

From: s47E(c)
To:
Cc:
Subject: FW: UNSW Canberra SOCOMD Ethics Framework Statement of Work 2020-2021 [SEC=UNCLASSIFIED]
Date: Friday, 22 May 2020 10:19:14 AM
Attachments: [image001.png](#)
[RE COMD SF Support for ethics package SECUNCLASSIFIED.msg](#)

UNCLASSIFIED

Hi Boss,

As discussed, my initial engagement (incl. telecon) and feedback from s47E(c), some good advice.

Key point, we need to develop 'our own' acquisition paperwork aligned with commonwealth procurement guidelines to justify UNSW/DPB as a the sole source provider for the ethics package and gain 1 star formal endorsement. Our HQ BM branch should be able to give us the lead on necessary acquisition documentation required.

As a parallel LOE, we should be engaging ADFAs contract cell who may be able to undertake contract extension on one of their existing contracts with UNSW, which may be an easier road given the timeliness of standing up the Ethics team. That said, we still need to complete the acquisition paperwork.

BREAK...

s47E(c) with permission, I would like to employ s47E(c) to assist with the necessary acquisition paperwork for the Ethics Team as a priority. Point being is that the acquisition process we walk through for the Ethics team from UNSW should be replicated if we choose Clear Live as a single source provider. A learning experience for us all! Will come and have a chat.

Cheers

s47E(c)

s47E(c)

Chief of Staff

Defence Special Operations Training and Education Centre (DSOTEC)

Coral Lines, Holsworthy NSW 2173

s47E(c) :22



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From: s47E(c)
Sent: Friday, 22 May 2020 9:04 AM
To: s47E(c)
Subject: RE: UNSW Canberra SOCOMD Ethics Framework Statement of Work 2020-2021
[SEC=UNCLASSIFIED]

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Morning s47E(c)

The concept and statement of work are excellent. Needs strengthening in these areas:

- Tie into the [Training Transformation Strategy](#) objectives to be considered in scope (for TT funding)
- Is this compatible with broader/higher initiatives? Yes, please refer to the attached.
- Endorsed by COMDT? Yes, per attached, please also refer to DGTRADOG and COMD SFG direction in the attached.
- Commonwealth procurement policy is being followed? Does not appear so, but I can't see your acquisition paperwork. Let's discuss.

s22

Regards,

s47E(c)

Program Manager
Training Transformation
Directorate of Training Systems

A HQ Forces Command, Victoria Barracks Sydney

s22 E s47E(c)

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From: s47E(c)
Sent: Friday, 22 May 2020 7:28 AM
To: s47E(c)
Subject: FW: UNSW Canberra SOCOMD Ethics Framework Statement of Work 2020-2021
[SEC=UNCLASSIFIED]

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Good Morning s47E(c) ,

Your details were passed on by COMDT DSOTEC, s47E(c) , as the key POC at FOCOMD regarding DSOTEC contracted support initiatives aligned with Training Transformation.

As no doubt you may be aware, in the last week s47E(c) has engaged s47E(c) regarding DSOTEC's ongoing initiatives to establish an ethics cell, with the attached SoW outlining costs for contracted specialists from UNSW that will man the cell.

Could I potentially request your review and advice on the proposed costings in the SoW and associated requirements (format, wider process of review) to ensure alignment with like TT initiatives IOT enable progression of this SoW.

s22

Regards

s47E(c)

s47E(c)

Chief of Staff

Defence Special Operations Training and Education Centre (DSOTEC)

Coral Lines, Holsworthy NSW 2173

s47E(c)

s22



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From: s47E(c)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: COMD SF Support for ethics package [SEC=UNCLASSIFIED]
Date: Thursday, 23 April 2020 8:22:00 AM

UNCLASSIFIED

s47E(c)

I have the necessary approvals, scope justification and compatibility with enterprise initiatives stated below. Please provide an estimate and advise how you intend to execute in this FY and/or whether acquisition assistance is required.

Regards,

s47E(c)

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From: s47E(c)

Sent: Wednesday, 22 April 2020 7:38 PM

s47E(c)

Subject: Fwd: COMD SF Support for ethics package [SEC=UNCLASSIFIED]

s47E(c)

Depending on timelines and requirements, we should anticipate a subbid to achieve this ethics training for SOCOMD.

s47E(c)

Sent from my iPhone

Begin forwarded message:

From: "Shortt, Craig BRIG" s47E(c)

Date: 22 April 2020 at 6:52:39 pm AEST

To: "Ryan, Glenn BRIG 1" s47E(c), "Duncan, Ana BRIG"

s47E(c)

Cc: s47E(c) "Whittaker, Joanne BRIG"

s47E(c)

Subject: RE: COMD SF Support for ethics package [SEC=UNCLASSIFIED]

UNCLASSIFIED

s47E(c)

Appreciate the short notice turnaround on the provision of 2 x contractor to get after the development of the ethics package.

As discussed, there is a strategic imperative for SOCOMD to institutionalise the approach to the delivery of ethics. It is an important element of not only leadership but the culture of the organisation.

In 2019, we delivered the ethical training as detailed in the attached minute from SOCAUST to CA. However, I recognise that this work needs a coherent framework across both individual and collective training using contemporary examples to ensure that we are future ready.

Currently, SOCOMD have two ongoing reviews into reform:

- s47E(c) is examining the implementation of his report and will go back to CA at the end of May.
- MAJGEN Caughey, the SF advisor, is working with us on different initiatives including culture and character.
- Both these activities will assist with getting after organisational reform and support managing the release of the IGADF report into SO in AFG.

Consequently, I have amended the leads for management of the different parts of the process which I had previously discussed with Ana and was supported going forward.

It represents a deliberate approach that can then be used more broadly. It uses SOCOMD as the development organisation for integration of the stakeholder input. I therefore appreciate if funding is transferred to DSOTEC.

Happy to discuss.

Regards,

C

BRIG Craig Shortt | COMD SFG

s47E(c)

s22

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From: Ryan, Glenn BRIG 1 s47E(c)

Sent: Wednesday, 22 April 2020 8:37 AM

To: Shortt, Craig BRIG s47E(c) Duncan, Ana BRIG

s47E(c)

Cc s47E(c)

Subject: COMD SF Support for ethics package [SEC=UNCLASSIFIED]

UNCLASSIFIED

Craig,

I think I can support with other funding the effect you want of an ethics package to support the cultural initiatives in SCOMD based on our discussions yesterday.

Based on Army's endorsed authorities and processes, I think the correct execution pathway is:

- SOCOMD specify the problem, requirements and standards (it is more than individual training)
- DSOTEC with contractor support funded by DGTRADOC design the ethics package aligned to the endorsed Army leadership model supported by RMC-A. (Note our intent is to also bring CDLE – ^{s47E(c)} and academia into this process)
- DSOTEC executes the package
- SOCOMD as the user validates the package meets the needs (we are examining the use of the SF advisor, MAJGEN Caughey, to assist)
- Lessons learnt and package management is provided to RMC-A for broader application.

This model keeps us aligned to the Army authorities, enables industry standards for SOCOMD and Army and aligns to the Defence Learning Manual, ATIs and authorities.

If you agree ^{s47E(c)} will organise the money with RMC-A for the contractor support.

Regards,

^s
4 Glenn

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From: s47E(c)
To: [Redacted]
Cc: [Redacted]
Subject: FW: UNSW Canberra SOCOMD Ethics Framework Statement of Work 2020-2021 ~~[DLM=FOR-OFFICIAL-USE-ONLY]~~
Date: Monday, 25 May 2020 11:56:46 AM
Attachments: [respricingtool-socmd-project-s47F](#) 20200519032711.xls
s47G
[200524_Draft_SOCOMD_Ethics_Strategy_ADFSSO_UNCLASSIFIED_Exposure_Draft_V1.doc](#)
[image001.png](#)

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s47E(c),
)

As discussed, please note the attached SoW and costings proposed by UNSW – and current strategy for context.

Please keep myself and s47E(c) engaged in terms of contract framework development.

Regards,

s47E(c)

s47E(c) | Commandant

Defence Special Operations Training and Education Centre (DSOTEC)

Coral Lines, Holsworthy NSW 2173

s47E(c) s22



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From: s47F
Sent: Wednesday, 20 May 2020 10:41 AM
To: s47E(c)
Cc: s47E(c) s47F
s47F
s47F
Subject: UNSW Canberra SOCOMD Ethics Framework Statement of Work 2020-2021

Good morning s47E(c),

Thanks for your call yesterday, I'm very pleased with the direction that this is taking. As you say,

we will be breaking important new ground with this project and in many respects this will be world-leading.

s47E(d)



Warm regards,

s47F

s47F

Associate Professor
School of Humanities and Social Sciences
UNSW Canberra

s47F with s47F): [Future Operations Research Group](#)

s47F [Kings College London](#)

s47F [Centre for Applied Ethics, Stellenbosch University](#)

BUDGET TABLE

Generated on: 2020-05-19

s47G
Project ID:
Project Title:
Project Partner:
Start Date:

s47G

This page and the following 3 pages are exempt under Section 47G of the Freedom of Information Act.

From: s47E(c)
To: [REDACTED]
Cc: [REDACTED]
Subject: Procurement Preparation Plan: Ethics Strategy Implementation Phase 1 Project - ~~[DLM - FOR OFFICIAL USE ONLY]~~
Date: Thursday, 28 May 2020 3:38:00 PM
Attachments: [200525-Plan-DSOTEC-Ethics Strategy Implementation Phase 1 Project-Procurement Preparation.docx](#)

~~For Official Use Only~~

s47E(c)
)

PFA Procurement Preparation Plan for SOCOMD Ethics Strategy Implementation Phase 1.

This is in addition to the other procurement we've been discussing.

Could you advise feasibility of the dates articulated in plan.

Regards,

s47E(c)
[REDACTED]

s47E(c) **SO2 Learning Systems DSOTEC** s47E(c) [REDACTED] s22 [REDACTED]

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~~FOUO~~

Procurement Preparation Plan for SOCOMD Ethics Strategy Implementation Phase 1 Project

SOCOMD Ethics Strategy Implementation Phase 1 Project

1. The Australian Army's Special Operations Command (SOCOMD) Ethics Strategy Implementation Phase 1 Project represents the first stage of the implementation of the SOCOMD Ethics Strategy.
2. COMD Special Forces Group (SFG), BRIG Craig Shortt is the authority for this procurement with COMDT Defence Special Operations Training and Education Centre (DSOTEC), s47E(c) as the lead.
3. This project will establish an Ethics Cell with in ADF Special Operations School (ADFSSO) and generate an Ethics Professional Military Education Framework to set the conditions for the continued design, development, delivery and evaluation of Ethics education across SOCOMD.

Procurement Methodology

4. Australian Army's Special Operations Command (SOCOMD) seeks to utilise the following combination of procurement methodologies:
 - a. **Method 1 - Contractor:** Open Tender from the Defence Support Service Panel to source a suitably qualified project manager. SOCOMD has identified Omni Executive to be approached as a potential viable tenderer.
 - b. **Method 2 - Consultant Team:** Single Source Procurement with University of New South Wales (UNSW) to provide niche subject matter expertise and a research psychologist.
5. **Rationale for Single Source Procurement.** The rationale for single source procurement through UNSW is twofold:
 - a. UNSW is able to provide the unique consultancy services of s47F an acknowledged international expert in military ethics and the author of *Key Concepts in Military Ethics*.
 - b. SOCOMD has an established relationship with UNSW for the delivery of courses within the Professional Military Education continuum.

Contract period

6. SOCOMD seeks to commence the contracts 01 Jul 20 and extend through to 22 Jan 22. SOCOMD seeks to include two x 12-month extension options to provide for an extension of the scope of the project if required.

Budget and Financial Codes

s47E(d)

s47E(d)

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Procurement Preparation Plan for SOCOMD Ethics Strategy Implementation Phase 1 Project

s47E(d)

s47E(d)

10. SOCOMD has had in principle endorsement from Director General Training and Doctrine (DG TRADOC), BRIG Glen Ryan, for this procurement to be funded from the Training Transformation initiative. s47E(c) is the Program Director s47E(c), s22 and is aware of this proposed procurement.

11. Relevant financial codes are as follows: (TBC)

Background

12. SOCOMD is implementing, through the DSOTEC and ADFSSO a Command-wide Ethics Strategy. Constant exposure to high tempo operations has reinforced the need for cultural renewal and optimisation. SOCOMD has identified that a key contributor to cultural renewal and optimisation is a requirement for a renaissance in its approach to education in ethical decision making that draws on full time, world class military ethics expertise. This is most effectively achieved through a contracted solution.

13. SOCOMD is a dynamic organisation that consistently operates at a high tempo. Decision-making is delegated to the lowest level. All members' regardless of rank, service or area of expertise are expected to be proactive leaders who can work towards organisational goals with minimum supervision.

14. DSOTEC through ADFSSO delivers individual training and professional military education to SOCOMD members directly and provides technical and governance oversight to courses delivered by SOCOMD units. COMDT DSOTEC is the Special Forces Training Authority (TA) and Doctrine Sponsor. COMDT DSOTEC is tasked with leading the preparation for the delivery of the SOCOMD Ethics Strategy with CO ADFSSO providing primary support and then taking the lead in the delivery of Ethics training and education.

15. Ethical decision-making is a core attribute for service in SOCOMD, wider Army and the ADF. SOCOMD personnel must be equipped with the necessary tools to assist them to make instinctive ethical decisions, generating a cognitive and social advantage for the force in order to mitigate against the effects of moral injury and build trust amongst SOCOMD teams and partners.

16. The SOCOMD Ethics Strategy seeks to close the gap that currently exists in the methodology for ethics training by adopting a future focussed and command led program to educate the force. It will institutionalise ethical decision-making for all personnel in SOCOMD.

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Procurement Preparation Plan for SOCOMD Ethics Strategy Implementation Phase 1 Project

17. This project is a key enabler for achieving this strategy. The key driver for the engagement of a contractor and consultant is the lack of capacity and organic subject matter expertise at SOCOMD to enable the successful implementation of this strategy.

Is there any ICT involved in this contract?

18. There are no ICT requirements associated with this project.

Cost Modelling / Estimation services

19. There are no requirements for cost modelling or estimation services associated with this project.

Objective

20. The purpose of this procurement is to support the initial phase of the implementation of the SOCOMD Ethics Strategy by establishing an Ethics Cell supported by an Ethics Education Framework.

21. At the end of this project the SOCOMD Ethics Cell and the SOCOMD Ethics Educational Framework will be established and the conditions set for sustainment and further implementation of the Ethics Strategy.

Definitions and applicable documents

22. The following policies underpin this project:

- a. *Special Operations Command (SOCOMD) Ethics Strategy (Draft)*
- b. *Accelerated Warfare, Futures Statements for an Army in Motion* of 08 Aug 18
- c. *Good Soldiering*: Australian Army's cultural optimisation program of 01 Mar 19
- d. *SOCOMD Plan 2020-23: Centres of Gravity – Operational Security (Tactical), Integration (Operational) and Trust (Strategic)*
- e. COMDT DSOTEC Directive 2/20: *Application of the SADL at SOCOMD* of 15 Apr 20

23. The following terms are applicable to this project:

- a. **SADL**: Systems Approach to Defence Learning is the five-phase model that underpins all elements of individual learning in Defence.
- b. **DSOTEC**: Defence Special Operations Training Education Centre, the SOCOMD individual learning formation responsible for the force generation of Special Operations Forces personnel. DSOTEC is headed by an O6-level commandant who is also the SOCOMD Training Authority responsible for all-phases of the SADL WRT the various SOF learning continua.
- c. **ADFSSO**: Australian Defence Force School of Special Operations, one of the two training establishments within DSOTEC. ADFSSO is headed by an O5-level commanding officer is the delegated Implement and Develop Authority for most of the SOF learning continua including the suite of professional military education (PME) courses.

Description and Scope of Works

24. The project encompasses the following Scope of Works:

- a. **Performance Needs Analysis**: The project team will work in collaboration with Command-identified SOCOMD personnel to undertake an ethics-focused Performance Need Analysis

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Procurement Preparation Plan for SOCOMD Ethics Strategy Implementation Phase 1 Project

(PNA) IAW the SADL and DSOTEC procedures of all stream, trade and rank levels. This PNA will ascertain the level and scope of ethical understanding required to ensure that selection, ab initio training, leadership training and collective activities address the appropriate performance requirements. A holistic approach to the analysis will ensure that ethics training builds upon and does not replicate other learning activities and is consistent in its messaging.

- b. **Ethics Learning Model:** In coordination with Command-identified DSOTEC and ADFSSO personnel the project team will develop, on the basis of the best available existing research and (where necessary) new research, the curricula and supporting content (e.g. instructor guides) IAW SADL and DSOTEC procedures for the SOCOMD 'ethics learning model'. In line with the framework specified by the draft SOCOMD Ethics Strategy, this is to be composed of a series of internal SOCOMD short courses as follows:
- (1) a foundational 'Ethical Armouring' short course directed at all SOCOMD personnel (to be initially delivered across the Command prior to becoming a part of the Special Operations Common Induction Course (SOFIC)
 - (2) an 'Ethical Leader' short course directed at junior officers and non-commissioned officers
 - (3) an 'Ethical Commander' short course directed at mid-ranking officers and warrant officers.
- c. As part of the development process, the project team will co-deliver, alongside Command-identified contributors, the first iterations of these courses and, within the scope of the 18-month duration of this agreement, oversee the handover of the packages to Command structures and personnel.
- d. The project team will also assist DSOTEC in developing the conceptual and organisational infrastructure for the fourth 'plank' of the Command's ethics learning model, namely the creation and sustainment of a network of appropriately qualified 'ethics exponents' across the Command. The role of these exponents will be to provide command advice and support within units to ensure appropriate and relevant ethical dilemmas and scenarios are seeded in collective training iterations.
- e. **Ethical Assessment Tools.** In consultation with Command-identified personnel the team will develop a set of evaluation and assessment tools (e.g. survey tools and checklists) to assist the Command in evaluating the 'ethical health' of the workforce and ensuring that Command personnel are able to receive and give feedback relating to ethical issues, as well as assurance that the Command is meeting its obligations.
- f. **Primary research and development.** The team will conduct targeted primary research in areas where there are relevant gaps in the existing research on ethical conduct as that relates to special operations in order to ensure that the deliverables outlined above are rigorously grounded and appropriate to the specific needs of SOCOMD and its personnel.

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Procurement Preparation Plan for SOCOMD Ethics Strategy Implementation Phase 1 Project

- g. **Report:** On completion of the contract, the project team will provide SOCOMD with a comprehensive final report on what has been achieved over the 18-month period, and a set of recommendations for the future sustainment and development of the SOCOMD Ethics Framework.

Statement of Duties (for Contractors / Consultants)

25. The duties of the contractor and consultants are as follows:

a. **Project Manager** will, under a time and materials arrangement whilst located at Coral Lines Holsworthy Barracks, undertake the following duties:

- (1) Supervise the Consultant Team to ensure the delivery of products IAW milestones
- (2) Command the Ethics Cell
- (3) Report to CO ADFSSO and COMDT DSOTEC as directed
- (4) Submit a monthly contract report to CO ADFSSO
- (5) Liaise with stakeholders
- (6) Adapt quickly to rapidly changing and emergent circumstances, deadlines and requirements
- (7) Generate all required documentation, info-graphics and other outputs in the format and standard specified by DSOTEC
- (8) Complete any Defence specific courses required to comply with Annual force Preservation and other mandatory requirements as applicable
- (9) Comply with Defence policy.

b. **Consultant Team** will undertake the following duties:

- (1) Deliver outputs IAW milestones.
- (2) Provide regular progress updates to the Project Manager.
- (3) Report to COMDT DSOTEC and CO ADFSSO.
- (4) Travel to Holsworthy and other locations as required.
- (5) Liaise with stakeholders as required.
- (6) Generate all required documentation, info-graphics and other outputs in the format and standard specified by DSOTEC.
- (7) Complete any Defence specific courses required to comply with Annual force Preservation and any other mandatory requirements as applicable.
- (8) Comply with Defence policy.

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Procurement Preparation Plan for SOCOMD Ethics Strategy Implementation Phase 1 Project

Deliverables

26. The Project Team will deliver the following:

Date	Deliverable
1 July 2020	MILESTONE: Commencement of work
July – August 2020	Develop, and prepare for delivery, the ‘Ethical Armouring’ course package.
Sept – October 2020	Staggered delivery of ‘Ethical Armouring’ course across the Command, including review and revision of the course after each iteration.
30 October 2020	MILESTONE: ‘Ethical Armouring’ course delivered across the entirety of SOCOMD (SOCOMD scheduling permitting).
November – December 2020	<ul style="list-style-type: none"> Develop initial overview of SOCOMD training and education continuum and ethics components thereof. Undertake comprehensive literature review of relevant published research in ethics, psychology and related disciplines.
15 January 2021	MILESTONE: Delivery of first interim report.
January – February 2021	<ul style="list-style-type: none"> Complete Performance Needs Analysis. In light of PNA, revise ‘Ethical Armouring’ course. Deliver ‘Ethical Armouring’ package as part of SOF Induction course, review and revise course as needed.
March – April 2021	<ul style="list-style-type: none"> Develop, and prepare for delivery, the ‘Ethical Leader’ course package. Deliver, evaluate and revise ‘Ethical Leader’ course package. Deliver ‘Ethical Armouring’ package as part of ab initio training, review and revise course as needed.
30 April 2021	MILESTONE: ‘Ethical Leader’ course package developed and (SOCOMD scheduling permitting) delivered, evaluated and revised.
May – June 2021	<ul style="list-style-type: none"> Development of ‘Ethical Exponent’ conceptual and organizational framework. [June 2021: Delivery of UNSW Canberra graduate level ‘Ethics in Special Operations and Irregular Warfare’ intensive]
July 1 2021	MILESTONE: Delivery of second interim report.
July – August 2021	<ul style="list-style-type: none"> Develop, and prepare for delivery, the ‘Ethical Commander’ course package. Deliver, evaluate and revise ‘Ethical Commander’ course package.
August 31 2021	MILESTONE: ‘Ethical Commander’ course package developed and (SOCOMD scheduling permitting) delivered, evaluated and revised.
September - October 2021	Selection, development and evaluation of SOCOMD Ethical Assessment Tools.
October 29 2021	MILESTONE: Delivery of SOCOMD Ethical Assessment Tools
November - December 2021	Final research projects, full package review and writing up of Final Report.
14 January 2022	MILESTONE: Delivery of Final Report.

Contractor resource requirements and qualifications

27. The following expertise and background is required of the Project Team:

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Procurement Preparation Plan for SOCOMD Ethics Strategy Implementation Phase 1 Project

- a. **Project Manager:** The Project Manager will have Defence and ideally SOCOMD experience at the O4-O5 level. They will be able to demonstrate the following expertise:
- (1) Command/leadership ability to establish and manage the Ethics Cell
 - (2) Manage a consultant team to ensure that milestones are met
 - (3) Manage an independent budget
 - (4) Liaise closely with SOCOMD headquarters and unit command teams
 - (5) Liaise closely with Ethics Exponents
 - (6) Develop networks with ADF, civilian and international centres of ethics excellence.
- b. **Consultant team:** The Consultant Team will demonstrate the following:
- (1) Internationally acknowledged expertise in Military Ethics
 - (2) Ability to work effectively within the SOCOMD environment
 - (3) Ability to conduct a Performance Needs Analysis (PNA) IAW SADL and DSOTEC policy and procedures
 - (4) Ability to undertake any required research
 - (5) Ability to design, develop and implement learning programs IAW SADL and DSOTEC policy and procedures.

28. **Risk mitigation.** A Project Team holding the expertise outlined will mitigate inherent risks to the project failing to deliver its objectives.

Defence security requirements

29. The following Security clearances are required:

a. Project Manager: NV2

b. Subject Matter Expert: NV1

c. Psychologist: NV1

30. Project Team must

a. remain cognisant of and comply with the requirements of Protected Identify Status that apply to SOCOMD personnel

b. comply with the all Defence and SOCOMD specific Security policies, procedures and protocols.

Performance standards and quality assurance

31. As a key component of the SOCOMD Ethics Strategy, this project will be subject to a biannual review by the SOCOMD Ethics Advisory Committee to ensure the Strategy remains fit-for-

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Procurement Preparation Plan for SOCOMD Ethics Strategy Implementation Phase 1 Project

purpose. The review will ensure all actions implemented by the Strategy are correct and they are undertaken effectively and through developing performance indicators. The review will use key recommendations from the IGADF Inquiry and Irvine Report as indicators for change within the Command. This review will be staffed to SOCAUST and CA respectively

Reporting and Communications

32. The Project Manager will report to COMDT DSOTEC either directly or through CO ADFSSO as directed. It is an expectation that the Project Manager will participate in CO ADFSSO weekly Commander's Update Brief (CUB).

33. In addition, the Project Manager will submit a monthly contract report to CO ADFSSO.

~~FOUO~~

From: s47E(c)
To: [Redacted]
Subject: RE: Procurement Preparation Plan: Ethics Strategy Implementation Phase 1 Project- ~~[DLM-FOR-OFFICIAL-USE-ONLY]~~
Date: Wednesday, 17 June 2020 11:17:07 AM

~~For Official Use Only~~

Hi s47E(c)
)

We have now finished all contracts for EOFY 2019/20 and are moving to the extensions and new procurements for 2020/2021.

I would expect yours to be started over the next few days.

s47E(c)
)

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From: s47E(c)

Sent: Wednesday, 17 June 2020 11:13 AM

s47E(c)

Subject: RE: Procurement Preparation Plan: Ethics Strategy Implementation Phase 1 Project- ~~[DLM-FOR-OFFICIAL-USE-ONLY]~~

s47E(c)
)

Further to my last, as you may recall from the preparation doc this project includes two procurements: contractor and consultant.

