entered into and both the agenda the minutes should note that any undertakings by the entity negotiating team are indicative only and not valid until accepted by the relevant delegate
- not making a decision or committing to an outcome if you do not have authority to do so. Be aware of the delegate's endorsed scope of negotiations. Where required, seek advice from the delegate and your entity's Central Procurement Team regarding the issue
- taking on notice any issues you do not have sufficient information or expertise to commit or decline. You don't need to agree at the time, you can inform the potential supplier that you'll consider and get back to them at a later date
- taking minutes or notes of the negotiations to provide an accurate representation of the negotiation outcomes. This should be presented as part of the Negotiation Report

- at the end of the meeting, recap what has been agreed and what remains to be addressed, and confirm in writing to all parties after the meeting, including a reminder to keep information discussed confidential
- following up any outstanding issues promptly
- ensuring that information relating to another potential supplier's submission (for example, the cost quoted by another potential supplier) is not disclosed
- if both parties cannot reach an acceptable position, within a reasonable timeframe, seek further advice from your delegate or entity's Central Procurement Team, consistent with your negotiation plan (if relevant).

Finalisation

The following activities generally take place after the contract has been negotiated:

- documenting the outcomes of negotiations, including updating the risk assessment - typically this would be done in the evaluation report, or where applicable, the Negotiation Report. This may include a sign-off by probity advisors, where outlined in the probity and/or negotiation plan
- seeking delegate agreement to the proposed negotiation outcomes
- incorporating agreed positions into the contract. Ensure both parties review and agree on the final negotiated draft of the contract
- obtaining relevant approvals to enter into the contractual arrangement
- evaluating whether the anticipated benefits were achieved within the expected costs.

Negotiating contract variations

Generally, contract terms and conditions are not re-negotiated after a contract has been established, however there may be circumstances where this is necessary. You may need to seek Central Procurement Team or legal advice if either party proposes changes to established terms and conditions.

Tips when negotiating a contract variation:

- Variation to a procurement contract should not significantly change the scope of the contract.
- A value for money assessment must be undertaken and approved by the delegate, prior to agreeing to a contract variation.
- Where formal negotiations are required, the effort expended in your negotiations should be commensurate with the potential benefits, scale, scope and complexity of the variation.
- Document details of the decision-making process for a contract variation to ensure the position is defensible, protects against challenges or perceptions of bias does not alter the original scope of the procurement and the contract still represents value for money.
- Proposed variations should be assessed to ensure that they do not breach entity policies or Australian Government legislation or policy.

A contract would ordinarily be varied consistent with the procedures set out in the contract itself and/or entity specific procedures. Importantly, the variation should be in writing and should be agreed to by all parties to the contract for it to have legal effect.

Further Advice

Further questions can be directed to procurementagencyadvice@finance.gov.au.