In the immediate term, can you pause the contractor procurement and expedite the consultant procurement ie single source through UNSW?

Regards,

s47E(c)

s47E(c)

SO2 Learning Systems DSOTEC | s47E(c) s22

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From: s47E(c)
Sent: Friday, 12 June 2020 1:26 PM
To: s47E(c)
Subject: RE: Procurement Preparation Plan: Ethics Strategy Implementation Phase 1 Project-
~~[DLM=FOR-OFFICIAL-USE-ONLY]~~

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I am guessing you want us to get this underway now?

s47E(c)
)

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From: s47E(c)
Sent: Friday, 12 June 2020 1:22 PM
s47E(c)
Subject: RE: Procurement Preparation Plan: Ethics Strategy Implementation Phase 1 Project-
~~[DLM=FOR-OFFICIAL-USE-ONLY]~~

~~For Official Use Only~~

s47E(c)

PFA 1-Star approval.

Regards,

s47E(c)

s47E(c)

SO2 Learning Systems DSOTEC

s47E(c)

s22

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From: s47E(c)
Sent: Thursday, 28 May 2020 4:25 PM
To: s47E(c)
Subject: RE: Procurement Preparation Plan: Ethics Strategy Implementation Phase 1 Project-
~~[DLM=FOR OFFICIAL USE ONLY]~~

~~For Official Use Only~~

Cant do much. The 1 Star approval has to go with the ETP to NMPB.

s47E(c)

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From: s47E(c)
Sent: Thursday, 28 May 2020 4:22 PM
To: s47E(c)
Subject: RE: Procurement Preparation Plan: Ethics Strategy Implementation Phase 1 Project-
~~[DLM=FOR OFFICIAL USE ONLY]~~

~~For Official Use Only~~

Too easy s47E(c) I'll get on to it. Can you move fwd whilst the 1-star is being done.

Regards,

s47E(c)

s47E(c)

SO2 Learning Systems DSOTEC

s47E(c)

s22

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From: s47E(c)
Sent: Thursday, 28 May 2020 4:19 PM
To: s47E(c)
Subject: RE: Procurement Preparation Plan: Ethics Strategy Implementation Phase 1 Project-

~~[DLM-FOR OFFICIAL USE ONLY]~~

~~For Official Use Only~~

Sorry the 1 Star is your job.

Have attached both the required pro-forma and a completed sample for you.

You can cut and paste almost all of it from the Planner. Usually people cut and paste from the 1 Star to make the Planner?

s47E(c)
)

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From: s47E(c)
Sent: Thursday, 28 May 2020 4:09 PM
To: s47E(c) >
Subject: RE: Procurement Preparation Plan: Ethics Strategy Implementation Phase 1 Project-
~~[DLM-FOR OFFICIAL USE ONLY]~~

~~For Official Use Only~~

s47E(c)

Will you do the paperwork for one-star approval for me to forward on? If not happy to do that. Either approval won't be a problem

Regards,

s47E(c)

s47E(c)

SO2 Learning Systems DSOTEC

s47E(c)

s22

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From: s47E(c)
Sent: Thursday, 28 May 2020 4:00 PM

To: s47E(c)

Subject: RE: Procurement Preparation Plan: Ethics Strategy Implementation Phase 1 Project-
~~[DLM-FOR-OFFICIAL-USE-ONLY]~~

~~For Official Use Only~~

Hi s47E(c)
)

s22

We will go close to getting you someone on board by 1 July although we do have a LOT of procurements and extensions happening over the next month.

The next step is getting endorsement from NMPB for the procurement approach. I will have to do that twice 1 x DSS Ethics Manager and 1 x UNSW Contract. I think the UNSW requirement will be OK.

I would suggest you make the initial contract(s) 12 mths with potential 12 mth extensions at Defence discretion. You don't have to take up the full 12 mth extension. In fact if it doesn't work out as planned you can cease a DSS contract at any time.

I think we have a research agreement with UNSW so I will look at that for potential use otherwise that may need a "special" contract which can slow things down.

s22

NOTE: I cant actually do much without the 1 Star Approval from your end. Does someone have that in hand?

s47E(c)
)

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From: s47E(c)

Sent: Thursday, 28 May 2020 3:39 PM

s47E(c)

Subject: Procurement Preparation Plan: Ethics Strategy Implementation Phase 1 Project-
~~[DLM-FOR-OFFICIAL-USE-ONLY]~~

~~For Official Use Only~~

s47E(c)
)

PFA Procurement Preparation Plan for SOCOMD Ethics Strategy Implementation Phase 1.

This is in addition to the other procurement we've been discussing.

Could you advise feasibility of the dates articulated in plan.

Regards,

s47E(c)

s47E(c)

SO2 Learning Systems DSOTEC

s47E(c)

;22

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From: s47E(c)
To: [REDACTED]
Subject: [REDACTED] SEC=UNCLASSIFIED]
Date: Wednesday, 1 July 2020 2:39:31 PM

UNCLASSIFIED

OK Thanks wasn't sure if he was the guy to talk to.

Thanks

s47E(c)

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From: s47E(c)
Sent: Wednesday, 1 July 2020 2:38 PM
s47E(c)
Subject: RE: UNSW Ethics Study [SEC=UNCLASSIFIED]

UNCLASSIFIED

s47E(c)

Yes it is at the highest level. s47F is the POC at UNSW.

We will aim to have the ETP with you ASAP.

Regards,

s47E(c)

s47E(c)

| SO2 Learning Systems DSOTEC |

s47E(c)

s22

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From: s47E(c)
Sent: Wednesday, 1 July 2020 1:11 PM

To: s47E(c)

Subject: UNSW Ethics Study [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi s47E(c)
)

This is suddenly important? I have someone from Head of Army Office ringing me about it

To move it along I need the name of whoever you have been talking to at UNSW please?

And can you tell them we will be contacting them over the next day or so?

Thanks

s47E(c)
)

s47E(c)

Contractor to Defence

Land Capability

AHQ

s47E(c)

s47E(c)

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From: s47E(c)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Current Total Budget? [SEC=UNCLASSIFIED]
Date: Monday, 13 July 2020 11:53:00 AM

UNCLASSIFIED

s47E(c)
)

Situation is as follows:

1. In an email dated 20 May from s47F to COMDT DSOTEC s47E(c), UNSW quoted DSOTEC s47G from Jul 20 to Jan 22 extending over two FY to deliver a SOCOMD specific Ethics Strategy
2. DSOTEC sought FY20/21 funding from Training Transformation initiative through DGTRADOC and was approved s47E(d)
3. DSOTEC raised procurement documentation through you based on these figures.
4. AHQ directed the amendment of the scope of works with AHQ COS becoming the authority for the procurement and the intent for the strategy widening to set the conditions for wider implementation throughout Army.

Way forward:

Following your advice that the quotation from UNSW is s47G duration for the contract I've discussed this with COS, s47E(c).

We have assessed this procurement as now having moved beyond the scope of DSOTEC's original intent and budget.

Noting the interest of AHQ, DSOTEC's position for you to appraise AHQ COS of the situation with regard to the increased quotation and to seek his guidance on an appropriate COA.

Regards,

s47E(c)
[REDACTED]

s47E(c)

SO2 Learning Systems DSOTEC

s47E(c)

22

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From: s47E(c)
Sent: Monday, 13 July 2020 11:32 AM
To: s47E(c)
Subject: Current Total Budget? [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi s47E(c)
)

s22

As of today what is your current TOTAL budget for this?

i.e How much for s47F the Professor?

Thanks

s47E(c)

s47E(c)

Contractor to Defence

Land Capability

AHQ

s47E(c)

s47E(c)

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From: s47E(c)
To: [REDACTED]
Subject: OMD Ethics Framework Statement of Work 2020-2021 [REDACTED] ~~[DLM-FOR-OFFICIAL-USE-ONLY]~~
Date: Monday, 13 July 2020 11:08:59 AM
Attachments: [image001.png](#)
s47G

~~For Official Use Only~~

Didn't think so.

Its actually getting worse the proposal from s47G [REDACTED].
Have attached a copy.

Will ring you in 5

s47E(c)

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From: s47E(c) [REDACTED]
Sent: Monday, 13 July 2020 11:05 AM
s47E(c) [REDACTED]
Subject: RE: UNSW Canberra SOCOMD Ethics Framework Statement of Work 2020-2021
~~[DLM-FOR-OFFICIAL-USE ONLY]~~

~~For Official Use Only~~

s47E(c) [REDACTED]

I can't authorise anything like that. I don't think the allocated budget can extend to that.

s47E(c) [REDACTED]

Can we do this?

Regards,

s47E(c) [REDACTED]

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From: s47E(c)
Sent: Monday, 13 July 2020 10:46 AM
To: s47E(c)
Subject: RE: UNSW Canberra SOCOMD Ethics Framework Statement of Work 2020-2021
~~[DLM-FOR-OFFICIAL-USE-ONLY]~~

~~For Official Use Only~~

s47G to manage themselves which we would normally not do. We usually s47E(d)

s47E(d)

s47E(c)
)

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From: s47E(c)
Sent: Monday, 13 July 2020 10:07 AM
To: s47E(c)
Subject: FW: UNSW Canberra SOCOMD Ethics Framework Statement of Work 2020-2021
~~[DLM-FOR-OFFICIAL-USE-ONLY]~~

~~For Official Use Only~~

s47E(c)
)

As dx'd.

Regards,

s47E(c)

s47E(c)

SO2 Learning Systems DSOTEC |

s47E(c)

s22

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From: s47E(c)

Sent: Monday, 25 May 2020 11:57 AM

s47E(c)

Subject: FW: UNSW Canberra SOCOMD Ethics Framework Statement of Work 2020-2021

~~[DLM - FOR OFFICIAL USE ONLY]~~

~~For Official Use Only~~

s47E(c)

As discussed, please note the attached SoW and costings proposed by UNSW – and current strategy for context.

Please keep myself and s47E(c) engaged in terms of contract framework development.

Regards,

s47E(c)

s47E(c)

Commandant

Defence Special Operations Training and Education Centre (DSOTEC)

Coral Lines, Holsworthy NSW 2173

Ext: s47E(c) | **Mob:** s22



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From: s47E(c)

Sent: Wednesday, 20 May 2020 10:41 AM

s47E(c)

s47F

Subject: UNSW Canberra SOCOMD Ethics Framework Statement of Work 2020-2021

Good morning s47E(c)

s47G

Warm regards,

s47F

s47F

Associate Professor
School of Humanities and Social Sciences
UNSW Canberra

s47F with s47F): [Future Operations Research Group](#)

s47F [Kings College London](#)

s47F [Centre for Applied Ethics, Stellenbosch University](#)

This page and the following 13 pages are exempt under Section 47G of the Freedom of Information Act.

From: s47E(c)
To: [Redacted]
Cc: [Redacted]
Subject: RE: SOTEC Ethics Strategy [SEC=UNCLASSIFIED]
Date: Tuesday, 14 July 2020 4:30:00 PM
Attachments: [image005.jpg](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)
[image009.jpg](#)
[image010.png](#)
s47G

UNCLASSIFIED

s47E(c)
)

I've made some minor adjustments to emphasise the Army-wide aspect of the procurement. Pls use this version

Costs are fine. We have assurances that funding will be available. Go ahead and finalise.

Regards,

s47E(c)
[Redacted]

s47E(c) **SO2 Learning Systems DSOTEC |** s47E(c) 22

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From: s47E(c)
Sent: Tuesday, 14 July 2020 4:10 PM
To: s47E(c)
Subject: FW: SOTEC Ethics Strategy [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi s47E(c)
)

s47E(d)
[Redacted]

We can chat tomorrow and I can negotiate some more if required.

s47E(c)
)

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From: s47F
Sent: Tuesday, 14 July 2020 1:36 PM
To: s47E(c)
Cc: s47F
Subject: RE: SOTEC Ethics Strategy [SEC=UNCLASSIFIED]

Hi s47E(c), and thanks once again.
)

I followed up on the quote that caused concern – the dollar amounts you saw were part of the S&Q template we were provided. We should have removed them before sending it to you – my apologies for that.

Please find attached a revised Survey and Quote form for your review – please consider it a draft only at this point; we can still make any changes you might wish before seeking our delegate’s approval and forwarding back to you for endorsement, and ADFA for processing.

s47G



Please don’t hesitate to call to discuss – we can make changes as needed, particularly if you might want to make use of the remaining budget you have?

Thanks again and speak soon,

s47F

s47F

Institute Manager, UNSW Defence Research Institute

s22

e: s47F

w: www.dri.unsw.edu.au

[UNSW Defence Research Capability Portfolio](#)



From: s47E(c)

Sent: Tuesday, 14 July 2020 1:05 PM

s47F

Subject: RE: SOTEC Ethics Strategy [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi s47F

There has been some movement this end although money is still tight.

If you can provide a Quote for s47F services :

1. outlining how many days are expected @ what rate per day so we can set up an approval for his services on an S&Q basis up to a set limit; and,
2. seeking a separate amount of pre-approved travel at Non SES rates to be repaid to UNSW as part of your monthly invoicing,

The issue of "expenses" and an upfront payment should be proposed as a separate item if you still require inclusion.

That will make my life simpler when the discussion starts?

Thanks

s47E(c)
)

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From: s47E(c)

Sent: Monday, 13 July 2020 3:01 PM
To: s47F
Subject: RE: SOTEC Ethics Strategy [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi s47F

OK a new quote would inform the discussion.

We originally planned for ASDEFCON as we do them all the time and they can be done quickly if both parties know what they want.

Happy to use any existing contract but s47E(c) would be the guy to actually do the final contracting.

Thanks

s47E(c)
)

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From: s47F
Sent: Monday, 13 July 2020 2:52 PM
To: s47E(c)
Cc: s47F
Subject: RE: SOTEC Ethics Strategy [SEC=UNCLASSIFIED]

Hi s47E(c) no problem at all – I'm just off the phone to s47F . I'll come back to you with a revised quote very shortly. Will that help?

In the interim, there are a couple of procurement options for you to choose from – we could use the new ADFA contract or, possibly more suitable for this is the Defence Science Partnership deed we signed with the Commonwealth on 28 April. ASDEFCON is an alternative, although not the best given CPR requirements. Please let me know your preference?

Cheers, s47F

From: s47E(c)
Sent: Monday, 13 July 2020 2:44 PM
To: s47F
Subject: RE: SOTEC Ethics Strategy [SEC=UNCLASSIFIED]

UNCLASSIFIED

Hi s47F

I actually started out with a chatty email to you suggesting how we might make it happen quickly with some emails this week and catch up the paperwork when s47E(c) get back next week. I think everyone wants to kick it off asap?

Then SOTEC indicated it was outside their budget and it all went downhill.

They have indicated their budget is based on discussions with s47F and they have no more.

Thanks

s47E(c)
)

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From: s47F
Sent: Monday, 13 July 2020 1:33 PM
s47E(c)
Cc: s47F s47E(d)
s47E(c)
s47E(c)
s47E(c) Shortt, Craig BRIG s47E(c)
Subject: RE: SOTEC Ethics Strategy [SEC=UNCLASSIFIED]

Hi s47E(c) and thanks for reaching out.

I'm playing a little bit of catch up after a week off – let me check in with s47F and come back to you shortly.

I'm confident we can get this sorted quickly – to that end, it would be good to know your timeline.

Best wishes, s47F

s47F
Institute Manager, UNSW Defence Research Institute

s22
e: s47F
w: www.dri.unsw.edu.au
[UNSW Defence Research Capability Portfolio](#)



From: s47E(c)
Sent: Monday, 13 July 2020 1:14 PM
To: s47F s47E(c)
Cc: s47E(c)
s47E(c)
s47E(c) Shortt, Craig BRIG s47E(c)
Subject: SOTEC Ethics Strategy [SEC=UNCLASSIFIED]

UNCLASSIFIED

Good Morning s47F

I understand s47E(c) way this week as is s47E(c) (Land Capability Procurement Manager) and you and I appear to have inherited this. I also note that the Chief of Army appears to have taken a personal interest in getting it underway.

Although this has now taken on an all of Army flavour, I have been liaising for some time with s47E(c) at SOTEC regarding the procurements associated with development of a SOTEC Ethics Strategy. I spoke to s47E(c) again this morning and our understanding is as follows:

1. Currently there is around s47E(d) to employ Associate Professor s47F s47F of the UNSW Canberra School of Humanities and Social Sciences (HASS) to conduct the Ethics Strategy consultancy. I understand that amount was approved by SOTEC based on discussions with and a ROM Quote provided by s47F
2. There is no current requirement for a Project Manager OR other persons to form a consultancy team. My understanding is that s47F is aware of this from recent discussions with s47E(c).
 - a. I also understand that in recent discussions between SOTEC & s47F it was agreed the consultancy will be conducted solely by s47F and,
 - b. SOTEC have advised that the project management role will be formally undertaken by s47E(c) at Holdsworthy.

3. The contracting mechanism will be a Work Order (format to be agreed) from Defence and utilisation of the current Survey & Quote mechanism available under current Defence/ADFA/UNSW Contract 4277 which I understand you are aware of.

s47E(c) forwarded a copy of the proposed S&Q format to us on Friday last as a response to our RFQ. Generally we have no problem with the S&Q functionality or the use of Contract 4277.

b. Funding will come from SOTEC who will also respond to invoicing.

s47E(d)

s47E(d)

On advice from SOTEC s47E(d)

In the meantime I am happy to discuss s47E(d)

I have copied a number of Defence and UNSW personnel into this email trail for information.

Thanks

s47E(c)

s47E(c)

Contractor to Defence

Land Capability

AHQ

s47E(c)

s47E(c)

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From: s47E(c)
To: [REDACTED]
Cc: [REDACTED]
Subject: SOCOMD Ethics Strategy PM Procurement ~~[DLM - FOR OFFICIAL USE ONLY]~~
Date: Thursday, 16 July 2020 12:48:00 PM
Attachments: [200529-Form-DSOTEC-Ethics Strategy Implementation Phase 1-COMD SFG Approval.pdf](#)
[200626-Plan-DSOTEC-Ethics Strategy Implementation Phase 1 Project PM only- RMC-A amended Procurement Preparation.docx](#)

~~For Official Use Only~~

s47E(c)
)

SOCOMD now wishes to proceed with the second procurement for the Ethics Strategy: Project Manager through open tender IAW attached Preparation Plan.

This is covered under Procurement 1 in the attached 1-Star approval.

Here we go again...

Regards,

s47E(c)
[REDACTED]

s47E(c)

| SO2 Learning Systems DSOTEC

s47E(c)

s22

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SES OR STAR APPROVAL TO COMMENCE A PROCUREMENT PROCESS TO ENGAGE A CONTRACTOR, CONSULTANT OR OUTSOURCED SERVICE PROVIDER

PURPOSE

The purpose of this submission is to seek your approval to commence procurement processes to engage a contracted and consultants to support the implementation of the SOCOMD Ethics Strategy.

BACKGROUND

SOCOMD is implementing, through the DSOTEC and ADFSSO, a Command-wide Ethics Strategy. Constant exposure to high tempo operations has reinforced the need for cultural renewal and optimisation. SOCOMD has identified that a key contributor to cultural renewal and optimisation is a requirement for a renaissance in its approach to education in ethical decision making that draws on full time, world class military ethics expertise.

The SOCOMD Ethics Strategy seeks to close the gap that currently exists in the methodology for ethics training by adopting a future focussed and command led program to educate the force. It will institutionalise ethical decision-making for all personnel in SOCOMD

JUSTIFICATION

The key driver for the engagement of a contractor and consultant is the lack of capacity and organic subject matter expertise at SOCOMD to enable the successful implementation of this strategy.

The purpose of this procurement is to support the initial phase of the implementation of the SOCOMD Ethics Strategy by establishing an Ethics Cell supported by an Ethics Education Framework.

At the end of this project the SOCOMD Ethics Cell and the SOCOMD Ethics Educational Framework will be established and the conditions set for sustainment and further implementation of the Ethics Strategy.

The project is scheduled for an 18-month period over FY 20/21 and FY 21/22. It is proposed to provide for two 12-month extension options activated at DSOTEC's discretion based on funds availability and continued requirement.

To achieve this, DSOTEC seeks approval to undertake the following procurements:

- a. **Procurement 1 - Contractor:** Open Tender from the Defence Support Service Panel to source a suitably qualified project manager on a time and materials arrangement.
- b. **Procurement 2 - Consultant Team:** Single Source Procurement with University of New South Wales (UNSW) to provide niche subject matter expertise and a research psychologist.

Rationale for Single Source Procurement. The rationale for single source procurement through UNSW is twofold:

- a. UNSW is able to provide the unique consultancy services of s47F [REDACTED] an acknowledged international expert in military ethics and the author of *Key Concepts in Military Ethics*.
- b. SOCOMD has an established relationship with UNSW for the delivery of courses within the Professional Military Education continuum

DEFENCE OFFICIALS' CHECKLIST

I confirm that (tick):

Step 1 – Planning

- It is necessary for Defence to undertake the task as described above or attached;
- The task described above cannot be delayed; and
- Specialist skills are required to undertake the task described above.

Step 2 – Current APS and ADF workforce considerations

- The APS and ADF workforce does not have the capacity and capability (skills and knowledge) to achieve the outcome;
- Other work cannot be reprioritised to temporarily release the necessary APS or ADF personnel; and
- There is a requirement for additional resources, or specialised knowledge and/or skills that are not required within the ongoing APS or ADF.

Step 3 – Cost Considerations

- I have estimated the cost of this option and DSOTEC has received in-principle endorsement from DGTRADOC for funding from the Training Transformation initiative for FY 20/21. I will seek the appropriate approvals to extend funding over two F/Y to achieve the 18-month duration of the project through DFG and funding assurance from DGTRADOC (pending approval).
- I have determined that this is the most effective and efficient means of delivering the required outcomes and have considered the relative priority of other cost pressures within DSOTEC.
- I have considered the on costs associated with engaging external workforce support including, but not limited to, government furnished equipment, office equipment, ICT support, security vetting, official travel and training (in-house or external).

Step 4 – Industry Considerations

- The engagement of a contractor and consultant team is the most efficient and effective option to deliver the outcome; and
- The proposed term of the engagement is appropriate to fulfil the requirement.

Step 5 – Engagement Classification and Number

- I have used the definitions in Attachment B to the Fact Sheet to confirm that a contractor and consultant team is required.

RECOMMENDATION

That you approve the requirement to commence a procurement processes to engage a contractor and consultant through two separate procurement approaches.

s47E(c)  Digitally signed by
s47E(c) 
Date: 2020.06.10
20:31:59 +10'00'

s47E(c) 

COMDT DSOTEC
Coral Lines, Holsworthy Barracks.

From: s47E(c)
To: [Redacted]
Subject: RE: SOCOMD Ethics Strategy [~~SEC-OFFICIAL. Sensitive~~]
Date: Wednesday, 5 August 2020 1:02:42 PM
Attachments: [image001.png](#)
s47E

~~OFFICIAL: Sensitive~~

s47E(c)

Here is the final version of the S&Q. Please send me the S23 when signed and I shall arrange for contract signature.

s47E(c)

IMPORTANT: This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.

From: s47E(c)
Sent: Wednesday, 5 August 2020 7:22 AM
s47E(c)

~~OFFICIAL: Sensitive~~

ACK Sir. I'll make this my ME until resolved.

Regards,


s47E(c)

s47E(c) | SO2 Learning Systems DSOTEC s47E(c) s22

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From: s47E(c)
Sent: Tuesday, 4 August 2020 4:04 PM

s47E(c)




~~OFFICIAL: Sensitive~~

Team,

I truly appreciate everyone is working hard to get this done and away.

For context it has a CA optic on the Ethics strategy and the contractor support - and hence Chief Of Staff AHQ signoff for the Sect23 and in reality was due to be signed off weeks ago and I'm now funding the initial "contract" support out of my own HQ budget as there is no signed contract in place.

s47E(d)



Regards,

s47E(c)



s47E(c)



Commandant

Defence Special Operations Training and Education Centre (DSOTEC)

Coral Lines, Holsworthy NSW 2173

s47E(c) | Mob: s22




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From: s47E(c)



Sent: Tuesday, 4 August 2020 7:55 AM

s47E(c)



Subject: SOCOMD Ethics Strategy [~~SEC=OFFICIAL: Sensitive~~]

~~**OFFICIAL: Sensitive**~~

s47E(c)

Any word on the contract from UNSW?

Regards,

s47E(c)

s47E(c)

SO2 Learning Systems DSOTEC

s47E(c)

s22

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This page and the following 13 pages are exempt under Section 47G of the Freedom of Information Act.

From: s47E(c)
To: [REDACTED]
Subject: FW: s23 Army Ethics Strategy Procurement - Training Transformation Funds FY 20/21 [SEC-~~OFFICIAL~~:
~~Sensitive~~]
Date: Wednesday, 2 September 2020 6:29:21 PM
Attachments: [image001.png](#)
[200805-S23-AHQ- Army Ethics Strategy Procurement 2020_001 vers 2 \(002\).pdf](#)
[200807-FORM-AHQ-SOCOMD Ethics strategy-Commitment Clearance \(003\).pdf](#)
[image002.png](#)

~~OFFICIAL: Sensitive~~

Team,

FYSA – finally signed.

Regards,

s47E(c)

Commandant

Defence Special Operations Training and Education Centre (DSOTEC)
Coral Lines, Holsworthy NSW 2173

Ext s47E(c) | **Mob:** s22



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From: s47E(c)
Sent: Wednesday, 2 September 2020 5:13 PM

s47E(c)

Subject: FW: s23 Army Ethics Strategy Procurement - Training Transformation Funds FY 20/21
[S [REDACTED]]

Good afternoon Gents

Signed documentation attached. We will keep a look out for the budget journal in due course.

Regards [redacted] s47E(c)

[redacted] s47E(c)
SO1 Resource Management
Resource Management - Army

Army Headquarters
Department of Defence

[redacted] s47E(c) Russell Drive | DGLAND
ACT 2601

[redacted] s47E(c) [redacted] s22

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From: Kelly, David BRIG 1 [redacted] s47E(c)

Sent: Wednesday, 2 September 2020 5:11 PM

[redacted] s47E(c)

Subject: RE: s23 Army Ethics Strategy Procurement - Training Transformation Funds FY 20/21

~~[SEC - OFFICIAL: Sensitive]~~

~~OFFICIAL: Sensitive~~

Thanks [redacted] s47E(c)

Dave

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From: [redacted] s47E(c)

Sent: Wednesday, 2 September 2020 4:36 PM

To: Kelly, David BRIG 1 [redacted] s47E(c)

[redacted] s47E(c)

Subject: s23 Army Ethics Strategy Procurement - Training Transformation Funds FY 20/21

[redacted]

[redacted]

Good afternoon Sir

Could you pls sign the attached S23 documentation and return to me.

Should you have any queries/issues, please do not hesitate to contact me.

Many thanks

s47E(c)

s47E(c)

SO1 Resource Management
Resource Management - Army

Army Headquarters
Department of Defence

s47E(c) Russell Drive | DGLAND

RUSSELL | ACT 2601

s47E(c)

s22

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From: s47E(c)

Sent: Wednesday, 2 September 2020 4:29 PM

s47E(c)

Subject: RE: Training Transformation Funds FY 20/21

Sorry s47E(c)

I had attached the unsigned versions on the previous email. Signed versions now attached.

Regards- s47E(c)

s47E(c)

SO1 Resource Management
Resource Management - Army

Army Headquarters
Department of Defence

s47E(c)

Russell Drive | DGLAND

RUSSELL | ACT 2601

s47E(c) s22

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From: s47E(c)

Sent: Wednesday, 2 September 2020 4:12 PM

s47E(c)

Subject: FW: Training Transformation Funds FY 20/21

~~OFFICIAL Sensitive~~

Good afternoon s47E(c)

Would appreciate if you could sign and return the Commitment Clearance form to me. I will then attach to the s23 for BRIG Kelly's signature.

If you have any queries/issues, please don't hesitate to contact me.

Regards - s47E(c)

s47E(c)
SO1 Resource Management
Resource Management - Army

Army Headquarters
Department of Defence

s47E(c) Russell Drive | DGLAND
RUSSELL | ACT 2601
s47E(c) s22

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From: s47E(c)

Sent: Wednesday, 2 September 2020 3:17 PM

s47E(c)

Subject: RE: Training Transformation Funds FY 20/21

[REDACTED]
s47E(c)

s47E(d)

I have amended that attached Commitment Clearance to reflect recent changes to AAls .

Regards

s47E(c)

Contract Manager
Director Training Systems
HQ FORCOMD

Bld 71 | Simpson Barracks | MACLEOD | VIC 3085

P s47E(c) s22 E: s47E(c)

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From: s47E(c)

Sent: Monday, 17 August 2020 3:45 PM

s47E(c)

Subject: FW: Training Transformation Funds FY 20/21 [REDACTED]

[REDACTED]
Good afternoon Gents

Now it has been confirmed that funding will be provided by the Training Transformation funding line, I will step away from the financial requirements. s47E(c) will process the financial requirements.

Regards

s47E(c)

SO1 Resource Management

Resource Management - Army

Army Headquarters
Department of Defence

s47E(c) | Russell Drive | DGLAND
RUSSELL | ACT 2601
P s47E(c) s22

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From: s47E(c)

Sent: Monday, 17 August 2020 2:50 PM

s47E(c)

Subject: RE: Training Transformation Funds FY 20/21

~~OFFICIAL - Sensitive~~

s47E(c)

Please liaise with s47E(c) about transactions, codes and the money stuff/ transfers for the Ethics Package.

Thanks.

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From: s47E(c)

Sent: Monday, 17 August 2020 1:32 PM

s47E(c)

Subject: RE: Training Transformation Funds FY 20/21

~~OFFICIAL - Sensitive~~

Thanks s47E(c)

For your and Director's info, s47E(d) in TT budget for DSOTEC Ethics and Leadership package, as directed by DGTRADOC. You can consider this e-mail as funds availability. The line will be created in ACMS shortly.

s47E(c)

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From: s47E(c)

Sent: Monday, 17 August 2020 1:26 PM

s47E(c)

Subject: RE: Training Transformation Funds FY 20/21

s47E(c)

Good to chat with you today. We understand and acknowledge all points in your email 03 Jul 20. Apologies for my tardiness; I missed the reply request! I'll confirm phasings are loaded this week.

Project Updates

Now our plans have matured, we're putting together an update on our projects. It has taken a while to finalise our spending plans, but was necessary for stakeholder engagement. We now have a way forward and will commence spending shortly.

New Program Team visit to DSOTEC

Looking forward to hosting a visit from the new TT program team at DSOTEC. I'll wait to hear from s47E(c) to arrange a date.

Anything else, please let me know.

Kind regards,

s47E(c)

| SO2 Training Transformation

Defence Special Operations Training and Education Centre (DSOTEC)

Coral Lines, Holsworthy NSW 2173

Ext s47E(c) **Mob:** s22



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From: s47E(c)

Sent: Thursday, 13 August 2020 3:38 PM

s47E(c)

Subject: FW: Training Transformation Funds FY 20/21 [REDACTED]

Gents,

I did not receive a reply to below or attached. Please provide the necessary acknowledgement for FY20/12 Financial instructions or DSOTEC won't be able to access TT Funds.

s47E(d)

TT - DSOTEC - Simulation Development
TT - DSOTEC - Blended Learning Development Support
TT - DSOTEC - Professional Military Education
TT - DSOTEC - Learning Lab Upgrades
TT - DSOTEC - Data Assessment Tool

s47E(d)

Thanks,

s47E(c)

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From: s47E(c)

Sent: Friday, 3 July 2020 4:33 PM
s47E(c)

[Redacted]

Cc: Ryan, Glenn BRIG 1 s47E(c)

s47E(c)

Casey, Brendan BRIG s47E(c)

Duncan, Ana BRIG

s47E(c)

[Redacted]

s47E(c)

[Redacted]

~~For Official Use Only~~

TT Reps,

There are a number of points below that pertain to authorisations and governance.

- TT Funds have now been transferred through ACMS from FORCOMD to training centres in accordance with the Summary Tab of the attached.
- Funding for training transformation is tagged funding and is not to be cross levelled to other training activities or initiatives. Ie. FORCOMD TT funds are transferred only for an activity approved by DGDRADOC as listed in the DCA Funding tab of the attached.
- Underspends will be managed at the program level and allocated to unfunded priorities or supplementary bids for new activities (SUPBIDS).
- SUPBIDS will be called for quarterly and prioritised alongside other unfunded priorities.

- Units are to ensure that ROMAN transactions are coded to WBS FC-TT for the purpose of monitoring and reporting.
- Army Minors funds are not being transferred. When they are approved through the Army Minors Business Case process specific codes will follow.
- **Training Centres are to load phasings by 21 July** – committed funds will be accurate (IAW the contract) and all others will be estimated.

Please consult with you BM if required and reply when ready, that you have read and understood all points. Apologies for seeming draconian but there were some practices last FY that need to be stamped out.

Kind Regards,

s47E(c)

Program Manager
Training Transformation
Directorate of Training Systems

A HQ Forces Command, Victoria Barracks Sydney

M s22 E s47E(c)

[The Future Ready Training System](#)

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Australian Government
Department of Defence

ARMY
AHQ

Chief of Staff AHQ
BRIG David Kelly

(Commitment Approval)
(R1-4-B029)

Army Headquarters
s47E(c)

(Funds Availability)

SECTION 23 (COMMITMENT APPROVAL) – RA UNSW 2020/001 PROVISION OF SPECIALIST MILITARY ETHICS SUPPORT TO DSOTEC

REFERENCES:

- A. Public Governance, Performance and Accountability Act 2013 (PGPA Act 2013)
- B. Commonwealth Procurement Rules (CPR) 2019
- C. Defence Procurement Policy Manual (DPPM) 2019
- D. RA 2020/011 One Star Approval (BQ13952678)
- E. RA 2020/001 Endorsement To Proceed (BQ14621884)
- F. RA 2020/001 Consolidated Evaluation Matrix (BQ15027454)

PURPOSE

1. This submission seeks PGPA Section 23 Commitment Approver approval to spend public s47E(d) (inclusive of GST) for a Specialist Military Ethics Consultant for DSOTEC. The contract will be delivered by the **University of NSW (UNSW)**.

RECOMMENDATIONS

2. It is recommended that you:

APPROVE the commitment and expenditure of relevant money by Army Headquarters for s47E(d) (inclusive of GST) with **UNSW** for procurement of a Specialist Military Ethics Consultant for DSOTEC and RMC-A under Section 23 of the Public Governance, Performance and Accountability Act. The Delegate confirms that the arrangement will be a proper use of relevant money, promotes the achievement of the purposes and financial stability of the entity, and is not inconsistent with the policies of the Australian government.

BACKGROUND

3. SOCOMD elements are trained and enabled for short-notice activation into unpredictable and often non-permissive, domestic, regional, and global security environments, with national level-expectations of mission success.

4. In order to meet these expectations, SOCOMD generates and employs advanced technical and operational capabilities for the four core activities, all of which are scalable in size and signature:

- a. Special Reconnaissance (SR)
- b. Strategic Strike (SS)
- c. Special Warfare (SW)
- d. Technical Enablement (TE).

5. As part of Army's overall ethical enhancement, SOCOMD is nesting and implementing through the DSOTEC and ADF Special Operations School (ADFSSO) a Command-wide Ethics Strategy. Constant exposure to high tempo operations has reinforced the need for cultural renewal and optimisation. SOCOMD has identified that a key contributor to cultural renewal and optimisation is a requirement for a renaissance in its approach to education in ethical decision making that draws on full time, world class military ethics expertise.

6. The SOCOMD Ethics Strategy Implementation Phase 1 Project represents the first stage of the implementation of the SOCOMD Ethics Strategy nested within the Australian Army's Ethics Enhancement Plan.

7. The project will establish an Ethics Cell within ADFSSO and RMC-A and generate an Ethics Professional Military Education Framework to set the conditions for the continued design, development, delivery and evaluation of Ethics education across SOCOMD and wider implementation across Army through the Australian Army Ethics Enhancement Plan.

8. This procurement is intended to provide Specialist Military Ethics input to the Military Education Framework by providing advice on the content, design, development and presentation of DSOTEC training. It is intended that the Ethics Consultant will also assist in establishing processes which will provide continued assessment and evaluation of DSOTEC Ethics Training. The concept of Ethics Training is not restricted to SOCOMD and the outcomes from this procurement will have utility across all of Army and potentially across all of Defence.

9. SOCOMD has an established relationship with UNSW for the delivery of courses within the Professional Military Education continuum and wishes to expand that relationship by utilising the services of s47F and his UNSW faculty to develop a specialist ethics learning model based on available data, new research and feedback from current training programs. A number of additional specialist short courses are expected to be an outcome.

10. The contract which will be established using the Survey and Quote functionality of the ADFA University Contract – 4277 between ADFA/UNSW and is proposed to commence on 01 August 2020 and expire on 14 January 2022. As some minor delays were expected before the Delegate would be able to sign the Section 23 verbal approval was given for the proposed training to commence with DSOTEC on 03 August 2020.

PROCUREMENT METHOD AND PROCESS

11. The 1 Star Approval to procure a Contractor was garnered on 12 June 2020 (at Reference D).

12. Non Materiel Procurement Branch (NMPB) endorsed the approach for the procurement via an Endorsement to Proceed (ETP) on 12 June 2020 (Reference E). The ETP and procurement planner were utilised as the Procurement Plan.

13. The Indigenous Procurement and Remote Policy was not considered due to the procurement being expected to exceed s47E(d) and the requirement for all work to be undertaken in Sydney NSW.

14. This procurement is subject to the additional rules detailed in Division 2 of the Commonwealth Procurement Rules (CPRs) and no exemptions apply.

15. A Request for Quotation for the services was released to UNSW via the Survey and Quote functionality of ADFA University Contract 4277 and a response was provided by the Vendor by the stated closing date.

16. Negotiations between the LCD Procurement Cell and ADFA/UNSW addressed changes to the proposed Statement of Work and adjusted the final cost for the UNSW services downward. Additionally, AHQ agreed to fund s47E(d) as the outcomes are equally applicable across all of Army.

17. An evaluation of the final quote was undertaken by s47E(c) with the Land Capability Procurement Team providing process and probity advice.

CONSIDERATIONS INCLUDING VALUE FOR MONEY ASSESSMENT

18. The Land Capability Procurement Manager found the UNSW submission compliant in accordance with the rates and Survey and Quote functionality of ADFA University Contract 4277. This contract was established after an open procurement for like services – ensuring the work packages created underneath it represent value for money.

19. Consideration was given to value for money from an FTE perspective. As no Army resources are available to perform the duties the Evaluation Team found that the quote offered value for money from an FTE perspective.

20. The Evaluation found that the submission offered the requested technical expert, provided overall value for money to Defence and met the technical requirements. s47F

s47F

s47F

urther detail can be found in the consolidated evaluation at Reference F. An extensive CV can also be found on the UNSW website.

21. The contract will be reported on AusTender as an Open Tender, as per the establishment of the ADFA University Contract 4277. The procurement is assessed as minor carrying a low risk.

FUNDS AVAILABILITY

22. Funding assurance has been facilitated by AHQ to the required s47E(d) (GST inclusive) as outlined in Table A.

23. The funding identified for the proposed commitment is consistent with the purpose for which it was allocated. The following AHQ financial codes will be used for this procurement:

s47E(d)

Table A – Commitment Approval

Service	Cost excluding GST	GST Component	Cost including GST
0.6 FTE Services of Ethics expert s47F	s47E(d)		
Services of Research Assistant			
Total			

SPECIALIST ADVISORS

24. Specialist financial advice has been obtained on the relevant financial aspects of the proposed commitment of relevant money. The following authorities have been consulted in this process:

s47E(c)

25. Specialist procurement advice has been obtained on the relevant procurement aspects of the proposed commitment of relevant money. The following authorities have been consulted in this process:

- a. s47E(c), Procurement Manager, Land Capability Division; and
- b. s47E(c), Procurement Specialist, Land Capability Division.

s47E(c)
Commandant
DSOTEC
Holsworthy

August 2020

SPECIALIST ADVICE - FINANCE

As Specialist Advisor Finance I confirm:				
<input checked="" type="checkbox"/>	the sufficiency of the budget;			
<input checked="" type="checkbox"/>	the soundness of the costing calculations; and			
<input checked="" type="checkbox"/>	the accuracy of the costing calculations.			
Signature	Printed name	PMKeyS	Appt/PN	Date

SECTION 23 – COMMITMENT APPROVAL

As Section 23 - Commitment Approver I can confirm that:

- I have consulted with a person who currently holds the required procurement competency and who has been involved in a material way during the development of the arrangement or has provided advice during the procurement process;
- the arrangement will be a proper use of relevant money;
- I have taken care and diligence and have made reasonable inquiries to ensure this arrangement meets all required procurement obligations, notably the Commonwealth Procurement Rules, the Accountable Authority Instructions, the Defence Procurement Policy Manual, applicable Departmental Procurement Policy Instructions, and is not inconsistent with the policies of the Australian government;
- I am acting in good faith and for proper purpose;
- I do not stand to gain advantage for myself or other persons or cause detriment to Defence, the Commonwealth or any other person;
- any real or perceived conflict of interest has been disclosed.

	BRIG David Kelly	s22	COS AHQ	Aug 20
Signature	Printed name	PMKeyS	Appt/PN	Date

AUSTRALIAN ARMY

Commitment Clearance – AS Finance - Army Consultation

This form must be completed and after signing by the appropriate recommending and funds available officers, forwarded to AS Finance – Army in accordance with Accountable Authority Instruction 2 - Spending Defence Money Procurement - Paragraph 56 for an arrangement which involves expenditure beyond available appropriation (such as multiple year expenditure) and/or an indemnity.

The spending proposal details must be given and an AS Finance – Army response provided before an official exercises their:

- a. commitment approval delegation with involves expenditure against future years appropriations; and/or
- b. delegation to grant an indemnity.

Command: SOCOMD **Formation:** SFG **Unit:** DSOTEC

1. Brief description of the spending proposal.

Implementation of SOCOMD Ethics Strategy Aug 20 – Jan 22

2. Name of the applicable departmental item. (do not change)

Department of Defence

3. Length of the agreement. (number of financial years across)

2 Years

4. Estimated cost of the spending proposal, including any proposed current year expenditure, but excluding GST and contingent liabilities?

s47E(d)

5. Details of any indexation arrangements. (e.g. CPI or other indices)

Fixed Price using Survey and Quote

6. Total estimated cost of the spending proposal, including GST, but excluding contingent liabilities.

s47E(d)

7. Does the spending proposal contain a contingent liability, such as an indemnity clause where Defence agrees to indemnify the other party?

No

If yes, complete Annex A.

8. Is the spending proposal wholly a contingent liability, such as a stand-alone indemnity not part of a purchase order or procurement contract, where Defence agrees to indemnify the other party?¹

No

If yes, complete Annex A.

9. Contingent liability potential expenditure. (from Annex A)

\$0.00

Do not attach Annex A if there is no contingent liability

10. Proposed Expenditure, excluding contingent liabilities.²

	FY 20/21	FY 21/22	Total
Expenditure	s47E(d)		
Commitment			

¹ Commitment Approver approval is necessary for any stand-alone indemnity – FINMAN 2 Part A Division 1 Schedule 1.

² For larger more complex commitments, such as long term contracts, attach detailed cost estimates and phasings in addition to summarising the expenditure and commitment in the following table.

GST	s47E(d)
Total (including GST)	

11. Are there direct or indirect risks arising from the arrangement and any proposed transaction under it? **No**

If yes, attach details.

12. Recommended by (EL 1, O-5, or higher).

s47E(c)		COMDT Defence Special Operations Training & Education Centre
Signature	Name	Appointment

13. Funds available - there is sufficient uncommitted appropriation and uncommitted forward estimates.

s47E(c)		
Signature	Name	Appointment

14. Clearance is provided, under Accountable Authority Instruction 2 - Spending Defence Money Procurement - Paragraph 56, to expenditure that might become payable under the spending proposal / arrangement detailed above.

	s47E(c)	Assistant Secretary Finance – Army s47E(c)
Signature	Name	Appointment

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Monitor and Review

This Manual will be reviewed whenever relevant sections of any of the identified references are updated or amended. All feedback and suggestions for improvement should be sent to:

Procurement.Policy@Defence.gov.au

Note to External Agencies

External agencies intending to use this template will need to tailor it in order to meet their specific procurement requirements (including relevant internal guidance) and should seek appropriate professional guidance as required.

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Please note that while the Procurement Policy Help Desk can respond to DPPM policy questions, this service is not available to those outside of Defence. Contractors should, in the first instance, seek guidance from the relevant Contact Officer for their specific procurement.

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This publication should be attributed as the *Defence Procurement Policy Manual April 2017*.

Use of the Coat of Arms

The terms under which the Coat of Arms can be used are detailed on the [It's an Honour](#) website.

UNCONTROLLED IF PRINTED

DPPM Amendment List

Version Number	Change	Date
Version 1.0	Original	1 April 2017
Version 1.1	Version 1.1 Matrix of Changes	19 December 2017
Version 1.2	Version 1.2 Matrix of Changes	8 November 2018

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Chapter 1

Introduction to the Defence Procurement Policy Manual

Overview

1. Welcome to the new version of the Defence Procurement Policy Manual (DPPM). The DPPM has been completely re-written to more clearly set out for Defence *officials* the mandatory policy that **must** be complied with when undertaking *procurement*.
2. The DPPM has also adopted a completely new structure and format. In particular, the DPPM now incorporates the Commonwealth Procurement Rules (CPRs) so that *officials* can find in one place the Commonwealth and Defence *procurement* related policy that applies to them.
3. There are many terms in *italics*. This normally means that the term is a defined term. Appendix B to the CPRs (and the DPPM) sets out the definitions of these terms.

Policy Statement

4. The DPPM incorporates both the CPRs and additional Defence Procurement Policy Directives that **must** be complied with by Defence *officials* in relation to *procurement*. Defence Procurement Policy Directives supplement specific CPRs in the context of the particular circumstances and needs of the Department of Defence ('Defence').

Defence Procurement Policy Directive

- D1. In addition to complying with the CPRs, Defence officials must comply with the Defence Procurement Policy Directives in the DPPM when undertaking procurement. Defence Procurement Policy Directives are generally denoted by the term 'must' (or 'must not').¹

5. Together with the guidance, templates, tools and other resources referred to in the DPPM, the DPPM is an internal control system that forms part of the framework that applies the principles and requirements of the resource management and *procurement* frameworks (focusing on Defence's operations). The DPPM provides primary operational instructions to Defence *officials* in carrying out their duties related to *procurement*, in a way that is tailored to Defence's particular circumstances and needs.

Scope and applicability of this manual

6. The DPPM applies to all Defence *officials*. In addition, a *contract* may extend the application of this manual to a *contractor*,² or a *contractor* may be prescribed to be a Defence *official* in accordance with Defence's Accountable Authority Instructions.

What is the purpose of this manual?

7. The purpose of the DPPM is to:
 - a. assist Defence *officials* to implement the requirements of the CPRs and Defence policy when undertaking *procurement*;
 - b. provide Defence *officials* with a plain English document that is simple to understand and use when undertaking *procurement*;
 - c. update Defence's approach to *procurement* to reduce red tape and costs to industry;
 - d. encourage *officials* to use more strategic approaches, commercial expertise and good practice, when procuring for Defence; and

¹ Where the term 'should' or 'may' is used in the DPPM, this generally indicates good practice. See also the section 'How do I read the DPPM' in this Chapter for more information.

² See further paragraph 4.15 of the CPRs and the related Note.

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- e. encourage *officials* to engage early with Defence industry to stimulate competition and innovation, and work with industry to develop better solutions and outcomes for Defence.

How do I read the DPPM?

8. The DPPM is divided into five chapters and has two appendices, as follows:

Chapter 1 – Introduction to the Defence Procurement Policy Manual – this chapter provides an overview of the role of the DPPM and how it is designed to be used;

Chapter 2 – An overview of the CPRs and the procurement lifecycle – this chapter provides an overview of the CPRs, including the key policy requirements as they apply to the *procurement* lifecycle, and provides a summary of the *procurement* life cycle to get into *contract*,

Chapter 3 – The procurement framework - this chapter incorporates all of the preliminary rules and guidance contained in the CPRs;

Chapter 4 – Achieving Value for Money in procurement – this chapter incorporates all the rules from Division 1 of the CPRs, as well as additional Defence Procurement Policy Directives;

Chapter 5 - Procurements above the procurement thresholds – this chapter incorporates all of the rules from Division 2 of the CPRs, as well as additional Defence Procurement Policy Directives;

Appendix A – Exemptions from Division 2 of the CPRs – this is Appendix A from the CPRs which sets out the list of *procurements* that are exempt from Division 2 of the CPRs;

Appendix B – Definitions – this is Appendix B from the CPRs which sets out the definitions of the terms used in the CPRs. These terms also have the same meaning when used in the DPPM.

9. Chapters 3 – 5 of the DPPM set out the individual CPR rules that **must** be complied with by all *officials* (including Defence *officials*) undertaking *procurement* for the Commonwealth. The CPR rules have been numbered as they appear in the CPRs, and are easily identifiable as having been drafted in the following format:

EXAMPLE ONLY

‘2. Procurement Framework

- 2.1 The Commonwealth Procurement Rules (CPRs) are issued by the Minister for Finance (Finance Minister) under section 105B(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).
- 2.2 *Officials* from *non-corporate Commonwealth entities* and prescribed *Corporate Commonwealth entities* listed in section 30 of the Public Governance, Performance and Accountability Rule 2014 must comply with the CPRs when performing duties related to *procurement*. These entities will collectively be referred to as relevant entities throughout the CPRs.’

10. Many of the CPR rules stand by themselves and need no further explanation or context. Also, in many cases, there are no additional Defence Procurement Policy Directives over and above the individual CPR rule.

11. In other cases, however, there may be one or more additional Defence Procurement Policy Directives that **must** also be complied with by Defence *officials*. These are also easily identifiable as they appear below the particular CPR rules to which they most closely relate, have been numbered with ‘D’ as an identifier, and have been drafted in the following format:

EXAMPLE ONLY

Defence Procurement Policy Directive

D3. If a Defence *official* determines that an exemption given under paragraph 2.6 of the CPRs applies to a *procurement*, the *official* must ensure that the reasons supporting that determination are appropriately documented.'

12. Also accompanying a CPR rule or Defence Procurement Policy Directive in many cases are 'Notes'. These Notes assist with the interpretation of, or provide more context for readers about, a particular CPR or Defence Procurement Policy Directives, and how they apply in the Defence *procurement* environment. An example of a Note is as follows:

EXAMPLE ONLY

Note: The DPPM also sets out the Defence Procurement Policy Directives that Defence *officials* must comply with when they procure *goods* and services for or on behalf of Defence. The DPPM also indicates *good practice*.'

13. These Notes do not form part of the mandatory policy that **must** be complied with under the DPPM. However, they can be used, along with the material in Chapters 1 and 2 of the DPPM, to assist with interpretation and to give greater context for the DPPM user.

14. The headings in the DPPM are usually the headings from the CPRs. However, other headings have also been included where appropriate to help guide the reader.

Commonwealth legislative and policy framework

15. As paragraph 2.10 of the CPRs notes, Defence and its *officials* operate in an environment of legislation and Commonwealth policy. Defence has numerous business policy owners that are responsible for ensuring Defence complies with applicable Commonwealth legislation and policy requirements, as well as with particular State and Territory legislation that may also apply to Defence activities. This legislation and policy often interacts with Defence *procurement* and in many cases is given effect to through *contracts*.

16. The DPPM refers to and incorporates by reference relevant Commonwealth legislation and policy, and other Defence policy, relating to *procurement*. Also, the endorsed Defence contracting templates have been drafted and are regularly updated to give effect to applicable Commonwealth legislation and policy (including the CPRs), and applicable Defence policy. These templates have been developed to assist Defence *officials* to comply with applicable legislation and policy requirements if used for the purposes for which they are intended. Where the *procurement* involves a unique or unusual requirement not within the contemplation of the endorsed templates, specialist advice should be sought to ensure any specific legislation and policy is addressed. The endorsed Defence contracting templates may be found on the [Commercial Division Tools and Templates intranet page](#).

17. There are also many policy or support areas in Defence that can assist in relation to specific aspects of *procurement* or on legislation and policy that intersect with *procurement* (eg contracting, legal, finance, environment, work health and safety, security, technical regulatory frameworks etc). These resources can be found by the procurement support areas link on the [Commercial Division Help Desk Kiosk](#) intranet page.

18. The Department of Finance's *Buying for the Australian Government* website provides further assistance on policies that interact with *procurement* (called 'Procurement-Connected Policies'). The Department of Finance also releases Resource Management Guides and Finance Circulars that provide additional guidance and interim policy updates. These resources may be found on the [Department of Finance webpage](#).

Resource management framework

19. The resource management framework is part of the broader Commonwealth legislative and policy environment, and consists of the legislation and policy (including the CPRs) governing the management of the Commonwealth's resources. The main elements of this framework are set out in Figure 3 of the CPRs.

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20. The resource management framework is primarily comprised of the PGPA Act and associated *Public Governance Performance and Accountability Rule 2014* (PGPA Rule 2014). The PGPA Act authorises the Secretary, as Defence's *Accountable Authority*, to issue Accountable Authority Instructions (AAIs) (PGPA Act, section 20A; see also paragraph 2.5 of the CPRs). The Secretary has issued the Defence AAIs under this authorisation. The PGPA Act also contains provisions dealing with the commitment of *relevant money* and *officials* entering into arrangements such as *contracts* and *deeds* (PGPA Act, section 23). Section 60 of the PGPA Act governs the granting by the Commonwealth of indemnities, warranties and guarantees ('contingent liabilities'). Sections 23 and 60 of the PGPA Act are key provisions relating to *procurement*.

21. The PGPA Framework requires Defence officials to:

- a not be inconsistent with the policies of the Australian Government (PGPA Act, section 21);
- b use and manage public resources in an efficient, effective, economical and ethical manner (PGPA Act section 8 and 15);
- c exercise 'care and diligence' in performing their duties (PGPA Act, section 25);
- d exercise powers, perform functions and discharge duties "honestly, in good faith and for a proper purpose" (PGPA Act, section 26);
- e not improperly use their position in performing their duties (PGPA Act, section 27);
- f not improperly use information (PGPA Act, section 28); and
- g disclose interests in relation to the performance of their duties (PGPA Act, section 29).

22. Section 21 of the PGPA Act requires the Secretary to govern Defence in a way that is 'not inconsistent with the policies of the Australian Government'. The 'policies of the Australian Government' is not a defined term and should be interpreted broadly, applying its ordinary dictionary meaning. Among other things, the term will likely include things like Cabinet decisions, or other Government approvals relating to a commitment of *relevant money*, to the extent that the decision or approval establishes a course or line of action.

23. Accordingly, Defence *officials* exercising delegations (especially those for the purposes of section 23 of the PGPA Act) should ensure that they do so consistent with the terms of any Australian Government decisions or approvals relevant to the *procurement*.

24. For a Defence *official* (including a contractor who is prescribed as a Defence *official*) to exercise a power conferred on or delegated to the Secretary under the PGPA Act in relation to *procurement*, they are required to have the delegated authority. These delegations are described in the [Defence AAIs](#) and issued in Financial Delegations Manual ([FINMAN 2](#)).

25. For the purposes of section 23(3) of the PGPA Act, delegated Defence *officials* may approve the commitment of *relevant money* (Commitment Approval delegation). This delegation is required to be exercised before the Commonwealth enters into the arrangement that commits *relevant money*. For the purposes of section 23(1) of the PGPA Act, Defence *officials* may enter into an arrangement on behalf of the Commonwealth (Enter into an Arrangement delegation). The Defence *official* exercises this delegation by the physical act of entering into an arrangement, after the proposed commitment has been approved by a Commitment Approval delegate. These delegations are mentioned in Defence Procurement Policy Directive D5.³ Defence *officials* should be aware that the section 23 PGPA Act delegations apply to all kinds of *procurements*. For example, both delegations will be required for each order placed under a *standing offer* arrangement.⁴

26. Also, a change to a *contract* (whether called a *contract* change, amendment or variation or some other terminology) may itself technically constitute a *procurement*. In any event, both delegations will be required to be exercised for each *contract* change, if the change involves the commitment of *relevant money*. If the *contract* change does not involve the commitment of *relevant*

³ If a *procurement* includes a contingent liability, Defence Procurement Policy Directive D6 requires the relevant delegate to authorise the granting of the contingent liability for the purposes of section 60 PGPA Act. In Defence (apart from CASG), the Commitment Approval delegate may do this as part of exercising this delegation. In CASG, a separate delegation is required in addition to the Commitment Approval delegation, both of which must be exercised before the exercise of the Enter into an Arrangement delegation.

⁴ The [Establishing and Using Standing Offers Fact Sheet](#) provides further information regarding delegations required for the establishment and use of *standing offer* arrangements.

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money (that is, it is a 'nil-cost' *contract* change), only the Enter into an Arrangement delegation is required.⁵ However, even in this situation, the delegate should be satisfied that the proposed change represents proper use and management of *public resources* and is not inconsistent with the policies of the Australian Government (see further paragraph 6.1 of the CPRs).

27. In addition to these delegations under the PGPA Act, and in accordance with AAI 3, Defence *officials* are also required to obtain an 'Endorsement to Proceed' before undertaking certain *procurements* (see Defence Procurement Policy Directive D9). An Endorsement to Proceed process is part of Defence's internal controls (which are required by section 16 of the PGPA Act) to better ensure the proper use and management of *public resources*. Having a Defence *official* provide an Endorsement to Proceed for *procurements* above a certain value provides additional internal scrutiny through which Defence can satisfy itself that proceeding with the *procurement* would be an efficient, effective, economical and ethical use of *public resources*, and that it will not be inconsistent with the policies of the Australian Government. An [Endorsement to Proceed Fact Sheet](#) and template have been developed to assist Defence *officials* to deal with all the matters they need to consider when exercising this function.⁶

28. Defence has also developed [fact sheets](#) and templates to assist and guide Commitment Approval and Enter into Arrangement delegates (as well as any separate delegate authorising the granting of a contingent liability under section 60 of the PGPA Act) through all the considerations they need to be aware of when exercising their delegations.

Compliance with the DPPM

29. The DPPM sits within the procurement policy framework as set out in Figure 1.

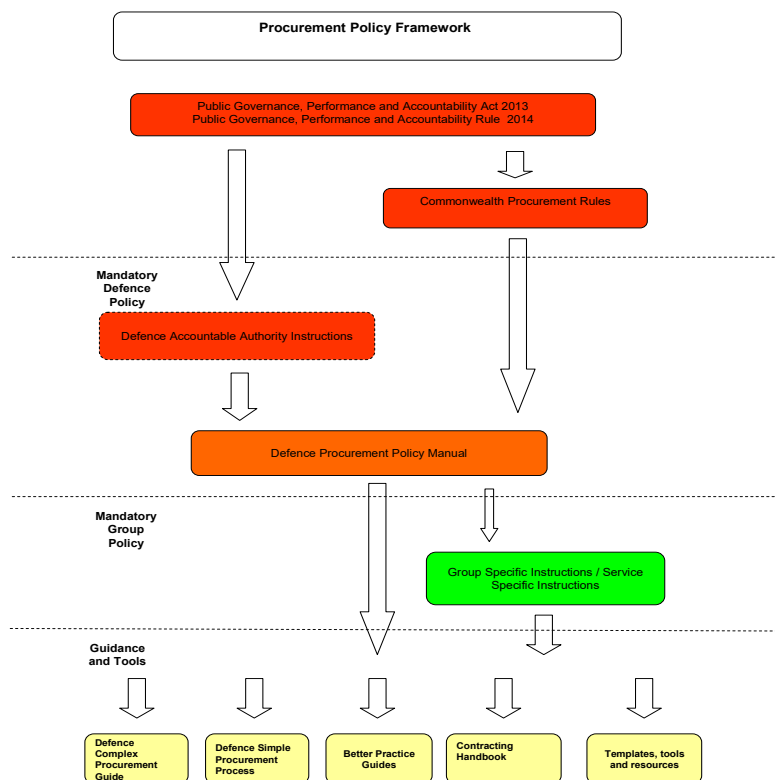


Figure 1

⁵ While only the Enter into an Arrangement delegation is required, AAI 2.4.1.8 and FINMAN 2 have the effect that not all Defence *officials* have the delegated authority to agree to enter into arrangements that are nil-cost contract changes. Defence *officials* should refer to AAI 2.4.1.8 and FINMAN 2 to make sure that these contract changes are authorised at the right level.
⁶ For further guidance, see Chapter 4 of the Complex Procurement Guide.

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30. If a Defence *official* departs from the DPPM in a way that results in a departure from the CPRs, (or the PGPA Act or PGPA Rule 2014), then the *official* will have contravened the law.

31. When considering a possible departure from a Defence Procurement Policy Directive contained in the DPPM, Defence *officials* should:

- a. consider whether a proposed departure from the policy requirement is reasonable and justified in the circumstances and would produce the same or better outcome for Defence;
- b. consult their supervisor, wherever practicable, about a proposed departure – a properly informed decision may involve consulting the policy owner; and
- c. be responsible and accountable for the consequences of departing from, or not adhering to, the content of a manual, including where such departure or non-adherence results in a breach of applicable laws or leads to adverse outcomes for Defence.

32. Officials are not permitted to depart from the mandatory requirements of the PGPA Act, PGPA rule, CPRs, AAI and FINMAN 2

33. Defence *officials* should consider whether contractors should be required to comply with the DPPM when undertaking procurement on behalf of Defence and communicate this requirement to the contractors, including the incorporation of appropriate provisions in *contracts*.⁷

Why do we have procurement rules?

34. The CPRs and Defence Procurement Policy Directives in the DPPM exist to assist Defence *officials* make proper use of *public resources* when undertaking *procurement* related activities for the Commonwealth. Defence *officials*, like *officials* from other Commonwealth agencies, are accountable for how they spend *relevant money* (also known as ‘public money’).

35. The DPPM provides a framework that promotes responsible and accountable spending by Defence *officials* when procuring *goods* and services for Defence. This framework supports the proactive management of the risks relating to *procurement*, as required by the CPRs.

Why are the CPRs and the DPPM drafted the way they are?

36. As noted at paragraph 2.14 of the CPRs, the CPRs give effect to Australia’s international treaty obligations. Access to overseas markets is secured through Free Trade Agreements (FTAs). Under FTAs, countries offer reciprocal access to their government *procurements*. The CPRs reflect Australia’s FTA commitments, and in particular are substantially based on the text of Chapter 15 of the Australia-USA FTA. The CPRs also align with the World Trade Organisation’s Agreement on Government Procurement (GPA). Accordingly, the CPRs include *procurement* related rules that give effect to Australia’s international obligations.

37. The CPRs also seek to ensure that Commonwealth agencies achieve value for money in their *procurement* activities, however they have not been specifically drafted to follow the logical order or timeline of the *procurement* life cycle, and it is very difficult to simply translate or allocate the CPR rules to the various parts of the life cycle. The Defence Procurement Policy Directives have been drafted to align with the structure of the CPRs, and therefore also do not follow the *procurement* life cycle. Chapter 2 of the DPPM provides an overview of the CPRs, including a discussion of the core principles underpinning Commonwealth *procurement*. Chapter 2 also provides an overview of how to plan and undertake a *procurement*.

38. By contrast, the [Simple Procurement Process](#) and [Complex Procurement Guide](#), which accompany the DPPM, have been based on the *procurement* life cycle so that Defence *officials* have a more intuitive sequenced guidance document to follow when planning for and undertaking *procurements*. The documents do not contain mandatory policy requirements, rather, along with the practitioner level Better Practice Guides and Handbooks on specific *procurement* topics, they provide more detailed ‘how to’ guidance to undertake good *procurement*, whether for a low risk, low value (‘simple’) *procurement* or for the more highly complex *procurements* that are often undertaken in Defence, whether in the materiel or non-materiel environment.

⁷ For more information about when it might be appropriate to require contractors to comply with the DPPM, see paragraph 4.15 of the CPRs and the related Note.

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What is the *procurement* life cycle?

39. The *procurement* life cycle is simply the breakdown of the end-to-end *procurement* process into logical phases and stages. If each stage of the life cycle is planned for and executed well, Defence *officials* are more likely to achieve good outcomes from their *procurement* activities. The *procurement* lifecycle separates *procurement* into three phases: planning, sourcing and managing. These phases are further divided into seven distinct, but interrelated stages, which are:

Planning

1. Plan the procurement
2. Request documentation

Sourcing

3. Approach the market
4. Evaluation
5. Negotiation and contract signature

Managing

6. Contract management⁸
7. Disposal.

40. The *procurement* life cycle is represented by the following 'procurement wheel' (see figure 2).



Figure 2

41. While the *procurement* life cycle includes a Disposal stage, the actual disposal of *goods* (for example, Defence materiel at the end of its life of type) is not a *procurement* within the meaning of the CPRs. This is so even though paragraph 2.7 of the CPRs mentions a 'consideration of disposal of *goods*' as being part of *procurement*. Hence, disposal of *goods* is neither subject to the CPRs nor the Defence Procurement Policy Directives in the DPPM. For example, if the disposal strategy for a ship involves selling the ship by tender (see paragraph 2.9c of the CPRs) or through an auction, that process would not be a *procurement* and hence not subject to the CPRs.

⁸ Defence Officials should refer to the [Defence Contract Management Framework](#) and the [Defence Contract Management Handbook](#) for guidance about the contract management stage of the procurement life cycle.

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42. However, there may be occasions where Defence *officials* wish to engage services to assist with the planning or conduct of a disposal activity. The engagement of these services may constitute a *procurement* under the CPRs. For instance, in the example of a ship disposal, if the strategy involves engaging services to decommission and scrap the ship, then the *procurement* of these services would constitute a *procurement* for the purposes of the CPRs.

43. What paragraph 2.7 of the CPRs requires is that Defence *officials* undertaking a *procurement* of *goods* consider how the *goods* will be disposed of at the end of life (including any potential costs) as part of the decision about whether and how to proceed with the *procurement*⁹.

44. In Defence, the policy governing disposal of *goods* is set out in AAI 10.12, the Defence Logistics Manual (see [DEFLOGMAN, Part 2, Volume 5, Chapter 10](#)) and the [Electronic Supply Chain Manual](#) ('ESCM'). For guidance and templates on contracting processes for disposals, including sale by tender and gifting or transfer by deed, Defence *officials* should refer to [Materiel Logistics, Disposals and Sales Branch](#).

Guidance, tools, templates and resources

45. The [Complex Procurement Guide](#) has been developed to align with the *procurement* life cycle. Each section of the *procurement* life cycle is represented by a Chapter of the Complex Procurement Guide.

46. The [Simple Procurement Process](#) also follows the *procurement* lifecycle and guides users undertaking a simple *procurement* activity through a step by step process. By following the process, Defence *officials* can rely on this as satisfying their obligations under the CPRs and DPPM.

47. The DPPM also refers to and contains links to further guidance, templates and tools to assist Defence *officials* to meet the requirements of the DPPM and to facilitate better *procurement* outcomes. These materials can be found on the Commercial Division [Commercial Policy Framework](#) intranet page.

48. Collectively, the DPPM and the related guidance, templates, tools and other resources, provide a framework that supports accountability for spending, sound commercial practice and better outcomes for Defence, the Australian Government and the taxpayer.

⁹ The intention of paragraph 2.7 of the CPRs is to ensure disposal costs and related matters are adequately considered and understood (where predictable) to inform the acquiring of goods through the procurement process. For example, Defence may need to factor into the original procurement decision the need for additional funding to cover the costs of making the goods safe for disposal.

Chapter 2

An overview of the CPRs and the procurement life cycle

1. As noted in Chapter 1, the CPRs have not been specifically drafted to follow the logical order or timeline of the *procurement* life cycle. Paragraph 2.7 of the CPRs describes the *procurement* life cycle as covering all aspects of acquiring and delivering *goods* and services - it starts with identifying the need for a *procurement* and finishes with either the end of the related services *contract* or the end of the useful life and disposal of the *goods* that were procured. While the CPRs do not follow the *procurement* life cycle, the CPRs include a number of core principles that underpin Commonwealth *procurement* across the life cycle.

2. This Chapter provides a brief overview of the CPRs and the *procurement* life cycle, and discusses these core principles in the context of Defence *procurement*. This Chapter is not intended to replicate the CPRs and does not attempt to discuss all the CPR rules. Also, even though this Chapter discusses the CPRs, the terms '**must**' and '**must not**' are not used in this Chapter to avoid any confusion about whether this Chapter gives rise to additional mandatory policy requirements. The CPR rules and Defence Procurement Policy Directives in Chapters 3-5 of the DPPM (and Defence Procurement Policy Directive D1 in Chapter 1) stand on their own and apply according to their terms.¹⁰

CPRs – an overview

3. The CPRs provide all entities governed by the PGPA Act – which includes the Department of Defence - with the policy framework and associated rules for conducting *procurement* activities. The CPRs are a 'legislative instrument', which means that they are part of the law of the Commonwealth.

4. The CPRs are divided into an introductory section and two Divisions - which are set out in Chapters 3, 4 and 5 respectively of the DPPM - and two Appendices (which are included as the Appendices to the DPPM). Division 1 of the CPRs applies to all Commonwealth *procurements* and Division 2 sets out 'additional rules' which apply to *procurements* that are valued at or above the relevant *procurement threshold* - unless a *procurement* is exempted from having to comply with these additional rules. Many Defence *procurements* are exempt from Division 2. The main obligation of the additional rules is to require *officials* to undertake *procurements* by way of an *open tender* in most circumstances, as well as setting out particular requirements for how the tender is undertaken.

5. The introductory section of the CPRs (in Chapter 3 of the DPPM) covers the purpose, scope and legislative and policy framework of the CPRs.

6. Division 1 of the CPRs (in Chapter 4 of the DPPM) sets out rules that apply to all *procurements*. This means that all Defence *procurements* are required to comply with Division 1 (and the additional Defence Procurement Policy Directives in Chapter 4 of the DPPM). This Division establishes 'value for money' as the core requirement of Commonwealth *procurement*. Defence *officials* responsible for a *procurement* need to be satisfied, after reasonable inquiries, that the *procurement* achieves value for money.

Value for money framework

7. Division 1 provides a framework for determining 'value for money'.¹¹ Under this framework, *procurements* should:

- encourage competition and be non-discriminatory;
- use *public resources* in an efficient, effective, economical and ethical manner that is not inconsistent with the policies of the Commonwealth;
- facilitate accountable and transparent decision making;
- encourage appropriate engagement with risk; and
- be commensurate with the scale and scope of the business requirement.

¹⁰ See also the section 'How do I read the DPPM' in Chapter 1 for more information.

¹¹ See section 4 of the CPRs (in Chapter 4 of the DPPM).

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8. In addition to these considerations, for *procurements* valued above \$4 million, *officials* are also required to consider the economic benefit of the *procurement* to the Australian economy as part of the framework for determining value for money.¹² However, this additional requirement does not apply if the *procurement* is exempt from the additional rules in Division 2 of the CPRs. This means that the requirement does not apply, for example, to those *procurements* for which there is a Defence specific exemption.¹³ For these Defence *procurements*, the consideration of economic benefit occurs through the evaluation of the Australian Industry Capability (AIC) requirements of the *procurement*.¹⁴ In particular, tenderers are required to submit an AIC plan which sets out the tenderers' Local Industry Activities (LIAs) to meet the specified Industry Requirements of the *procurement*. Tenderers are required to describe the benefits of their LIAs, including the significance of the work, the skills and knowledge that will be transferred, the training that will be provided, the new technologies or innovations that will be introduced, and the contribution to Australian company competitiveness, including access to global supply chains, technical data and intellectual property.

9. Value for money does not automatically mean the lowest price *goods* or services. When conducting a *procurement*, *officials* are required to consider the relevant financial and non-financial costs and benefits of each *submission*, including matters such as:¹⁵

- the quality of the *goods* and services;
- fitness for purpose of the proposal;
- the *potential supplier's* relevant experience and performance history;
- flexibility of the proposal (including innovation and adaptability over the lifecycle of the *procurement*);
- environmental sustainability of the proposed *goods* and services (such as energy efficiency and environmental impact); and
- whole-of life costs.

Valuing a procurement – relevant procurement thresholds

10. The additional rules in Division 2 (and the Defence Procurement Policy Directives in Chapter 5 of the DPPM) apply only to *procurements* that are valued at or above a certain threshold (see paragraph 14 below). This means that Defence *officials* need to estimate the value of their *procurement* to know whether it has to comply with the additional rules.

11. The *procurement* value is the maximum anticipated value of the proposed *contract*, including options, extensions, renewals or other mechanisms that may be executed over the life of a *contract*. The estimated value includes:¹⁶

- all forms of remuneration, including any premiums, fees, commissions, interest, allowances and other revenue streams that may be provided for in the proposed *contract*;
- the total maximum value of the property or services being procured, including the value of any options in the proposed *contract*; and
- any taxes or charges (including GST).

12. If a *procurement* is being conducted in multiple parts with *contracts* awarded either at the same time or over a period of time, with one or more *suppliers* (for example, a *standing offer* panel arrangement), the expected value of the *goods* and services being procured has to include the maximum value of all of the *contracts*. Further, Defence *officials* cannot split a *procurement* into separate parts just to try and avoid the relevant *procurement* threshold.

13. In any case, where the maximum value of a *procurement* over its entire duration cannot be estimated (for example, a *standing offer* panel arrangement), Defence *officials* are required to treat the *procurement* as being valued above the relevant *procurement* threshold.

¹² See paragraphs 10.31 and 10.32 of the CPRs, and the guidance on the [Department of Finance webpage](#).

¹³ See Defence Procurement Policy Directives D2-D4 and the related Notes.

¹⁴ See Defence Procurement Policy Directive D15 and the related Note.

¹⁵ See paragraphs 4.5 and 4.6 of the CPRs.

¹⁶ Defence *officials* should be aware that the way in which they value a *procurement* for the purposes of the CPRs is different to the way they need to value it for the purposes of completing the AE643 form to record a contract in ROMAN. See Complex Procurement Guide, Chapter 6 Appendix A for further details.

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14. The value thresholds are:

- for *procurements* other than for *construction services* - \$80,000 (including GST);
- for *procurements* of *construction services* by relevant entities the *procurement* threshold is \$7.5 million (including GST).

Exemptions from the additional rules in Division 2

15. As noted above, some *procurements* may be exempt from having to comply with the additional rules in Division 2 of the CPRs. There are two ways in which a Defence *procurement* may be exempt:

- first, the *procurement* may be covered by one of the general exemptions listed in Appendix A of the CPRs (discussed further below); or
- second, a Defence specific exemption may apply as a result of a measure made by the Secretary under paragraph 2.6 of the CPRs. This is discussed further in Chapter 4 of the DPPM. These Defence specific exemptions relate mainly to the acquisition and sustainment of Defence materiel.

16. However, even if exempt from Division 2 of the CPRs, Defence *officials* still have to make sure that they undertake their *procurements* in accordance with Division 1 of the CPRs. Also, Defence *officials* still have to comply with all applicable Defence Procurement Policy Directives contained in this manual.

17. While the full list of general exemptions is set out in Appendix A to the CPRs (see Appendix A to the DPPM), some of the main exemptions relevant to Defence business include:

- leasing or purchase of real property or accommodation (noting that the *procurement* of *construction services* is not exempt);
- *procurement* of *goods* or *services* by a *relevant entity* from other Commonwealth, state, territory or local government entities where no commercial market exists or where legislation or Commonwealth policy requires the use of a government provider (for example, legal services which are tied to the Australian Government Solicitor);
- *procurement* for the direct purpose of providing foreign assistance;
- procurement of research and development services, but not the procurement of inputs to research and development undertaken by Defence;¹⁷
- the engagement of an expert or neutral person, including engaging counsel or barristers, for any current or anticipated litigation or dispute;
- *procurement* of *goods* or *services* (including construction) outside Australian territory, for consumption outside Australian territory;¹⁸
- *procurement* of motor vehicles;
- *procurement* of *goods* or *services* by, or on behalf of, the Defence Intelligence Organisation, the Australian Signals Directorate, or the Australian Geospatial-Intelligence Organisation;
- *contracts* for labour hire (noting that this does not include the engagement of consultants);¹⁹
- *procurement* of *goods* or *services* from a business that primarily exists to provide the services of persons with a disability; and
- *procurement* of *goods* or *services* from a Small to Medium Enterprise with at least 50 per cent Indigenous ownership.

¹⁷ This exemption would be relevant mainly for Defence Science and Technology Group.

¹⁸ This exemption would cover *procurements* of *goods* or *services* by the Offices of the Counsellor Defence Materiel in Washington and London that are needed for the ongoing operation of those Offices.

¹⁹ A '*contract for labour hire*' is a contract under which Defence engages an individual to provide labour, when the individual is engaged either directly or through a firm which primarily exists to provide the services of only that individual (that is, the individual's own company). This includes the appointment of an eminent individual to a special role by the Secretary, or the Secretary's appointment of individuals to a governance committee (for example, an audit committee, ethics committee or steering committee), but does not include the engagement of consultants.

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Indigenous business exemption and the Indigenous Procurement Policy

18. The purpose of the Indigenous Procurement Policy (IPP) is to stimulate indigenous entrepreneurship and business development, providing indigenous Australians with more opportunities to participate in the economy through the awarding of Australian Government *contracts*.

19. Appendix A of the CPRs (item 17) permits Defence to procure *goods* or services directly from a small to medium enterprise with at least 50 per cent indigenous ownership ('indigenous enterprise'), without running an *open tender* process, if the proposed *procurement* represents value for money.

20. The IPP builds on the Appendix A exemption and has two components that apply to *procurement*:

- a mandatory 'set-aside' that applies to certain *procurements* conducted on or after 1 July 2015 and which may result in *contracts* being directly sourced to indigenous enterprises; and
- mandatory minimum requirements that apply to certain high value *procurements* aimed at enhancing indigenous participation for certain Commonwealth *contracts*.

21. [Supply Nation](#) maintains a non-exhaustive list of indigenous enterprises that meet this definition. If an enterprise states that it is an indigenous enterprise and is not listed with Supply Nation, Defence *officials* will need to make sufficient inquiries to satisfy themselves that the enterprise satisfies the IPP definition of an indigenous enterprise.

22. In general terms, the mandatory set-aside part of the IPP applies to *procurements* where the majority (by value) of the *goods* or services will be delivered in a Remote Area (except for transactions paid for by credit cards), and other domestic *procurements* where the estimated value is between \$80,000 and \$200,000 (GST inclusive). The set-aside requirement does not apply to Defence exempt *procurements* (under paragraph 2.6 of the CPRs) and some other specific *procurements*.²⁰

23. If the set-aside requirement applies, Defence *officials* are required to first determine whether an indigenous enterprise could deliver the required *goods* or services on a value for money basis before making any approach to the market. If satisfied that value for money can be achieved, then the Defence *official* should procure the *goods* or services from the indigenous enterprise (as permitted by Appendix A of the CPRs, item 17). If not, then the Defence *official* may procure through non-indigenous enterprises.

24. In general terms, the mandatory minimum requirements apply to *procurements* (except Defence exempt *procurements*) where the *contract* will be performed in Australia and has an estimated value of \$7.5 million (GST inclusive) or more, and where more than half of the value of the *contract* is anticipated to be spent in one or more of the following industry sectors:

- Building, construction and maintenance services;
- Transportation, storage and mail services;
- Education and training services;
- Industrial cleaning services;
- Farming and fishing and forestry and wildlife contracting services;
- Editorial and design and graphic and fine art services;
- Travel and food and lodging and entertainment services;
- Politics and civic affairs services.

25. The policy requires that the *request documentation* for *procurements* that are subject to the 'mandatory minimum requirements' include clauses (in both the conditions of tender and *contract*) that meet the IPP requirements. Model clauses that meet these requirements are available on the Commercial Division [Minimum Requirements intranet page](#).

26. Defence *officials* can find further information and resources, including links to IPP fact sheets and Remote Area maps, on the Commercial Division [Indigenous Procurement intranet page](#).

²⁰ For more information about the kinds of *procurements* to which the IPP does not apply, refer to the IPP resources at the Commercial Division [Mandatory Set-Aside intranet page](#).

Disability business exemption

27. The Australian Government's National Disability Strategy 2010 - 2020 sets out a ten year national policy framework for improving the lives of Australians with disability, their families and carers, including by providing people with a disability with more opportunities to participate in the economy through the awarding of Australian Government *contracts*.

28. Appendix A of the CPRs (item 16) permits Defence to procure *goods* or services directly from a business that primarily exists to provide the services of persons with a disability ('disability business'), without running an *open tender* process, if the proposed *procurement* represents value for money.

29. Similar to the IPP, Defence *officials* should determine whether a disability business could deliver the required *goods* or services on a value for money basis before making any approach to the market. If satisfied that value for money can be achieved, then the Defence *official* should procure the *goods* or services from the disability business. If not, then the Defence *official* may procure through a non-disability enterprise. A list of Australian disability businesses can be found at the Australian Disability Enterprises website www.ade.org.au.

Procurement methods

30. Under the CPRs, there are two main *procurement* methods:

- an *open tender* – where Defence approaches the open market and invites *submissions*; and
- a *limited tender* - where Defence approaches only **one or more potential suppliers** to make *submissions*.

31. There is a third kind of procurement method – 'prequalified tender' – however this is limited to procurement from the Legal Services Multi-use list.

32. Identifying the *procurement* method does no more than categorise the *procurement* for the purposes of the CPRs, with some different rules applying depending on whether the *procurement* is categorised as an *open tender* or *limited tender*. Under the CPRs, the default position is that *procurement* should be undertaken by way of *open tender*. If it is not an *open tender*, then by definition it will almost always be categorised as a *limited tender*, even if the *procurement* is undertaken with only one *supplier* (often called a 'sole source'²¹ *procurement*). Similarly, a *procurement* process undertaken between two or more (but not all) *potential suppliers* will be a *limited tender* process, even if Defence does not release a formal request for tender to approach the market and instead seeks a different form of response from industry. If Defence establishes a *standing offer* panel arrangement through an *open tender*, then each *procurement* from the panel is categorised as an *open tender*, irrespective of whether the Defence *official* seeks quotes from one, some or all members of the panel.²²

33. The categorisation of a *procurement* as an *open tender* or *limited tender* does not determine what *approach to market* Defence *officials* may wish to use (which could be done through a request for tender, request for proposal, request for quote under a *standing offer* panel, competitive evaluation, some other form of iterative engagement process, or other form of documentation), nor the project delivery model (for example, prime *contract*, managing contractor, design and construct *contract*, alliance *contract* and so on). Defence *officials* should determine the appropriate *approach to market* strategy and project delivery model during the planning stage of the *procurement*.

34. Also, and as discussed below, a *limited tender* will still be a competitive process as long as it involves more than one *supplier*.

35. While the CPRs generally require an *open tender* process for *procurements* valued at or above the relevant *procurement* threshold, many Defence *procurements* are exempt from this requirement.²³ Accordingly, in circumstances where an *open tender* is not mandatory, the following factors are generally relevant to the selection of a *procurement* method:

- the nature and structure of the market;
- the extent of competition (that is, the number of genuinely competitive *suppliers*);

²¹ When the term 'sole source' is used in the DPPM, it is not being used to indicate a *procurement* method, rather to indicate a situation where Defence is proposing to approach only one supplier for a *procurement*.

²² See CPRs, paragraph 9.13.

²³ See DPPM, Defence Procurement Policy Directive D2. Appendix A to the CPRs also provides for other exemptions.

- schedule, cost or other constraints (for example, intellectual property, security etc).

36. Based on an assessment of these factors, Defence *officials* may still determine that an *open tender* process should be conducted as the best mechanism to deliver a value for money outcome.

Limited tenders

37. *Limited tenders* may only be undertaken in circumstances where the value of the *procurement*:

- is below the relevant *procurement* threshold – see chapter 2 para 4 above; ;
- is at or above the relevant *procurement* threshold but exempt from the additional rules in Division 2 of the CPRs (see Chapter 2 paragraphs 15 – 17); or
- is above the relevant procurement threshold and subject to the additional rules in Division 2 of the CPRs, but satisfies the Conditions for limited tender in paragraph 10.3 of the CPRs.

38. If a *procurement* is subject to the additional rules in Division 2 of the CPRs, Defence *officials* will normally be required to use an *open tender* for the *procurement*. There are only very limited circumstances in which a Defence *official* may decide to use a *limited tender*. These are set out in paragraph 10.3 of the CPRs. Of these, there are probably four main circumstances on which a Defence *official* may rely to conduct a *limited tender*.

39. First, there is the circumstance of ‘reasons of extreme urgency’ (paragraph 10.3b of the CPRs). A *limited tender* can be undertaken if there are reasons of extreme urgency that have been brought about by events unforeseen by Defence, such that the *goods* and services could not be obtained in time under *open tender*. A good example of where this provision might be used is where a natural disaster or other unexpected event has occurred and Government has directed Defence to procure *goods* or services in support of its emergency response.

40. However, paragraph 10.3b of the CPRs cannot validly be used in circumstances where Defence *officials* have not planned well enough in advance and now find themselves in a situation where they may not be able to undertake an *open tender* process in time to obtain the *goods* or services when they are needed. Defence *officials* cannot use poor *procurement* planning as a valid justification for running a *limited tender* process. The underlying principle is that the event giving rise to the need to undertake a *procurement* should have arisen at short notice and could not have reasonably been foreseen by Defence.

41. The second main circumstance is for ‘unsolicited innovative proposals’ where the *procurement* can be categorised as having been made under ‘exceptionally advantageous conditions that arise only in the very short term’ and which is not ‘routine *procurement* from regular *suppliers*’. (paragraph 10.3c of the CPRs). Sometimes industry will have an innovative idea that offers real value to Defence, even though it is not something that Defence has identified as a current need or priority. Paragraph 10.3c of the CPRs offers a mechanism for encouraging industry to put forward these ideas and, if Defence considers the idea of benefit, to procure directly from the relevant company without having to openly test the market.

42. However, Defence companies may sometimes seek to use this mechanism as a way of pitching their *goods* or services to Government without having to compete for a contract. If Defence *officials* act on these proposals without testing the market, then it may be unfair to other suppliers of similar *goods* or services, as well as being difficult to demonstrate value for money. Accordingly, Defence *officials* need to be cautious when using this circumstance to justify undertaking a *limited tender*. It is difficult to give definitive guidance about the kind of proposals that will meet this circumstance, however, as a general rule, it would cover most proposals that are unique or otherwise not readily obtainable in the market place. By contrast, the circumstance should not be used where the proposal is effectively an advance proposal for a requirement that Defence has already identified for *procurement* in the market. Defence *officials* should seek specialist contracting or legal advice before accepting an unsolicited proposal.

43. While Defence business units should be open to receiving and considering unsolicited innovative proposals from industry, Defence has also put in place a formal mechanism to manage these kinds of proposals from industry. This is the Centre for Defence Industry Capability (CDIC) which hosts the Defence Innovation Portal, the primary gateway for companies seeking to submit innovation proposals or ideas to the Defence Innovation Hub and Next Generation Technology Fund. For further information about the CDIC and the Defence Innovation Hub, Defence *officials* should refer to www.business.gov.au/cdic.

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44. The third main circumstance is where there is no real alternative because of an 'absence of competition for technical reasons' (Paragraph 10.3d of the CPRs). Normally, this circumstance is used where only one *supplier* can provide the relevant *goods* or services because of intellectual property or other restrictions. This circumstance cannot validly be used by a Defence *official* based simply on the *official's* perceived overall knowledge of the market. An 'absence of competition for technical reasons' has to be something more than an *official's* mere assertion that there is only one *supplier* in the market who is capable of providing the *goods* or services. It requires objective, demonstrable evidence. An example could be a situation where Defence is seeking to procure specialised medical equipment, and there are only two manufacturers of the equipment in the world because of its specialised nature. Defence could defensibly undertake a *limited tender* between the two manufacturers because there would be an absence of competition for technical reasons.

45. The fourth main circumstance is for additional deliveries of *goods* and services by the original *supplier* or authorised representative that are for replacement parts or continuing services for existing equipment, software, services or installations, when a change of *supplier* would mean the *goods* or services would be incompatible with the existing equipment or services' (Paragraph 10.3e of the CPRs). This circumstance is often used in the context of ICT *procurements* where Defence needs spare parts for the installed ICT system, or wants to upgrade the system. The parts or upgrades may be available only from the original *supplier* of the system. The underlying matters giving rise to this circumstance will often also support the circumstance discussed above dealing with an absence of competition for technical reasons.

46. Defence *officials* may sometimes seek to use this circumstance to justify the extension or continuation of consultancy or other professional services, whether or not related to ICT systems, equipment, software or support services. As a general rule, this would normally not be a valid use of this circumstance to justify (as a *limited tender*) the extension or continuation of these kinds of services, and would be an example of where the relevant Defence *officials* have not planned their procurement well enough in advance. For instance, *officials* should have built into the original *approach to market* the necessary options to extend the service period, or for the contractor to provide additional services. As noted above, Defence *officials* cannot use poor *procurement* planning as a valid justification for running a *limited tender* process.

47. Justifications for using a *limited tender procurement* method will be reported on AusTender, and made publically available in accordance with Defence's AusTender reporting requirements. Consequently, Defence *officials* should ensure that the decision to use a *limited tender procurement* method complies with the CPRs, is approved by an appropriate delegate, is defensible and the justification is recorded.

The procurement life cycle - core principles

48. The CPRs have some core principles that Defence *officials* need to consider when planning and undertaking their *procurement* activities. These are discussed below.

Value for money

49. As noted above, value for money does not necessarily mean the lowest price. In most Defence *procurements* of any complexity, determining value for money will mean assessing tenders against all the *evaluation criteria* stated in the *request documentation* and determining on the balance of all the assessments which one delivers best value for the Commonwealth. In undertaking this assessment, *officials* need to look at the total cost of ownership of the solutions. Value for money is about getting the best possible outcome over the whole-of-life of the *goods* or services.²⁴

50. The standard conditions of tender in the [endorsed Defence contracting templates](#) include *evaluation criteria* that meet the requirements of the CPRs for determining value for money, and in particular enable Defence *officials* to properly consider the relevant financial and non-financial costs and benefits of tenders. In major Defence *procurements*, particularly materiel *procurements*, one of the criteria to be considered in determining value for money is Australian Industry Capability (AIC). This is an explicit criterion in ASDEFCON tendering and contracting templates. The ability for the Australian Government to maintain an AIC program is provided for under our free trade agreements as an express exception to the non-discrimination principle (which is discussed below). Indeed, even before Defence releases *request documentation*, Defence *officials* will consider during the planning

²⁴ See paragraphs 4.5 and 4.6 of the CPRs.

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stage of the *procurement* the requirement or potential for Australian industry involvement in the *procurement*, consistent with the Government's defence and industry policy.

51. During the evaluation stage of a *procurement*, Defence *officials* will evaluate tenders against the stated *evaluation criteria* in accordance with the process and methodology set out in the tender evaluation plan. If the assessment of tenders against the non-price *evaluation criteria* leaves little or no discrimination between the tenders, then it is likely that the lowest priced tender will be the best value for money. However, the assessment of value for money can become more difficult where, for example, one *tenderer* offers a high level of capability or performance at a higher price, than other tenders which meet the minimum requirements but offer a lower level of capability or performance at a lower price. Effectively, the question for Defence *officials* becomes whether the higher level of capability or performance at the higher price is 'worth' more or less to Defence than the lower level of capability or performance at the lower price. This is a subjective assessment and *officials* need to make sure that they can properly articulate the reasons for why they make their decision. As long as the reasons are sensible and logical and in accordance with the PGPA Act framework requirements and duties, then the decision itself will be defensible.

52. Defence *officials* also need to make sure that when making these decisions, they are comparing 'apples with apples'. *Officials* need to ensure that all omissions and risks relating to a tender have been properly understood, considered, and if necessary quantified and 'priced in' to that tender, so as to ensure that when comparing with another tender that does not have those omissions or risks, the comparison is being done on an equivalent basis. For more guidance about how to undertake tender evaluation, Defence *officials* should refer to the [Complex Procurement Guide](#)²⁵.

53. Selecting the most appropriate *procurement* process that is commensurate with the scope, scale and risk of the *procurement* will also help Defence *officials* achieve value for money. This will normally involve some form of competition.

Competition

54. As paragraph 5.1 of the CPRs notes, competition is a key element of the Australian Government's *procurement* framework. A competitive *procurement* process is normally the mechanism by which Defence ensures that it is receiving value for money. Competition is important because time and again it has been shown to be the most effective motivator for industry to reduce costs and improve performance. Whilst early contractor selection and sole source *procurement* can also be an effective and efficient execution strategy in appropriate cases, it should not be used solely to avoid the need for competitive tendering, especially when a viable competition can be held. Sound commercial judgment, not convenience, should determine the right approach.

55. However, competition does not necessarily mean an *open tender*. Any process involving more than one *supplier* will be competitive. Accordingly, if an open competition is not feasible, Defence *officials* should explore opportunities for a limited competition (known under the CPRs as a *limited tender*). However, as discussed earlier in this Chapter, for a *procurement* that is subject to Division 2 of the CPRs, unless it is exempt, there are only very limited grounds on which Defence *officials* are permitted to conduct a *limited tender* (whether sole source or competitive).²⁶

56. Competition is important as under competitive processes (whether *open tender* or *limited tender*), *suppliers* put forward their best solution and price. *Suppliers* know that if they don't do so then it is likely that one of their competitors will win the work instead. Effective competition creates the incentive for *suppliers* to deliver quality *goods* or services at more competitive prices. In other words, value for money is driven by the market.

57. This is so even when Defence *officials* are procuring from *standing offer* panel arrangements. If the *standing offer* is established through an *open tender* process, then Defence *officials* may procure from the panel by approaching one, some or all of the *suppliers* on the panel for a quote or proposal. It is often tempting for Defence *officials* to seek a quote from just one panellist, particularly if the panellist is known to them. However, it is also important to provide opportunities for all capable *suppliers*, particularly small to medium enterprises, as this helps maintain a strong Defence industrial base, as well as incentivising best value performance. Accordingly, the right approach to procuring from a panel will depend on the circumstances of each case. For more information about establishing and using

²⁵ See Chapter 5 of the Guide.

²⁶ See paragraph 10.3 of the CPRs.

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standing offer panel arrangements, Defence *officials* should refer to the factsheet on the [Commercial Division Fact Sheets and Guidance](#) intranet page.

58. Also, the Defence panel manager will usually have established the business rules for the panel to ensure that it is accessed and used appropriately, *suppliers* on the panel have a fair and equitable chance of being engaged through the arrangement, and Defence is able to demonstrate the panel is delivering value for money. Defence *officials* should make themselves aware of and comply with these business rules to ensure that Defence panels are used appropriately.

59. While awarding *contracts* through full and open competition is key to ensuring that the Government efficiently acquires *goods* and services to best meet its needs, there are certain circumstances when competition may not be practical. This can especially be the case given the nature of major Defence *procurement*, and particularly (but not exclusively) in complex materiel related *procurements*. For instance, a competitive process will be unable to be undertaken if Defence requires a unique product or service such that there is only one *supplier* that offers the required capability or solution. This will be the case where, for example, a *supplier* has the patent for a particular product, or because of other intellectual property rights a *supplier* is the only one that is able to install or maintain a particular system or network.

60. A sole source *procurement* may also arise because it is a follow-on *contract* and only the incumbent contractor can continue the work due to intellectual property restrictions or because the contractor is the only one with the necessary skills and expertise. This kind of 'supplier lock in' may be able to be avoided if Defence has acquired sufficient technical data and associated intellectual property rights to enable a competition to be undertaken. Avoiding 'supplier lock in' promotes value for money by establishing competitive tension across the lifecycle of the procured *goods* or services.

61. Accordingly, Defence *officials* should consider during the planning stage of the *procurement* how to maintain the competitive environment not only at the outset of the *procurement*, but over the life of the program or activity. Conducting market research to understand the market and the scope for competition is critical. In addition, early and ongoing engagement with industry around Defence's requirements is also important, particularly as this may allow new entrants to enter the market in time to meet those requirements. The importance of market research and ongoing industry engagement is discussed in the Complex Procurement Guide.²⁷

62. For major Defence *procurements*, a key to being able to avoid *supplier* lock in of the kind mentioned above and to remove barriers to future competition, is for Defence *officials* to have an effective intellectual property and technical data strategy that covers the whole of the lifecycle of the *goods* being procured. For example, for a major ICT project or major materiel acquisition, securing the necessary technical data and associated intellectual property rights (in particular, the ability to licence to third parties) in the initial *procurement* process will maximise competitive alternatives across the whole of life of the capability, including future *procurement* of additional systems or spares, operation and training, maintenance and repair, integration with other systems, and future updates, upgrades or modifications.

63. If proposing to undertake a sole source *procurement*, Defence *officials* will need to justify this in their *procurement* plan or Endorsement to Proceed, noting that the Commitment Approval delegate (see section 23(3) of the PGPA Act) will also need to be satisfied as to the *procurement* method (which would be a *limited tender*). Defence *officials* should consider what mechanisms are available to drive value for money outcomes from their engagement with industry, especially if this is done in a non-competitive environment. In particular, in this context Defence *officials* will need to be able to demonstrate how the price has been determined to be fair and reasonable for the required *goods* or services, and should consider seeking [specialist financial advice](#) to determine this.

64. Achieving value for money in a non-competitive environment can be particularly challenging, and [specialist procurement advice](#) should be sought to develop appropriate sourcing strategies to achieve a value for money outcome across the life of the *goods* or services being procured.

Non-discrimination

65. Effective competition also requires non-discrimination.²⁸ This principle means that Defence is normally unable to require in its *request documentation* that particular work be done in Australia, or done by Australian based *suppliers*, or that *suppliers* use Australian materials. The intent behind the

²⁷ See Chapter 2 of the Guide. See also the Early Industry Engagement Better Practice Guide.

²⁸ See paragraph 5.1 of the CPRs.

principle is that the market will work out how best to meet the requirement being sought by Defence. In many cases, the work will need to be performed in Australia, and indeed at particular locations in Australia, however, this should not prevent foreign companies from being able to bid to undertake the work as long as they are able to meet Defence's service delivery requirements in those locations.

66. Specific exemptions can be sought from the non-discrimination principle in appropriate cases (for example, through a measure under paragraph 2.6 of the CPRs), or through other mechanisms such as the AIC policy (mentioned above), or other specific Government policy decisions. These exemptions are most likely to be found in major capital equipment acquisition decisions (for example, naval shipbuilding).²⁹ Defence Procurement Policy Directive D15 requires Defence *officials* to comply with the Defence AIC policy (see also the Note following paragraph 5.5 of the CPRs). Importantly, these exemptions have to be consistent with Australia's obligations under its FTAs.³⁰

Ethical behaviour – the balance between probity and industry engagement

67. Section 6 of the CPRs (see Chapter 4 of the DPPM) sets out the requirement for Defence *officials* to properly use and manage *public resources*. 'Proper' means efficient, effective, economical and ethical.³¹

68. Attention to probity is integral to ensuring the defensibility, transparency and success of Defence *procurements*. Defence *procurements*, particularly those relating to major capital acquisitions, ICT projects and major facilities, are under increasing scrutiny by *tenderers*, the Australian National Audit Office, Senate Estimates and other Parliamentary Committees, and the media.

69. Probity is the evidence of ethical behaviour, and can be defined as complete and confirmed integrity, uprightness and honesty in a particular process. The [Department of Finance website](#) lists a number of principles which underpin ethics and probity in Australian Government *procurement*.

70. Defence *officials* need to put in place appropriate and sensible mechanisms to assure the probity of Defence *procurement* processes in line with the scope, scale, risk and sensitivity of the particular *procurement*. External legal process or probity advisers can be engaged when necessary. Occasionally, Defence may also wish to appoint an external probity auditor, either at the conclusion of the *procurement* process or at a key point during the process, to audit whether Defence *officials* followed the process and probity requirements set out in the documentation governing the *procurement*.

71. However, it is very important that Defence *officials* do not use probity as a reason or excuse not to engage appropriately with the market or *tenderers* throughout a *procurement* process. As long as it is done fairly and consistently, there is no reason why a *procurement* process cannot build in mechanisms (in the *request documentation*) for ongoing engagement with industry and *tenderers* throughout a *procurement* process. This might include engagement before tender release around Defence's requirements or to understand the market's capacity or capability, or engagement during the tender process, such as through *tenderer* clarification activities or mechanisms to allow *tenderers* to update and improve their offers (sometimes called 'offer definition and improvement activities').

72. A key factor in delivering good *procurement* outcomes is early market engagement and continued open dialogue with *suppliers* throughout the *procurement* process. Understanding *suppliers* and the market is part of the planning necessary to develop the right *approach to market*. Defence *procurement* should be supported by robust *procurement* plans that have a level of detail commensurate with the scope, scale and risk of the *procurement*. This is the first stage of the *procurement* life cycle.³² Good *procurement* also results from proactively managing *supplier* and other key stakeholder relationships throughout the *procurement* process and for the duration of the *contract*.

73. Defence *officials* may sometimes be approached by *tenderers* or contractors to sign a confidentiality agreement or deed (sometimes called a Non-Disclosure Agreement) either on behalf of the Commonwealth or in their personal capacity prior to receiving information from the *tenderer* or contractor. Defence *officials* are already subject to legal obligations to protect and not misuse

²⁹ As noted in Chapter 1 of the DPPM, specific Government policy decisions may be found in Cabinet decisions, or other Government approvals relevant to a commitment of relevant money, to the extent that the decision or approval establishes a course or line of action.

³⁰ This is why paragraph 10.32 of the CPRs provides that the economic benefit requirement set out in paragraph 10.31 of the CPRs has to operate 'within the context of' (that is, subject to) Australia's FTAs.

³¹ See paragraph 6.1 of the CPRs.

³² More guidance on industry engagement and *procurement* planning is set out in Chapter 2 of the Complex Procurement Guide and the Early Industry Engagement Better Practice Guide.

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information obtained as a result of their employment with Defence (for example, under the *Public Service Act 1999*; see also PGPA Act, section 28). Therefore, Defence *officials* are under no obligation to sign such agreements and should not do so without first seeking legal advice from Defence Legal. In particular, *officials* should be aware that confidentiality agreements will often contain an indemnity from the *official* (or Commonwealth) in favour of the person disclosing the information.

74. As part of Defence's probity framework for major *procurement* processes, Defence *officials* may be requested (for example, by the legal process or probity adviser) to sign a statement confirming that they are aware of their legislative and policy obligations to properly protect confidential information (and to declare any actual or perceived conflicts of interests). It is appropriate for Defence *officials* to sign such a confirmation in these circumstances, noting that the statement does not constitute a formal agreement.

75. There are some senior Defence officials who will have regular access to sensitive information related to Defence *procurements*, in particular the members of the Defence Committee, Investment Committee and Enterprise Business Committee. In addition, Defence's Contestability organisation may also be required to have access to this information to perform its function. As part of Defence's probity framework, members of these Committees and the Contestability organisation acknowledge under their respective business rules the legislative and policy obligations that apply in relation to confidential information and conflicts of interests. Accordingly, these Defence *officials* are not required to receive *procurement* specific probity briefings or sign individual probity statements.

76. The legislative and policy obligations related to probity include:

- the general duties of *officials* set out in sections 25 to 29 of the PGPA Act (dealing with due care, diligence, good faith, declaring interests etc);
- the APS Values and APS Code of Conduct (see *Public Service Act 1999*, sections 10 and 13);
- Defence Instruction (General) - PERS 25-4 - *Notification of Post Separation Employment*;
- Defence Instruction (General) - PERS 25-6 - *Conflicts of Interest and declarations of interests*; and
- Defence Instruction (General) - PERS 25-7 - *Gifts, Hospitality and Sponsorship* (see also AAI 10 - Managing Relevant Property).

77. Legal process and probity advisers can be engaged to help ensure that the processes, procedures and documentation used in implementing a major Defence *procurement* are robust, transparent and capable of external audit. However, there is no requirement for Defence *officials* to engage an external probity or process adviser, or that they be independent of another adviser (for example, the legal adviser). Depending on the nature of the *procurement*, internal personnel (for example, contracting officers or Defence Legal officers) can potentially perform the role of a probity adviser for a Defence *procurement*.

78. In relation to 'high risk' *procurements*, the Australian National Audit Office takes the view that a probity adviser should not have any actual or perceived conflicts of interest that could compromise their duty to give candid advice about the probity aspects of the project. A perceived conflict could include simultaneously serving as both probity and legal adviser. The decision about whether to have an independent probity or legal process adviser should be made based on the individual circumstances of the case, and in particular, whether the *procurement* is likely to be high profile, high value, controversial or sensitive.

79. The main reason to have a 'legal process adviser' as opposed to a 'probity adviser' is to maintain legal professional privilege in relation to the 'probity' advice. Non-lawyers cannot provide legal advice, so no legal professional privilege would apply to their advice if there is a challenge to the *procurement* process. Advice from a lawyer in relation to probity/process would be covered by the same rules as other legal advice.³³

80. A template probity/legal process plan can be found on the Commercial Division [Tools and Templates](#) intranet page.

³³ For more information about legal professional privilege (LPP), Defence *officials* should refer to the [Defence Legal LPP Fact Sheet](#).

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Risk management

81. A key principle of the CPRs is risk management, and in particular that risks should be borne by the party best placed to manage them.³⁴ Depending on the nature of the *procurement*, the risks that may need to be considered could include technical, operational, industrial, managerial, work health and safety, financial, legal, commercial, or probity risks. These risks need to be considered across the *procurement* lifecycle. For instance, the Complex Procurement Guide discusses the importance of risk identification and management in the planning stage of the *procurement* life cycle, as well as risk assessment during the tender evaluation stage.³⁵

82. In the planning stage, Defence *officials* will consider the risks relating to the conduct of the *procurement* process itself and what is being procured, and how these can be addressed through the *procurement* strategy. During evaluation and *contract* negotiation, Defence *officials* will be more focussed on assessing and addressing the risks in relation to the requirements of the *contract*, and the allocation of commercial and other risk under the *contract*, and considering how these risks can best be managed through setting up the contract management arrangements for the *contract*.³⁶

83. In relation to *procurements* that are required to be considered by the Defence Investment Committee (for example, Major Capital Equipment, and major ICT and infrastructure procurements), the ['Smart Buyer' framework](#) sets out various risk categories that should be considered when developing the Project Execution Strategy and the *procurement* and contracting strategies for the *procurement*.

84. Defence also has formalised policy and processes for the assessment and management of risk in the Defence environment. For instance, in relation to materiel *procurement*, Defence *officials* should follow the [Defence Materiel Manual \(PROJ\) \(DMM\(PROJ\)\) – 11-0-002- CASG Project Risk Management Manual](#) and [DMM\(LOG\)-04-0- 003- Materiel Logistics Manual Volume 3 – Risk Management in Sustainment](#).

85. The endorsed Defence contracting templates set out the standard Defence approach to risk allocation between the Commonwealth and its contractors. The templates have been drafted in accordance with the above principle that risks should be borne by the party best placed to manage them. In many cases, this will be the contractor, noting that companies are able to take out insurance (or self-insure) for most *contract* related risks.

86. However, given the scope, scale, value and risk of many Defence contracts, it is not unusual for contractors to seek to limit their liability, particularly under ICT *contracts*, and *contracts* for the acquisition or sustainment of major capital equipment. In these circumstances, Defence *officials* need to undertake a risk assessment in relation to the proposed limitation of liability to understand the implications for the Commonwealth and to quantify any potential exposure. For instance, the limitation may mean that the Commonwealth will be unable to sue the contractor for its normal entitlement to damages for breach of *contract*. The Defence contracting templates make clear which categories of liability the Commonwealth may consider limiting and by contrast those categories in relation to which it will not consider limiting the contractor's liability (for example, personal injury or death).

87. Defence has developed tools and guidance to assist Defence *officials* with the conduct of [liability risk assessments](#).

88. The [endorsed Defence contracting templates](#) also contain provisions requiring contractors to take out necessary insurances to cover their work for Defence. Again, depending on the nature of the Defence *contract*, the contractor's insurance arrangements can be both complex and costly (noting that the costs will be passed on to Defence through the *contract* price). Defence has developed tools and guidance to assist Defence *officials* with determining and managing *contract* insurance requirements which can be found on the Commercial Division [Approved Contractor Insurance Program Initiative](#) intranet page.

89. In relation to materiel *procurement*, Defence has established the Approved Contractor Insurance Program (ACIP) as a joint Defence and Industry *procurement* reform initiative that involves a periodic centralised review of participating Defence companies' global/group and local insurance

³⁴ See section 8 of the CPRs (in Chapter 3 of the DPPM).

³⁵ See Chapters 2 and 5 of the Complex Procurement Guide.

³⁶ See the [Defence Contract Management Framework](#). For further guidance on the contract management stage of the procurement lifecycle, Defence *officials* should refer to Chapter 7 of the Complex Procurement Guide and the Defence Contract Management Handbook.

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programs. The purpose of the review is to pre-qualify a participating company's insurance program, if Defence is satisfied with the company's insurances. This helps to reduce the costs of tendering for both industry and Defence as well as improve risk management within Defence in respect of insurable risks that arise in connection with the performance of major Defence *contracts*. Companies granted ACIP status are taken to comply with insurance requirements in individual *contracts* and do not have to provide evidence about their insurances during tendering and *contract* management phases of a *procurement*. The ACIP initiative is open to the 'top' 6-7 major Defence companies and participation by the companies is voluntary. The ACIP Register lists those companies currently holding ACIP status. For more information see the Commercial Division [Risk Assessments and Liabilities intranet page](#).

Accountability and transparency

90. The Australian Government is committed to ensuring accountability and transparency in its *procurement* activities. Accountability involves Defence *officials* being responsible for their *procurement* actions and decisions and related outcomes, while transparency involves Defence enabling appropriate scrutiny of its *procurement* activities.³⁷ Accordingly, the CPRs require Defence *officials* to meet certain record-keeping, reporting and other requirements before and after entering into a *contract* with a supplier, including documenting relevant approvals and other *procurement* related decisions and actions, and *AusTender* and other reporting requirements. *AusTender* is the Australian Government's *procurement* information system.

91. The [Complex Procurement Guide](#) provides guidance for Defence *officials* about how they can meet their accountability and transparency requirements as they progress through the *procurement* life cycle.

The procurement life cycle – overview of how to plan and undertake a procurement

Introduction

92. Good *procurement* practice is not about just mechanically applying the CPRs or the additional Defence Procurement Policy Directives in the DPPM. It is about developing a strong understanding of all aspects of the *procurement* lifecycle and using judgement to apply this understanding in each case to deliver the best outcomes. While Defence *officials* need to comply with the CPRs and the DPPM, *officials* should design each *procurement* process in a way that is commensurate with the scope, scale and risk of the relevant *procurement*.

93. So, for instance, *procurements* that are valued below the relevant *procurement threshold* will normally be low risk, routine *procurements* of *goods* or services. They are often called 'simple *procurements*' in Defence. However, many *procurements* valued at or above the relevant *procurement threshold* may also be simple in nature. For example, a *procurement* of more spare parts from an existing *supplier* may be valued at a lot higher than the *procurement threshold*, but would normally be a simple purchasing exercise. Accordingly, using a *procurement* process that involves significant cost, time and resources for both Defence and *suppliers* would not be sensible or represent value for money for these kinds of *procurements*. The concept of value for money is not limited to the *procurement* outcome, but is also a consideration when designing a *procurement* process.

94. By contrast, many Defence *procurements* are highly complex undertakings because of the nature of the *goods*, works or services being sought. The process for these *procurements* needs to be designed and undertaken in light of the scope, scale and risk of what is being procured.

95. The Complex Procurement Guide provides more in-depth guidance about how these kinds of *procurements* should be planned and executed across the life cycle. The following discussion provides an overview of the guidance for undertaking a *procurement* process.

Guidance overview

96. For more complex *procurements*, Defence *officials* will normally be required to prepare three main documents:

- a *procurement* plan;
- *request documentation*; and
- an evaluation plan.

³⁷ See section 7 of the CPRs (in Chapter 3 of the DPPM).

97. The *procurement* plan details the process that will be undertaken. It differs from a business case in that the business case explains why a *procurement* is being undertaken, including its value proposition, while the *procurement* plan explains how the *procurement* is to be undertaken. However, for convenience, and depending on the scope, scale and risk of the particular *procurement*, Defence *officials* may sometimes include the *procurement* plan as part of, or as an attachment to, the business case.

98. The *procurement* plan will normally cover the following:

- a description of the *procurement*;
- the *procurement* method to be used (for example, *open tender*, *limited tender*), including reasons;
- proposed probity arrangements;
- proposed governance arrangements, such as the need for a steering committee;
- the *procurement* risk assessment; and
- indicative time-lines and resources (including budgeting of funds to support the *procurement*).

99. The level of detail in the *procurement* plan should reflect the scope, scale and risk of the *procurement*. For less complex *procurements*, the Endorsement to Proceed document may be sufficient to serve as the *procurement* plan. For *procurements* that are required to be considered by the Defence Investment Committee (for example, Major Capital Equipment, and major ICT and infrastructure procurements), the *procurement* plan will be informed by the [Smart Buyer Project Execution Strategy](#).

100. The *request documentation* sets out the rules for the *procurement*. It describes to *potential suppliers*, the specifics of the *procurement*, the manner in which *submissions* are to be forwarded to Defence (for instance, through *AusTender*) and how *submissions* will be evaluated. If there is a possibility that other agencies will access the resulting *contract* (for example, a *standing offer* arrangement), Defence *officials* need to ensure the *request documentation* includes a statement to that effect.

101. The *request documentation* will usually be the primary information source used by *potential suppliers* when developing a *submission*. After reviewing the *request documentation*, the *potential suppliers* should be able to understand Defence's requirements and how the *procurement* is to provide value for money. This is why the CPRs, in effect, require that *request documentation* include all information necessary to permit *suppliers* to prepare and lodge responsive *submissions*.³⁸

102. *Request documentation* will normally include:

- a description of the requirement (for example, the statement of work), including any essential requirements;
- any *conditions for participation* or *minimum content and format requirements*;
- *evaluation criteria* and methodology;
- the other rules of the process; and
- the draft *contract*.

103. The statement of work should describe:

- the nature, scope and, where known, quantity of the *goods*, works or services required;
- specific requirements to be fulfilled or provided, including certification, test and evaluation, plans, drawings and training materials;
- any applicable technical *specifications* (in which case, these should be described in terms of function and performance requirements, rather than specific designs, trademarks, or product descriptions) and the related standards on which the *specifications are based*,³⁹

³⁸ While this discussion about *request documentation* applies to *procurements* to which the additional rules in Division 2 of the CPRs apply, it is also good practice for all *procurements*.

³⁹ In relation to specifications and standards, see paragraphs 10.9, 10.10, 10.11 and 10.38 of the CPRs

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- whether any of the requirements are 'essential requirements' (in which case, if *suppliers* are not able to meet the requirements, they will be excluded from consideration);
- the timeframes expected for the delivery of the required *goods*, works or services.

104. *Conditions for participation*⁴⁰ are mandatory requirements which describe minimum standards or essential characteristics that *potential suppliers* have to meet for their *submissions* to be considered. Defence *officials* should take great care when deciding whether to include *conditions for participation* and what these might be, as the CPRs require that Defence reject any *submission* that does not meet the *conditions for participation*. *Conditions for participation* are limited to those assuring the legal, financial, technical or commercial capabilities of the *supplier* to meet the particular requirements of the *procurement*.

105. Defence *officials* may also decide to set out *minimum content and format requirements*⁴¹ in their *request documentation*, for example:

- in relation to minimum content – Defence may require the *tenderer* to provide a certificate of insurance or a particular licence to support the *submission*; or
- in relation to formatting – Defence may require *submissions* to be submitted electronically through *AusTender*.

106. If the *tenderer's submission* does not meet the *minimum content and format requirements*, Defence *officials* will normally be required to exclude the *submission* from further consideration, unless the *officials* consider that the failure to meet the requirement has been due to an unintentional error of form in the *submission*. If so, Defence *officials* have the discretion to allow the *submission* to be corrected, subject to ensuring that all *tenderers* are treated fairly and equitably.

107. The *request documentation* will also set out the *evaluation criteria*. These set the foundation for a fair and equitable assessment of *submissions*. What the appropriate criteria are depends on the nature of the particular *procurement* and should flow from the planning stage.

108. Evaluation of *tenderers* should be based on a balance of all the criteria, or if a weighting methodology is used, on the relative importance of each criterion. If a weighting methodology is used, Defence *officials* should consider setting this out in the *request documentation* so that *potential suppliers* can appropriately focus their responses. This will make the process more transparent, which should limit misunderstandings that may result in complaints.

109. The *request documentation* should also set out the rules around lodgement of *submissions*, whether this is through *AusTender* or other means, including the closing time for *submissions*. Adherence to deadlines is important in maintaining the integrity and probity of the tender process. Therefore, Defence *officials* are not normally able to accept late *submissions*, unless there has clearly been a mishandling of the *submission* by Defence.

110. During the time that the tender process is open, Defence *officials* will need to be in a position to answer queries on the *procurement*. This needs to be done fairly and impartially in a manner that does not create an unfair advantage for any *potential supplier*. Therefore, the *request documentation* should explain the rules for answering questions and distributing responses.

111. At least in request for tender processes, Defence normally requires *tenderers* to indicate their compliance (or non-compliance) with a draft *contract* which contains the terms and conditions on which Defence is willing to enter into a *contract* for the requirement. Defence *officials* should assess the risk with the *tenderers'* non-compliances with the draft *contract* to enable *tenderers* to be evaluated against a common baseline.

112. The evaluation plan is an internal Defence document that sets out the methodology and processes to be followed by Defence when evaluating *submissions*. To reduce the risks of a perceived or actual bias in the *procurement* process, Defence *officials* should preferably develop and finalise the plan before an approach is made to the market, but in any event before *submissions* are opened.⁴² The Complex Procurement Guide provides guidance about the contents of an evaluation plan.⁴³

⁴⁰ While this discussion about *conditions for participation* applies to *procurements* to which the additional rules in Division 2 of the CPRs apply, it is also good practice for all *procurements*.

⁴¹ While this discussion about *minimum content and format requirements* applies to *procurements* to which the additional rules in Division 2 of the CPRs apply, it is also good practice for all *procurements*.

⁴² See Defence Procurement Policy Directive D44.

⁴³ See Chapters 3 and 5 of the Guide.

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113. The evaluation plan will normally identify the organisation that is responsible for the evaluation, and recommend a preferred *supplier* (or a shortlist of *potential suppliers*). Depending on the nature and complexity of the evaluation, the evaluation organisation may comprise a steering committee, an evaluation board or team and subordinate evaluation working groups. The evaluation organisation may also include internal or external advisers or experts to assist with elements of the evaluation, for example, the technical requirements, financial viability or price.

114. When receiving *submissions*, Defence *officials* need to use a mechanism that assures fairness and impartiality of the *procurement* process. *Submissions* should only be received into a secure environment. This can be through *AusTender* or other secure electronic system, or a physical tender box or tender room. Any *submissions* received after the closing time should be considered late and should generally not be accepted (see paragraph 109 above).

115. The evaluation committee should first check the *submissions* to make sure they satisfy any mandatory requirements, such as *minimum content and format requirements* and *conditions for participation*, and should then proceed to undertake the detailed evaluation of *submissions* against the *evaluation criteria*.

116. The evaluation of *submissions* is the most important aspect of determining value for money in a *procurement*. When evaluating *submissions*, the evaluation committee needs to make sure that it faithfully applies the *evaluation criteria*, methodology and procedures that have been set out in the *request documentation* and the evaluation plan. If the committee does not then this could compromise the evaluation outcome and give rise to a complaint or legal action by an affected *tenderer*, and require Defence to set aside the evaluation and possibly the whole *procurement* process, as well as incurring additional costs in dealing with the complaint.

117. The CPRs require Defence *officials* to maintain appropriate documentation of the decision-making process for each *procurement*. Therefore, the evaluation committee should be accurate and scrupulous in recording the evaluation and the reasons underlying its decisions. As a general rule, officials should ensure that there is sufficient documentation to provide an understanding of why the *procurement* was necessary, the process that was followed and all relevant decisions made, including approvals, and the basis of those decisions.

118. The evaluation committee should therefore prepare an evaluation report to document the evaluation process and the recommendation of a preferred *tenderer* (or shortlist of *tenderers*). The report can also assist in the future when providing feedback to *tenderers* through the debriefing process.

119. The evaluation report will normally contain:

- a summary of the evaluation process;
- a summary of the assessment of each *submission*;
- reasons for the exclusion of a *submission* from further consideration;
- recommendations concerning the preferred *tenderer(s)* based on value for money;⁴⁴ and
- details of any issues which need resolution during subsequent contract negotiations.

120. The evaluation committee members will normally sign the report and submit this for endorsement by the relevant delegate.

121. The CPRs require Defence *officials* to notify affected *tenderers* promptly of the rejection of their *submission* or the award of a *contract*, and if requested, provide a debrief to the *tenderers* (both successful and unsuccessful *tenderers*).⁴⁵ A debrief (whether verbal or written) should include, as appropriate:

- an explanation of why the *submission* was unsuccessful (or successful);
- areas of weakness or non-compliance in the offer;
- suggestions as to how future *submissions* can be improved; and

⁴⁴ For *procurements* to which the additional rules in Division 2 of the CPRs apply, Defence *officials* are required to award the *contract* to the *tenderer* that is assessed to provide the best value for money in accordance with the *request documentation*, including compliance with any *conditions for participation* and essential requirements. (See CPRs, paragraph 10.32 to 10.36).

⁴⁵ CPRs, paragraph 7.15.

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- in the case of unsuccessful *tenderers*, if the *contract* has already been successfully negotiated, the name of the successful *supplier* and total *contract* price (noting that this needs to be reported on *AusTender* in any event, if valued at or above \$10,000).

122. Defence *officials* should keep a written record of the debriefing.

123. The final stage in the *procurement* process itself relates to the negotiation and award of the *contract* with the preferred *tenderer*. During *contract* negotiations, Defence *officials* should seek to resolve any issues that were identified during the evaluation.

124. At any time during the *procurement* process, Defence can determine that awarding a *contract* is not in the public interest.⁴⁶ Public interest grounds generally arise in response to new information or unforeseen events which materially affect the objectives or reasons underlying the original *procurement* requirement as specified in the *request documentation*. Examples of situations in which it may not be in the public interest to award the *contract* could include:

- a Government decision to cancel or vary the program to which the *procurement* relates;
- unforeseen technological or environmental changes affecting the business case for the *procurement*;
- discovery of new information materially affecting the policy behind or operational effectiveness of the project or *procurement*.

125. However, termination of a *procurement* process is a serious step with potential legal and management risks that should be considered and addressed before any decision is made. At the least, it can harm Defence's credibility with *suppliers* that, in turn, may discourage *suppliers'* participation in future *procurements*. On the other hand, termination may be compelled in order to protect the integrity of the *procurement* process and avoid the awarding of a *contract* in a manner inconsistent with the stated evaluation process.

126. Defence *officials* cannot terminate a *procurement* process simply because they may be dissatisfied with the outcome of the evaluation conducted in accordance with the stated rules, conditions and criteria set out in the *request documentation* and evaluation plan.

127. If Defence cancels a *procurement* on the basis that it is not in the public interest to award a *contract*, it should normally provide *potential suppliers* with reasons. In any case, prior to cancelling a *procurement*, Defence *officials* should seek specialist legal or contracting advice.

128. Once Defence has entered into a *contract*, Defence *officials* need to ensure that they manage the *contract* effectively so that all parties to the *contract* (including Defence) fully meet their respective obligations as efficiently and effectively as possible, and to deliver the business and operation objectives required by the parties. Effective contract management is a key enabler to delivering value for money, as well as supporting proper governance and risk management across the life of the *contract*. Defence *officials* should refer to the Defence Contract Management Framework and the Defence Contract Management Handbook to support them achieving best practice contract management. The Framework brings together the underpinning principles, policies, tools, templates, guidance and competencies required to support more collaborative business relationships with industry and deliver more effective contract outcomes. Defence *officials* should apply the Framework and use the Handbook when undertaking contract management.

⁴⁶ For *procurements* to which the additional rules in Division 2 of the CPRs apply, this is the only ground on which a Defence *official* can decide not to award a *contract* in relation to the *procurement*. (See CPRs, paragraphs 10.36 and 10.37).

Chapter 3

The procurement framework

2. Procurement framework

CPR 2.1 – 2.6

Procurement framework

- 2.1 The Commonwealth *Procurement Rules* (CPRs) are issued by the Minister for Finance (Finance Minister) under section 105B(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).
- 2.2 *Officials* from *non-Corporate Commonwealth entities* and prescribed *corporate Commonwealth entities* listed in section 30 of the *Public Governance, Performance and Accountability Rule 2014* **must** comply with the CPRs when performing duties related to *procurement*. These entities will collectively be referred to as *relevant entities* throughout the CPRs.
- 2.3 Rules that **must** be complied with in undertaking *procurement* are denoted by the term '**must**'. *Non-corporate Commonwealth entities* **must** report non-compliance with the rules of the CPRs through the Commonwealth's compliance reporting process. The term 'should' indicates good practice.
- 2.4 The CPRs are the core of the *procurement* framework, which also includes:
 - a. [web-based guidance](#), developed by the Department of Finance (Finance) to assist entities to implement the *procurement* framework; and
 - b. [Resource Management Guides](#), which advise of key changes and developments in the *procurement* framework.
- 2.5 An *Accountable Authority* may use [Accountable Authority Instructions](#) to set out entity-specific operational rules to ensure compliance with the rules of the *procurement* framework.

Note: As the Defence *Accountable Authority*, the Secretary has issued Defence's AAs. The AAs set out specific operational rules dealing with *procurement*.

- 2.6 Nothing in any part of these CPRs prevents an *official* from applying 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.

Defence Procurement Policy Directives

- D2. For paragraph 2.6 of the CPRs, the Secretary has determined that the procurement of the *goods* and services listed in Table 1 below are exempt from the operation of Division 2 of the CPRs.
- D3. If a Defence *official* determines that an exemption given under paragraph 2.6 of the CPRs applies to a *procurement*, the *official* **must** ensure that the reasons supporting that determination are appropriately documented.
- D4. If a Defence *official* seeks to exempt a particular *procurement* (not otherwise covered by an existing exemption) from all or part of the CPRs, the *official* **must** seek the Secretary's written approval.

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Table 1

<p>Goods</p> <p>The <i>procurement</i> of goods that fall within the following US Federal Supply Codes (FSC):</p>	<ul style="list-style-type: none"> - FSC 10 Weapons; - FSC 12 Fire Control Equipment; - FSC 13 Ammunition and Explosives; - FSC 14 Guided Missiles; - FSC 15 Aircraft and Airframe Structural Components; - FSC 16 Aircraft Components and Accessories; - FSC 17 Aircraft Launching, Landing, and Ground Handling Equipment; - FSC 18 Space Vehicles; - FSC 19 Ships, Small Craft, Pontoons and Floating Docks; - FSC 20 Ships and Marine Equipment; - FSC 23 Ground Effect Vehicles, Motor Vehicles, Trailers and Cycles; - FSC 28 Engines, Turbines, and Components; - FSC 29 Engine Accessories; - FSC 31 Bearings; - FSC 46 Water Purification and Sewage Treatment Equipment; - FSC 48 Valves; - FSC 49 Maintenance and Repair Shop Equipment; - FSC 54 Prefabricated Structures and Scaffolding; - FSC 58 Communication, Detection, and Coherent Radiation Equipment; - FSC 59 Electrical and Electronic Equipment Components; - FSC 60 Fibre Optics Materials, Components, Assemblies, and Accessories; - FSC 61 Electric Wire, and Power and Distribution Equipment; - FSC 63 Alarm, Signal and Security Detection Systems; - FSC 66 Instruments and Laboratory Equipment; and - No code - Specialty Metals.
<p>Services</p> <p>The <i>procurement</i> of the following kinds of services:</p>	<ul style="list-style-type: none"> - design, development, integration, test, evaluation, maintenance, repair, modification, rebuilding and installation of military systems and equipment; - operation of Government-owned facilities; - space services; and - services in support of military forces overseas.

Notes: Paragraph 2.6 of the CPRs allows the Secretary to determine that specific *procurements* should not be subject to all or part of the CPRs. Usually, a measure made under this paragraph will exempt a *procurement* from the rules in Division 2 of the CPRs (in particular, the obligation to undertake an *open tender* process). This exemption mechanism is provided for in the Australia-US Free Trade Agreement (AUSFTA), and is consistent with the market access arrangements agreed by Australia in its other FTAs.

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Notes (cont): In the case of Defence, the AUSFTA (Chapter 15, Annex A) specifically provides for various Defence *procurements* to be exempt from the operation of the *procurement* rules in Chapter 15 of the AUSFTA (which rules are now mainly in Division 2 of the CPRs, and which are consistent with the *procurement* rules agreed by Australia in its other FTAs). This exemption is permitted on the grounds of 'essential security' (Article 22.2 of the AUSFTA). To give effect to this exemption, the Secretary has made a measure under paragraph 2.6 of the CPRs to determine that the *procurement* of the various *goods* or services listed in Table 1 above are exempt from the operation of Division 2 of the CPRs. The list in Table 1 replicates the list in Chapter 15, Annex A of the AUSFTA. Further details of the FSC codes mentioned in Table 1 can be found in the [Exemptions Fact Sheet](#) on the Commercial Division intranet site.

Even if a *procurement* is exempt from Division 2 of the CPRs, Defence *officials* are still required to undertake their procurements in accordance with Division 1 of the CPRs. In addition, Defence *officials* are still required to comply with all applicable Defence Procurement Policy Directives contained in this manual (see Defence Procurement Policy Directive D39).

CPR 2.7 – 2.9

Procurement

- 2.7 *Procurement* encompasses the whole process of procuring *goods* and services. It begins when a need has been identified and a decision has been made on the *procurement* requirement. *Procurement* continues through the processes of risk assessment, seeking and evaluating alternative solutions, the awarding of a *contract*, the delivery of and payment for the *goods* and services and, where relevant, the ongoing management of the *contract* and consideration of disposal of *goods*.
- 2.8 In addition to the acquisition of *goods* and services by a *relevant entity* for its own use, *procurement* includes the acquisition of *goods* and services on behalf of another *relevant entity* or a third party.
- 2.9 *Procurement* does not include:
- grants (whether in the form of a *contract*, conditional gift or deed);
 - investments (or divestments);
 - sales by tender;
 - loans;
 - procurement of goods* and services for resale or *procurement of goods* and services used in the production of *goods* for resale;
 - any property right not acquired through the expenditure of *relevant money* (for example, a right to pursue a legal claim for negligence);
 - statutory appointments;
 - appointments made by a Minister using the executive power (for example, the appointment of a person to an advisory board); or
 - the engagement of employees, such as under the *Public Service Act 1999*, the *Parliamentary Services Act 1999*, a *relevant entity's* enabling legislation or the common law concept of employment.

Notes: Paragraph 2.9a of the CPRs makes clear that grants are not *procurements*. Defence manages a number of grant programs and therefore these programs, and the individual grants made under them, are not *procurements* for the CPRs. For example, to give effect to the Australian Government's defence and industry policy, Defence undertakes various grants programs under which Defence companies and other entities receive payments. In undertaking these programs, Defence *officials* are required to comply with the [Commonwealth Grant Rules and Guidelines](#), rather than the CPRs and the Defence Procurement Policy Directives in the DPPM. Defence grant programs also have their own rules that govern their operation.

For guidance on contracting processes for disposals, including sale by tender (see paragraph 2.9c of the CPRs) and gifting or transfer by deed, Defence *officials* should refer to the [Materiel Logistics, Disposals and Sales Branch intranet page](#).

CPR 2.10 – 2.13**Resource management framework**

- 2.10 *Relevant entities* and *officials* operate in an environment of legislation and Commonwealth policy. Within that broad context, the resource management framework consists of the legislation and policy governing the management of the Commonwealth's resources.
- 2.11 The *procurement* framework is a subset of the resource management framework related to the *procurement* of goods and services.
- 2.12 Section 16 of the PGPA Act outlines an *Accountable Authority's* duty to establish appropriate internal control systems for their *relevant entity*. The CPRs provide the necessary framework for Accountable Authorities when issuing Accountable Authority Instructions and operational requirements in relation to *procurement*. In the area of *procurement*, an *Accountable Authority* should provide a mechanism to:
- a. apply the principles and requirements of the resource management and *procurement* frameworks, focusing on the *relevant entity's* operations; and
 - b. provide primary operational instructions to *relevant entity officials* in carrying out their duties related to *procurement*, in a way that is tailored to a *relevant entity's* particular circumstances and needs.
- 2.13 Non-compliance with the requirements of the resource management framework, including in relation to *procurement*, may attract a range of criminal, civil or administrative remedies including under the *Public Service Act 1999* and the *Crimes Act 1914*.

Defence Procurement Policy Directives

- D5. When conducting a *procurement*, Defence *officials must* ensure that the following two delegations are exercised in the following order, unless the *procurement* does not involve the commitment of *relevant money* (for example, a 'nil-cost' contract change) in which case only the FINMAN 2 Schedule 2 -Enter into an Arrangement delegation is required:
- FINMAN 2 Schedule 1 (Section 23(3) of the PGPA Act) – To Approve the Commitment of Relevant Money (Commitment Approval): a Defence official must exercise this delegation before the Commonwealth enters into the arrangement that commits *relevant money*; and
 - FINMAN 2 Schedule 2 (Section 23(1) of the PGPA Act) – To Enter into an Arrangement: a Defence *official must not* exercise this delegation (Enter into an Arrangement) unless a Commitment Approval delegation has been exercised for the *procurement* to which the arrangement relates.
- D6. Prior to agreeing to a contingent liability in favour of a third party (for example, granting an indemnity, guarantee or warranty), Defence *officials must*:
- undertake a liability risk assessment in relation to the contingent liability, including considering the full potential cost of the liability to the Commonwealth; and
 - ensure that the relevant delegate (Under FINMAN 2 Schedule 1 or FINMAN 2 Schedule 1A) (or the Finance Minister, if necessary) authorises the contingent liability under section 60 of the PGPA Act.

Notes: Chapter 1 of the DPPM discusses the resource management framework in more detail.

If a *procurement* includes a contingent liability, the effect of Defence Procurement Policy Directive D6 is that the relevant delegate must authorise the granting of the contingent liability for the purposes of section 60 PGPA Act. In Defence (apart from CASG), the Commitment Approval delegate may do this as part of exercising this delegation. In CASG, a separate delegation is required in addition to the Commitment Approval delegation, both of which must be exercised before the exercise of the Enter into an Arrangement delegation.

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Notes (cont): If a *procurement* is being undertaken through the Foreign Military Sales (FMS) system, the standard FMS conditions require the Commonwealth to grant an indemnity to the US Government. Accordingly, Defence Procurement Policy Directive D6 dealing with contingent liabilities applies to each FMS case. For guidance on conducting liability risk assessments for FMS cases see the Commercial Division [Risk Assessments and Liabilities intranet page](#).

Agreeing to a contingent liability in favour of a third party is one kind of limitation of liability. The Commonwealth may also limit a third party's liability in other ways, for instance, by agreeing to one or more financial caps on different heads of loss or damage that a contractor may be exposed to under a contract (for example, for personal injury, property damage, delay or other contractual non-performance). Accordingly, in addition to the requirement under Defence Procurement Policy Directive D6 to undertake a liability risk assessment in relation to contingent liabilities, Defence Procurement Policy Directive D24 requires Defence *officials* to undertake a liability risk assessment prior to agreeing to any limitation on a third party's liability under a *contract*. Defence has developed [guidance and tools](#) to assist Defence *officials* with the conduct of liability risk assessments.

The Department of Finance's [Resource Management Guide \(RMG\) No 414](#), together with [Defence AAI 2.6](#) and [FINMAN 2](#), set out Commonwealth and Defence policy in relation to indemnities, guarantees and warranties that give rise to 'contingent liabilities'. Consistently with RMG 414 and AAI 2.6, Defence has developed streamlined processes for undertaking liability risk assessments for certain kinds of contingent liabilities, namely indemnities contained in FMS cases and venue hire agreements. Defence *officials* should refer to the liability risk assessment [guidance and tools](#) for these streamlined processes.

CPR 2.14

International obligations

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

Note: Paragraph 2.14 of the CPRs means that Defence *officials* can refer to the CPRs as the single source of Australia's international commitments on government *procurement* and do not need to refer directly to the various treaties and other agreements. See also the Notes following paragraph 2.6 of the CPRs.

3. How to use the Commonwealth Procurement Rules

CPR 3.1 – 3.4

How to use the Commonwealth Procurement Rules

- 3.1 The CPRs set out the rules that *officials must* comply with when they procure *goods* and services. The CPRs also indicate good practice. The CPRs have been designed to provide *officials* with flexibility in developing and implementing *procurement* processes that reflect their *relevant entity's* needs.
- 3.2 Achieving value for money is the core rule of the CPRs. This requires the consideration of the financial and non-financial costs and benefits associated with *procurement*.
- 3.3 Further information and guidance on applying the CPRs are available on Finance's *procurement* policy website at www.finance.gov.au/procurement.
- 3.4 *Relevant entities* may have additional rules, guidance, templates or tools that apply when conducting *procurements*.

Note: For paragraph 3.4 of the CPRs, the DPPM sets out 'additional rules' in relation to the conduct of Defence *procurement* that Defence *officials must* comply with when they procure *goods* and services for Defence. These additional rules are set out under the heading 'Defence Procurement Policy Directives' in the DPPM. The DPPM also refers to guidance, templates, tools and other resources to further assist Defence *officials* undertaking *procurement*. Defence *officials* should have regard to these resources when undertaking *procurement*.

CPR 3.5 – 3.8**Compliance with the two divisions of the CPRs**

- 3.5 *Officials of non-corporate Commonwealth entities must* comply with the ‘rules for all procurements’ listed in Division 1, regardless of the *procurement* value. *Officials must* also comply with the ‘additional rules’ listed in Division 2 when the estimated value of the *procurement* is at or above the relevant *procurement threshold* and when an Appendix A exemption has not been utilised.
- 3.6 *Officials of corporate Commonwealth entities* prescribed in section 30 of the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) as having to comply with the CPRs *must* comply with the ‘rules for all procurements’ listed in Division 1 and the ‘additional rules’ listed in Division 2 when the expected value of the *procurement* is at or above the relevant *procurement threshold* and when an Appendix A exemption has not been utilised.
- 3.7 Despite being prescribed *corporate Commonwealth entities*, Australian Digital Health Agency, Australian Human Rights Commission, National Portrait Gallery of Australia, and Old Parliament House *must* apply a *procurement threshold* and *reporting threshold* of \$80,000 for *procurements* other than the procurement of *construction services*. They may opt-in to coordinated procurements and must only comply with those policies of the Commonwealth that specify compliance by *corporate Commonwealth entities*.
- 3.8 Despite being a corporate *Commonwealth entity*, paragraph 3.7 also applies to the Commonwealth Superannuation Corporation in regards to its administrative functions only.

Note: The Department of Defence (‘Defence’) is a *non-corporate Commonwealth entity*. Hence, paragraph 3.5 of the CPRs applies to Defence *officials* (including a contractor who is prescribed as a Defence *official*). In addition to an Appendix A exemption referred to in paragraph 3.5 of the CPRs, a Defence specific exemption may also be utilised (See Defence Procurement Policy Directives D2 and D4).

CPR 3.9**Using an Appendix A exemption**

- 3.9 When an Appendix A exemption applies, and the *relevant entity* chooses to utilise the exemption, the procurement is exempt from the additional rules for procurements at or above the relevant procurement threshold (Division 2) but *must* still comply with the rules for all procurements (Division 1).

Defence Procurement Policy Directive

- D7. If a Defence *official* determines that an exemption under Appendix A of the CPRs applies to a *procurement*, the *official must* ensure that the reasons supporting that determination are appropriately documented.

Notes: Items 16 and 17 of Appendix A permit Defence *officials* to procure directly from disability businesses and indigenous businesses, respectively. See further Chapter 2 of the DPPM, and Defence Procurement Policy Directive D13 (and the related Notes).

In addition to the exemptions provided for in Appendix A, various other kinds of Defence related *procurements* may be exempt from Division 2 of the CPRs. In particular, see Defence Procurement Policy Directives D2 and D4 (and the related Table 1 for a list of Defence *goods* and services that are exempt).

Chapter 4

Achieving value for money in procurement

Note: Chapter 4 of the DPPM incorporates all the rules from Division 1 of the CPRs.

4. Value for Money

CPR 4.1 – 4.3

Considering value for money

- 4.1 A thorough consideration of value for money begins by *officials* clearly understanding and expressing the goals and purpose of the *procurement*.
- 4.2 When a business requirement arises, *officials* should consider whether a *procurement* will deliver the best value for money. It is important to take into consideration:
 - a. stakeholder input;
 - b. the scale and scope of the business requirement;
 - c. the *relevant entity's* resourcing and budget;
 - d. obligations and opportunities under other existing arrangements;
 - e. relevant Commonwealth policies; and
 - f. the market's capacity to competitively respond to a *procurement*.

Notes: Defence officials should refer to Chapter 2 of the DPPM, and the Complex Procurement Guide, for more guidance about value for money.

Defence *officials* should be aware that 'Commonwealth policies' (paragraph 4.2e.) may include Cabinet decisions and other formal directions issued by the Government (whether through the Minister for Defence or otherwise).

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

Defence Procurement Policy Directives

- D8. Defence *officials* undertaking *procurement* valued at or above \$200,000 (including GST) **must** develop a written *procurement* plan for the *procurement* commensurate with its scale, scope and risk, and which takes account of the *procurement* life cycle, including cost of ownership and disposal considerations.
- D9. Defence *officials* **must** obtain an 'Endorsement to Proceed' prior to approaching the market for *procurements* to establish a *standing offer* arrangement, and all other *procurements* that are valued at or above \$200,000 (including GST).
- D10. Prior to approaching the market to procure a Contractor, Consultant or Outsourced Service Provider, Defence officials **must**:
 - obtain Senior Executive Service (SES) Band 1 or 1 Star Officer or above approval that the procurement is justified; and
 - advise the Secretary when the daily rate of the Contractor, Consultant or Outsourced Service Provider is at or above \$4,500 (including GST).
- D11. Prior to approaching the market to establish a strategic standing offer panel, Defence officials **must**:
 - obtain written endorsement of the business need from First Assistant Secretary Procurement and Contracting; then
 - obtain written approval to establish the strategic standing offer panel from the Enterprise Business Committee.

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Notes: See paragraphs 97 to 99 in Chapter 2 of the DPPM for guidance about *procurement* plans, including that the Endorsement to Proceed document may be sufficient to serve as the *procurement* plan for less complex *procurements*. More detailed guidance is set out in Chapter 2 of the Complex Procurement Guide.

Defence *officials* should refer to paragraphs 9.2 – 9.6 of the CPRs in relation to estimating the value of a *procurement*.

An Endorsement to Proceed may also be required to place an order under a *standing offer*. Defence *officials* should refer to the [Endorsement to Proceed Fact Sheet](#).

Defence *officials* should refer to [Defence Instruction Administrative Policy](#) for the definition of Contractors, Consultants and Outsourced Service Providers. Defence *officials* should refer to the [Engaging Contractors, Consultants and Outsourced Service Providers – Decision Making Governance Fact Sheet](#) for further guidance on the evidence required to justify the procurement of Contractors, Consultants or Outsourced Service Providers.

The [Establishing and Using Standing Offers Fact Sheet](#) contains further guidance on the establishment of strategic standing offer panels.

CPR 4.4 – 4.8

Achieving value for money

- 4.4 Achieving value for money is the core rule of the CPRs. *Officials* responsible for a *procurement* **must** be satisfied, after reasonable enquires, that the *procurement* achieves a value for money outcome. *Procurements* should:
- a. encourage competition and be non-discriminatory;
 - b. use *public resources* in an efficient, effective, economical and ethical manner that is not inconsistent with the policies of the Commonwealth;
 - c. facilitate accountable and transparent decision making;
 - d. encourage appropriate engagement with risk; and
 - e. be commensurate with the scale and scope of the business requirement.
- 4.5 When conducting a *procurement*, an *official* **must** consider the relevant financial and non-financial costs and benefits of each *submission* including, but not limited to:
- a. the quality of the *goods* and services;
 - b. fitness for purpose of the proposal;
 - c. the *potential supplier's* relevant experience and performance history;
 - d. flexibility of the proposal (including innovation and adaptability over the lifecycle of the *procurement*);
 - e. environmental sustainability of the proposed *goods* and services (such as energy efficiency and environmental impact); and
 - f. whole-of-life costs.
- 4.6 Whole-of-life costs could include:
- a. the initial purchase price of the *goods* and services;
 - b. maintenance costs;
 - c. transition out costs;
 - d. licensing costs (when applicable);
 - e. the cost of additional features procured after the initial *procurement*;
 - f. consumable costs; and
 - g. disposal costs.

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Procurement-connected policies

- 4.7 *Procurement*-connected policies are policies of the Commonwealth for which *procurement* has been identified as a means of delivery. To assist *relevant entities* in complying with policies of the Commonwealth, Finance maintains a list of procurement-connected policies, which can be found at www.finance.gov.au/procurement.
- 4.8 Generally, procurement-connected policies are the responsibility of entities other than Finance. The relevant policy-owning entity is responsible for administering, reviewing and providing information on the policy as required.

Notes: Defence contracting templates are drafted and regularly updated to give effect to applicable Commonwealth legislation and policy (including the CPRs), and applicable Defence policy. If using an endorsed Defence contracting template (for example, ASDEFCON, the Defence Facilities and Infrastructure Suite of Contracts or the Commonwealth Contracting Suite) for a *procurement* for which the template is intended, Defence *officials* may rely on the template as meeting applicable legislation and policy requirements. The endorsed Defence contracting templates may be found on the Commercial Division [Tools and Templates intranet page](#).

Defence has numerous business policy owners that are responsible for ensuring Defence complies with applicable Commonwealth legislation and policy requirements, as well as with particular State and Territory legislation that may also apply to Defence activities. This legislation and policy often interacts with Defence *procurement* and in many cases is given effect through *contracts*. There are many policy or support areas in Defence that that can assist in relation to this legislation and policy that intersects with *procurement* (eg contracting, legal, finance, environment, work health and safety, security, technical regulatory frameworks etc). These resources can be found on the procurement support areas link on the [Commercial Division Help Desk Kiosk](#) intranet page.

Defence Procurement Policy Directives

Trade sanctions

D12. Defence *officials* undertaking a *procurement* **must** ensure that the *procurement* does not breach any current [Australian Government trade sanctions](#).

Indigenous Procurement Policy

D13. Prior to approaching the market, Defence *officials* must determine whether the Indigenous Procurement Policy (IPP) applies to the *procurement* and if so comply with the IPP (see also Appendix A, item 17 of the CPRs).

Notes: The IPP is a procurement connected policy.

In addition, while not a Defence Procurement Policy Directive, Defence *officials* should also determine whether a disability business could deliver the required *goods* or services on a value for money basis before making any *approach to market*. If satisfied that value for money can be achieved, then the Defence *official* should procure the *goods* or services from the disability business (as permitted by Appendix A of the CPRs, item 16). If not, then the Defence *official* may procure through normal means. A list of Australian disability businesses can be found at the Australian Disability Enterprises website www.ade.org.au.

See Chapter 2 of the DPPM for more information about the IPP and the disability business exemption.

Workplace gender equality

D14. Defence *officials* undertaking a *procurement* at or above the relevant *procurement threshold* **must not** purchase *goods* or services from [contractors that do not comply](#) with the *Workplace Gender Equality Act 2012*.

Note: Workplace gender equality is a procurement connected policy.

Australian Industry Capability (AIC)

D15. Defence *officials* **must** comply with the Defence Australian Industry Capability (AIC) policy for *procurements* valued at or above \$20 million (including GST), and in particular ensure that the successful *supplier* in the *procurement* implements an AIC plan.

Note: Currently, only the ASDEFCON contracting templates incorporate provisions that give effect to the AIC program, including requiring *tenderers* to submit AIC plans as part of the tender process. The successful *tenderer* is required to give effect to the agreed AIC plan under the *contract*. The AIC program is currently being updated following the [Defence Industry Policy Statement 2016](#). For further information about the AIC program, Defence *officials* should refer to the [Defence Industry Policy Division intranet page](#). Australian Industry Participation Plans (AIP) for Government Procurement is a procurement connected policy, which was developed in accordance with the AIP National Framework. The AIP National Framework is available at www.industry.gov.au/aip. The Department of Industry, Innovation and Science's User Guide for AIP Plans states that the AIP policy 'may also be applied to Department of Defence non-materiel procurement'.

Code for the Tendering and Performance of Building Work 2016

D16. Defence *officials* **must** comply with the Code for the Tendering and Performance of Building Work 2016 (Building Work Code) when undertaking *procurements* for building work to which the Building Work Code applies.

Note: The Building Work Code is a procurement connected policy. In summary, the Building Work Code prevents Commonwealth agencies such as Defence from permitting companies to tender or enter into *contracts* for Commonwealth funded building work, unless the companies meet the requirements of the Building Work Code. In Defence, *procurements* for building work are normally managed by the Defence Estate and Infrastructure Group. The Defence Facilities and Infrastructure Suite of Contracts include provisions to ensure that Defence complies with the Building Work Code.

Public-private partnerships (PPP) policyD17. Defence *officials must*:

- consider using a public-private partnership (PPP) for all project proposals having an estimated capital cost over \$50 million where there is an opportunity to enter into a long term *contract* (for example, 15-30 years) with a focus on the delivery of services to government (for example, making materiel or facilities available for use by Defence); and
- comply with the [National PPP Policy and Guidelines](#) (December 2008), and complete a [PPP Suitability Checklist](#).

Note: More guidance on PPPs is set out in the [Procurement Delivery Models Better Practice Guide](#). PPPs (or Private Finance Initiatives or 'PFIs') involve the creation of an asset through financing and ownership control by a private party and private sector delivery of related services that may normally have been provided by the Commonwealth. The Commonwealth may contribute to establishing the infrastructure, for example through land, capital works or risk sharing. The service delivered may be paid for by the Commonwealth or directly by the end user. Defence *officials* should consult with the [Public Private Partnership Centre of Expertise](#), and engage the Resource Assurance and Analysis Branch, in Chief Finance Officer Group (CFOG) for an independent review of financial and budgetary impact. Building work that involves a PPP or PFI for the delivery of functions or services of the Commonwealth is also subject to the Building Work Code (see Defence Procurement Policy Directive D16).

CPR 4.9 – 4.10Coordinated procurement

- 4.9 Coordinated *procurement* refers to whole-of-government arrangements for procuring *goods* and services. A list of coordinated *procurements* can be found at www.finance.gov.au/procurement.
- 4.10 *Non-corporate Commonwealth entities must* use coordinated *procurements*. Exemptions from coordinated *procurements* can only be granted jointly by the requesting *non-corporate Commonwealth entity's* Portfolio Minister and the Finance Minister when a *non-corporate Commonwealth entity* can demonstrate a special need for an alternative arrangement. Prescribed *Corporate Commonwealth entities* may opt-in to coordinated *procurements*.

Defence Procurement Policy Directives

- D18. Prior to selecting a *procurement* method, Defence *officials must* determine whether a coordinated *procurement* arrangement has been established for the *goods* or services to be procured.
- D19. If a coordinated *procurement* arrangement has been established for *goods* or services, Defence *officials must* use the arrangement when procuring relevant *goods* or services unless an exemption is in place.

Notes: The Department of Finance has established several whole of government coordinated *procurement* arrangements for various *goods* and services, for example, ICT, telecommunications, stationery and office supplies, and airline travel. Defence *officials* can find more details at www.finance.gov.au/procurement.

Specialised military and classified telecommunications products and services (for military or intelligence agencies) fall outside the operation of the telecommunications coordinated *procurement* arrangements. For information about these exemptions Defence *officials* should refer to [CIOG Non Materiel Procurement Services](#).

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CPR 4.11 – 4.13Cooperative procurement

- 4.11 Cooperative *procurements* involve more than one *relevant entity* as the buyer. *Relevant entities* can procure cooperatively by approaching the market together or by joining an existing *contract* of another *relevant entity*.
- 4.12 If a *relevant entity* intends to join an existing *contract* of another *relevant entity*, the initial *request documentation* and the *contract* **must** have already specified potential use by other *relevant entities*.
- 4.13 *Relevant entities* joining an existing *contract* **must** ensure that:
- value for money is achieved;
 - the *goods* and services being procured are the same as provided for within the contract; and
 - the terms and conditions of the *contract* are not being materially altered.

Notes: The Defence Support Services panel (DSS Panel) is an example of a cooperative *procurement*. The panel was established so as to be able to be accessed by other Commonwealth agencies, and as a result many agencies have used and continue to use this panel for a range of support services.

Defence *officials* who are planning to establish a new *standing offer* arrangement with multiple *suppliers* should consider whether it would be appropriate for other Commonwealth agencies to be able to use the proposed panel for their needs. If so, the *approach to market* for the panel (and the panel deed) will need to expressly advise the *potential suppliers* that the panel may be used not only by Defence, but also by other agencies. However, in such circumstances, Defence *officials* will also need to consider the administrative arrangements for how the panel may be used, the extent to which this will impose an additional resource burden on Defence, and whether there will be any administrative fee charged to other agencies to cover Defence's costs of managing the panel.

CPR 4.14 – 4.15Contract end dates

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

Third-party procurement

- 4.15 *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.

Note: Under Defence *contracts*, it is not unusual for contractors to be required to undertake *procurements* on behalf of Defence. In many cases, this is simply part of the contractor's overall contracted responsibility to deliver a particular capability or outcome to Defence. In these cases, Defence does not usually intervene to specify that the contractors comply with CPR requirements, although Defence may wish to approve or specify under the *contract* the key subcontractors that the contractor will use, and further impose obligations on the contractor to ensure value for money is obtained, for example, by requiring the contractor to undertake competitive *procurements*. In other cases, the Commonwealth may task a contractor to undertake *procurement* activity that Defence *officials* might normally undertake themselves; that is, Defence is outsourcing the *procurement* function itself. In these cases, it may be appropriate to require the contractor to comply with the CPRs as if they were bound by them. If not, it could be argued that Defence was outsourcing the *procurement* function simply to avoid the operation of the CPRs. Defence is always under an obligation to ensure that its *procurement* activities (whether outsourced or not) deliver value for money to the Commonwealth.

5. Encouraging Competition

CPR 5.1 – 5.2

Encouraging competition

- 5.1 Competition is a key element of the Australian Government's *procurement* framework. Effective competition requires non-discrimination and the use of competitive *procurement* processes.
- 5.2 Participation in *procurement* imposes costs on relevant entities and *potential suppliers*. Those costs should be considered when designing a process that is commensurate with the scale, scope and risk of the proposed *procurement*.

Note: Chapter 2 of the DPPM discusses the importance of competition and selecting an appropriate *procurement* process to achieve value for money outcomes.

CPR 5.3

Non-discrimination

- 5.3 The Australian Government's *procurement* framework is non-discriminatory. All *potential suppliers* to government **must**, subject to these CPRs, be treated equitably based on their commercial, legal, technical and financial abilities and not be discriminated against due to their size, degree of foreign affiliation or ownership, location, or the origin of their *goods* and services.

Note: See Chapter 2 of the DPPM for more information about the non-discrimination principle.

CPR 5.4 – 5.5

Small and Medium Enterprises

- 5.4 To ensure that *Small and Medium Enterprises* (SMEs) can engage in fair competition for Australian Government business, *officials* should apply *procurement* practices that do not unfairly discriminate against SMEs and provide appropriate opportunities for SMEs to compete. *Officials* should consider, in the context of value for money:
 - a. the benefits of doing business with competitive SMEs when specifying requirements and evaluating value for money;
 - b. barriers to entry, such as costly preparation of *submissions*, that may prevent SMEs from competing;
 - c. SMEs' capabilities and their commitment to local or regional markets; and
 - d. the potential benefits of having a larger, more competitive *supplier* base.
- 5.5 The Australian Government is committed to *non-corporate Commonwealth entities* sourcing at least 10 per cent of *procurement* by value from SMEs.

Notes: In the Defence context, the Australian Government's policy relating to small to medium enterprises (SMEs) is given effect through the Defence Industry Policy 2016, and in particular, the Australian Industry Capability (AIC) program. As noted in Chapter 2 of the DPPM, the AIC program is identified as a specific exemption from the 'non-discrimination' principle (reflected in paragraph 5.3 of the CPRs) in the Australia-US Free Trade Agreement (AUSFTA), and other FTAs to which Australia is a party. The AUSFTA (Chapter 15, Annex A) provides that 'the Australian Government reserves the right to maintain the Australian Industry Involvement program and its successor programs and policies.' The AIC program is a successor to the previous Australian Industry Involvement (AII) program.

The ASDEFCON templates incorporate provisions that give effect to the AIC program, including requiring *tenderers* to submit AIC plans as part of the tender process. The successful *tenderer* is required to give effect to the agreed AIC plan under the *contract*. See also Defence Procurement Policy Directive D15 and the related note following.

6. Efficient, effective, economical and ethical procurement

CPR 6.1 – 6.8

Efficient, effective, economical and ethical procurement

- 6.1 The Australian Government promotes the proper use and management of *public resources*. Proper means efficient, effective, economical and ethical. For *non-corporate Commonwealth entities*, this would also include being not inconsistent with the policies of the Commonwealth.
- 6.2 Efficient relates to the achievement of the maximum value for the resources used. In *procurement*, it includes the selection of a *procurement* method that is the most appropriate for the *procurement* activity, given the scale, scope and risk of the *procurement*.
- 6.3 Effective relates to the extent to which intended outcomes or results are achieved. It concerns the immediate characteristics, especially price, quality and quantity, and the degree to which these contribute to specified outcomes.
- 6.4 Economical relates to minimising cost. It emphasises the requirement to avoid waste and sharpens the focus on the level of resources that the Commonwealth applies to achieve outcomes.
- 6.5 Ethical relates to honesty, integrity, probity, diligence, fairness and consistency. Ethical behaviour identifies and manages conflicts of interests, and does not make improper use of an individual's position.

Note: Chapter 2 of the DPPM, the Complex Procurement Guide, and the Early Industry Engagement Better Practice Guide provide more guidance about probity and effective industry engagement.

Ethical behaviour

- 6.6 In particular, *officials* undertaking *procurement* **must** act ethically throughout the *procurement*. Ethical behaviour includes:
 - a. recognising and dealing with actual, potential and perceived conflicts of interest;
 - b. dealing with *potential suppliers*, *tenderers* and *suppliers* equitably, including by:
 - i. seeking appropriate internal or external advice when probity issues arise, and
 - ii. not accepting inappropriate gifts or hospitality;
 - c. carefully considering the use of *public resources*; and
 - d. complying with all directions, including *relevant entity* requirements, in relation to gifts or hospitality, the Australian Privacy Principles of the *Privacy Act 1988* and the security provisions of the *Crimes Act 1914*.
- 6.7 Relevant entities **must** not seek to benefit from *supplier* practices that may be dishonest, unethical or unsafe. This includes not entering into *contracts* with *tenderers* who have had a judicial decision against them (not including decisions under appeal) relating to employee entitlements and who have not satisfied any resulting order. *Officials* should seek declarations from all *tenderers* confirming that they have no such unsettled orders against them.

Note: The [endorsed Defence contracting templates](#) contain the necessary provisions and form of statutory declaration to give effect to paragraph 6.7 of the CPRs.

- 6.8 If a complaint about *procurement* is received, relevant entities **must** apply equitable and non-discriminatory complaint-handling procedures. Relevant entities should aim to manage the complaint process internally, when possible, through communication and conciliation.

Defence Procurement Policy Directive

D20. If a Defence *official* receives a complaint from a third party in relation to a Defence *procurement*, the *official must* ensure that the complaint is managed in accordance with the Defence Procurement Complaints Handling Process.

Note: The Defence Procurement Complaints Handling Process can be found on the Commercial Division [Fact Sheets and Guidance intranet page](#). A *procurement* complaint in itself does not constitute a formal 'claim' against the Commonwealth that would need to be managed in accordance with [AAIs](#) and the Attorney General's Legal Services Directions. A 'claim' would normally not arise until legal action has been commenced against the Commonwealth.

7. Accountability and transparency in procurement

CPR 7.1 – 7.4

Accountability and transparency in procurement

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

Records

- 7.2 *Officials must* maintain a level of documentation commensurate with the scope, scale and risk for each *procurement*. Documentation should provide accurate and concise information on:
- the requirement for the *procurement*;
 - the process that was followed;
 - how value for money was considered and achieved;
 - relevant approvals; and
 - relevant decisions and the basis of those decisions.
- 7.3 Relevant entities **must** have access to evidence of agreements with *suppliers*, in the form of one or a combination of the following documents: a written *contract*, a purchase order, an invoice or a receipt.
- 7.4 Documentation **must** be retained in accordance with the *Archives Act 1983*.

Note: For Defence policy in relation to record keeping, Defence *officials* should refer to the [Defence Records Management Manual](#) (RECMAN). RECMAN takes a principles based approach to records management and does not include information about practices and procedures – which are proposed to be set out in a Records Management Operations Guide (under development). For further information, Defence *officials* should contact Directorate of Records Management Policy at DRMP.Policy@defence.gov.au.

CPR 7.5 – 7.8

AusTender

- 7.5 *AusTender*, the Australian Government's *procurement* information system, is a centralised web-based facility that publishes a range of information, including relevant entities' planned *procurements*, *open tenders* and *contracts* awarded. It also supports secure electronic tendering to deliver integrity and efficiency for relevant entities and *potential suppliers*.
- 7.6 *AusTender* is the system used to enable relevant entities to meet their publishing obligations under the CPRs. It also enables relevant entities to monitor and review their

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AusTender-based *procurements*, including approaches to market, publication of *contracts*, and amendments to *contracts*.

Annual procurement plans

- 7.7 In order to draw the market's early attention to potential *procurement* opportunities, each *relevant entity* **must** maintain on *AusTender* a current *procurement* plan containing a short strategic *procurement* outlook.
- 7.8 The *annual procurement plan* should include the subject matter of any significant planned *procurement* and the estimated publication date of the *approach to market*. *Relevant entities* should update their plans regularly throughout the year.

Notes: The *Annual Procurement Plan* (APP) is a tool that facilitates early *procurement* planning and notifies *potential suppliers* to the planned Defence *procurements*. The APP includes a short strategic *procurement* outlook for Defence supported by details of any planned *procurements*. The APP includes only those opportunities that are planned as *open tender* as there are linkages between the APP and subsequent *approaches to market*.

For practical reasons (given the volume of Defence *procurement*), Defence includes in its APP only those *procurements* valued at or above \$1,000,000 (GST inclusive). *Procurements* of a lesser value can be included if advance notice to industry is desired, but this is not mandatory.

Details regarding the coordination and publication of Defence's APP can be found on the [AusTender Publishing intranet page](#). Defence *officials* should refer to the intranet page for more information about the APP process.

CPR 7.9 – 7.13

Notifications to the market

- 7.9 *Relevant entities* **must** use *AusTender* to publish *open tenders* and, to the extent practicable, to make relevant *request documentation* available. *Relevant entities* may use *AusTender* to publish *limited tender approaches to market* and make relevant *request documentation* available.

Note: All open *approaches to market* (*open tenders*) from Capability Acquisition and Sustainment Group (CASG) to be published on *AusTender* are managed centrally through the [CASG e-tendering service](#). Defence *officials* from other Groups and Services can submit requests for *AusTender* publication for open *approaches to market* to defence.procurement@defence.gov.au. For further information about *AusTender* publication, Defence *officials* should refer to the Commercial Division [AusTender intranet page](#).

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

Defence Procurement Policy Directive

D21. Defence *officials* undertaking a *procurement* **must** ensure that the *evaluation criteria* advertised in the *request documentation* are the criteria used for the evaluation of *submissions*.

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

Note: The [Department of Finance's Resource Management Guide No 407](#) sets out Commonwealth policy in relation to advertising open *approaches to market* in the media. As a general rule, such advertising is not permitted, although exemptions from the policy may be granted on a case by case basis.

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

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

CPR 7.14 – 7.15**Providing information**

- 7.14 *Officials must*, on request, promptly provide, to eligible *potential suppliers*, documentation that includes all information necessary to permit the *potential supplier* to prepare and lodge *submissions*.
- 7.15 Following the rejection of a *submission* or the award of a *contract*, *officials must* promptly inform affected *tenderers* of the decision. Debriefings *must* be made available, on request, to unsuccessful *tenderers* outlining the reasons the *submission* was unsuccessful. Debriefings *must* also be made available, on request, to the successful *supplier(s)*.

Note: Defence *officials* should refer to Chapter 5 of the Complex Procurement Guide for guidance about when to inform an affected *tenderer* of a decision in relation to a *procurement* process.

CPR 7.16 – 7.18Reporting arrangements

- 7.16 Relevant entities *must* report *contracts* and amendments on *AusTender* within 42 days of entering into (or amending) a *contract* if they are valued at or above the reporting threshold.
- 7.17 The *reporting thresholds* (including *GST*) are:
- a. \$10,000 for *non-corporate Commonwealth entities*; and
 - b. for prescribed *corporate Commonwealth entities* ,
 - i. \$400,000 for procurements other than procurement of construction services, or
 - ii. \$7.5 million for procurement of construction services.
- 7.18 Regardless of value, *standing offers* must be reported on *AusTender* within 42 days of the *relevant entity* entering into or amending such arrangements. Relevant details in the *standing offer* notice, such as *supplier* details and the names of other relevant entities participating in the arrangement, must be reported and kept current.

Defence Procurement Policy Directive

D22. To enable Defence to meet its accountability and transparency requirements (including *AusTender* reporting), for all new *contracts* and *contract* amendments that meet the *AusTender reporting thresholds*, Defence *officials must* complete the AE643 Defence Purchasing form.

Notes: The reporting threshold in paragraph 7.17a of the CPRs applies to the Department of Defence as a *non-corporate Commonwealth entity*.

The CPR reporting requirements apply equally to *contract* changes (whether called a *contract* change, amendment or variation or some other terminology) that are valued at or above the relevant *reporting threshold* as they do to the original *contracts*. However, the reporting requirements do not apply to *contracts* or *contract* changes for *goods* or services procured outside Australia to be used completely outside of Australia.

To assist Defence to meet its *AusTender* reporting requirements, Defence has developed the [AE643 form](#) and related *AusTender* reporting procedure. The form and procedure covers the proper recording of *contracts* and amendments that may be undertaken or processed through ROMAN, MILIS and the CMS financial management system. Defence *officials* should refer to the Commercial Division [AusTender intranet page](#) for more information about *AusTender* reporting requirements, including in relation to *standing offer* notices.

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For *procurement* of Contractors, Consultants or Outsourced Service Providers, the AE643 records that a Senior Executive Service (SES) Band 1 or a 1 Star Officer or above has endorsed the requirement in accordance with Defence Procurement Policy Directive D10.

CPR 7.19

Subcontractors

- 7.19 *Relevant entities must* make available on request, the names of any subcontractor(s) engaged by a contractor in respect of a *contract*.
- a. Relevant entities **must** require contractors to agree to the public disclosure of the names of any subcontractors engaged to perform services in relation to a *contract*.
 - b. Contractors **must** be required to inform relevant subcontractors that the subcontractor's participation in fulfilling a *contract* may be publicly disclosed.

Note: The [endorsed Defence contracting templates](#) contain the necessary provisions to give effect to paragraph 7.19 of the CPRs.

CPR 7.20 – 7.23

Treatment of confidential information

- 7.20 When conducting a *procurement* and awarding a *contract*, *relevant entities* should take appropriate steps to protect the Commonwealth's confidential information. This includes observing legal obligations, such as those under the *Privacy Act 1988*, and statutory secrecy provisions.
- 7.21 *Submissions must* be treated as confidential before and after the award of a *contract*. Once a *contract* has been awarded the terms of the *contract*, including parts of the *contract* drawn from the *supplier's submission*, are not confidential unless the *relevant entity* has determined and identified in the *contract* that specific information is to be kept confidential in accordance with the 'confidentiality test' set out in the guidance on *Confidentiality Throughout the Procurement Cycle* at www.finance.gov.au/procurement.
- 7.22 The need to maintain the confidentiality of information should always be balanced against the public accountability and transparency requirements of the Australian Government. It is therefore important for *officials* to plan for, and facilitate, appropriate disclosure of *procurement* information. In particular, *officials* should:
- a. include provisions in *request documentation* and contracts that alert *potential suppliers* to the public accountability requirements of the Australian Government, including disclosure to the Parliament and its committees;
 - b. when relevant, include a provision in *contracts* to enable the Australian National Audit Office to access contractors' records and premises to carry out appropriate audits; and
 - c. consider, on a case-by-case basis, any request by a *supplier* for material to be treated confidentially after the award of a *contract*, and enter into commitments to maintain confidentiality only when such commitments are appropriate.
- 7.23 When confidential information is required to be disclosed, for example following a request from a parliamentary committee, reasonable notice in writing **must** be given to the party from whom the information originated.

Note: The [endorsed Defence contracting templates](#) contain the necessary provisions to give effect to the CPR requirements on treatment of confidential information. Defence *officials* should refer to the Commercial Policy [Fact Sheets and Guidance intranet page](#) for more guidance on how to determine what information is actually 'confidential' and the use of confidentiality provisions in Defence *contracts*.

CPR 7.24

Other obligations

- 7.24 Other reporting and disclosure obligations apply to *officials* undertaking *procurement*, including:
- a. disclosure of *procurement* information for *relevant entity* annual reporting purposes;

- b. disclosure of non-compliance with the CPRs through the Commonwealth's compliance reporting process;
- c. disclosure to the Parliament and its committees, as appropriate, in line with the Government Guidelines for *Officials Witnesses before Parliamentary Committees and Related Matters*;
- d. disclosure of information consistent with the *Freedom of Information Act 1982*; and
- e. disclosure of discoverable information that is relevant to a case before a court.

8. Procurement risk

CPR 8.1 – 8.4

Procurement risk

- 8.1 Risk management comprises the activities and actions taken by a *relevant entity* to ensure that it is mindful of the risks it faces, that it makes informed decisions in managing these risks, and identifies and harnesses potential opportunities.
- 8.2 Relevant entities **must** establish processes for the identification, analysis, allocation and treatment of risk when conducting a *procurement*. The effort directed to risk assessment and management should be commensurate with the scale, scope and risk of the *procurement*. Relevant entities should consider risks and their potential impact when making decisions relating to value for money assessments, approvals of proposals to spend *relevant money* and the terms of the *contract*.
- 8.3 Relevant entities should consider and manage their procurement security risk in accordance with the *Australian Government's Protective Security Policy Framework*.
- 8.4 As a general principle, risks should be borne by the party best placed to manage them; that is, relevant entities should generally not accept risk which another party is better placed to manage. Similarly, when a *relevant entity* is best placed to manage a particular risk, it should not seek to inappropriately transfer that risk to the *supplier*.

Defence Procurement Policy Directives

- D23. For all *procurements* at or above the relevant *procurement threshold*, Defence *officials must*:
- undertake a risk assessment so that they are properly informed about the risks associated with the *procurement*; and
 - subject to the risk assessment, develop and implement a risk management plan to manage the risks.
- D24. Defence *officials must* undertake a liability risk assessment prior to agreeing to limit a third party's liability under a *contract*.

Notes: Chapter 2 of the DPPM provides guidance on risk management. The endorsed Defence contracting templates enable Defence officials to allocate risks to the parties best placed to manage them.

The Commonwealth may limit a third party's (including a contractor's) liability in various ways, for instance, by agreeing to one or more financial caps on different heads of loss or damage that a contractor may be exposed to under a contract (for example, for personal injury, property damage, delay or other contractual non-performance). Defence has developed tools and guidance to assist Defence *officials* with undertaking [liability risk assessments](#). See also Defence Procurement Policy Directive D6 which requires Defence *officials* to undertake a liability risk assessment in relation to contingent liabilities.

9. Procurement method

CPR 9.1

Procurement method

- 9.1 Australian Government *procurement* is conducted by one of three methods *open tender*, *prequalified tender* or *limited tender*. These methods are detailed in this section.

Defence Procurement Policy Directives

- D25. In deciding on the *procurement* method for a *procurement*, Defence *officials must* ensure that the method is commensurate with the scope, scale, and risk of the *procurement* and is consistent with value for money.
- D26. Defence *officials must* ensure that all *procurement* method decisions are appropriately documented.

Note: For *procurements* valued at or above \$200,000 (GST inclusive), the Endorsement to Proceed template is normally the mechanism by which *procurement* method decisions are documented. The Commitment Approval delegate (see section 23(3) of the PGPA Act) would also confirm the *procurement* method decision as part of the exercise of their delegation.

CPR 9.2 – 9.7

Requirement to estimate value of procurement

- 9.2 The expected value of a *procurement must* be estimated before a decision on the *procurement* method is made. The expected value is the maximum value (including GST) of the proposed *contract*, including options, extensions, renewals or other mechanisms that may be executed over the life of the *contract*.
- 9.3 The maximum value of the *goods* and services being procured **must** include:
- all forms of remuneration, including any premiums, fees, commissions, interest, allowances and other revenue streams that may be provided for in the proposed *contract*;
 - the value of the *goods* and services being procured, including the value of any options in the proposed *contract*; and
 - any taxes or charges.
- 9.4 When a *procurement* is to be conducted in multiple parts with *contracts* awarded either at the same time or over a period of time, with one or more *suppliers*, the expected value of the *goods* and services being procured **must** include the maximum value of all of the *contracts*.
- 9.5 A *procurement must* not be divided into separate parts solely for the purpose of avoiding a relevant *procurement* threshold.
- 9.6 When the maximum value of a *procurement* over its entire duration cannot be estimated the *procurement must* be treated as being valued above the relevant *procurement* threshold.

Procurement thresholds

- 9.7 When the expected value of a *procurement* is at or above the relevant *procurement threshold* and an exemption in Appendix A is not utilised, the rules in Division 2 **must** also be followed. The *procurement thresholds* (including GST) are:
- for *non-corporate Commonwealth entities*, other than for *procurements of construction services*, the *procurement* threshold is \$80,000;
 - for prescribed *corporate Commonwealth entities*, other than for *procurements of construction services*, the *procurement* threshold is \$400,000; or

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

Defence Procurement Policy Directives

Procurements under \$10,000 (GST inclusive) - Defence Purchasing Card

- D27. For *procurements* valued under \$10,000 (GST inclusive), Defence *officials must* use the Defence Purchasing Card (DPC), unless there are valid reasons for not doing so.
- D28. Defence *officials must* not use the DPC for *procurements* made through MILIS (the core logistics management system in Defence).

Procurements under \$200,000 (GST inclusive) - Commonwealth Contracting Suite

- D29. For *procurements* valued under \$200,000 (GST inclusive), Defence *officials must* use the Department of Finance's Commonwealth Contracting Suite (CCS), unless the *procurement* has been assessed as exempt from this requirement by applying the Defence specific CCS Decision Tree.
- D30. If the *procurement* is exempt from using the CCS, the *official must* use an endorsed Defence contracting template.

Procurements valued at or above \$200,000 (GST inclusive)

- D31. For *procurements* valued between \$200,000 and \$1 million (GST inclusive), officials must consider using the CCS as the basis for the procurement. If the CCS is unsuitable or the procurement is valued at or above \$1 million (GST inclusive), if an endorsed Defence contracting template exists for the type of *procurement* being undertaken, Defence *officials must* use that template as the basis for the *procurement*.
- D32. If a Defence *official* intends to use a form of *contract* other than an endorsed Defence contracting template, the *official must* ensure the *contract* is appropriate for the requirement, and capable of achieving an appropriate risk allocation consistent with the Commonwealth resource management framework.

Procurements through the US Foreign Military Sales (FMS) system

- D33. If a Defence *official* is undertaking a *procurement* through the FMS system, the *official must* consult with the Office of the Counsellor Defence Materiel (Washington) (DEFMAT (W)) prior to establishing or amending the FMS case.

Notes: Defence *officials* should follow the [Simple Procurement Process](#) when undertaking low risk, low value (or 'simple') *procurements*.

For Defence Procurement Policy Directive D29, the Department of Finance's Commonwealth Contracting Suite (CCS) and the Defence specific CCS Decision Tree can be found at the Department of Finance's [Commonwealth Contracting Suite](#) webpage.

The endorsed Defence contracting templates and guidance on appropriate template selection can be found on the Commercial Policy [Tools and Templates](#) intranet page.

The US Foreign Military Sales (FMS) program is a form of security assistance authorised by the US Arms Export Control Act (AECA) and is part of US foreign policy. Under Section 3, of the AECA, the US may sell defence articles and services to foreign countries like Australia when to do so will strengthen the security of the US and promote world peace. For more information about the FMS system see the [Support Office Foreign Military Sales](#) intranet page.

The Capability Acquisition and Sustainment Group has a Washington office (CASG-W) which is the focal point for Defence materiel related activity in North America, providing acquisition and sustainment support to Defence and other Australian government agencies. DEFMAT (W) provides acquisition advice to the Head of Australian Defence Staff (Washington) (HADS(W)) and is the representative of Deputy Secretary CASG in North America. The office supports a range of activities, including FMS and direct commercial *procurements*. For more information and contact details see the [Support Office Foreign Military Sales](#) intranet page.

CPR 9.8**Three procurement methods**Method 1 – Open tender

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

Defence Procurement Policy Directive

D34. Defence officials **must** use an *open tender* process for all *procurements* at or above the relevant *procurement threshold*, unless the conditions for a *limited tender* can be satisfied, or the *procurement* is otherwise exempt from this requirement.

Note: See Defence Procurement Policy Directive D2 (and the related Table 1) for Defence *procurements* that are exempt from the *open tender* requirement. Appendix A of the CPRs also sets out various kinds of *procurements* that do not require *open tender* processes.

See paragraphs 30 to 36 in Chapter 2 of the DPPM for guidance about *procurement* methods.

CPR 9.9Method 2 – Prequalified tender

- 9.9 *Prequalified tender* involves procurements from the *Legal Services Multi-use List*.

CPR 9.10 – 9.11Method 3 – Limited tender

- 9.10 *Limited tender* involves a *relevant entity* approaching one or more *potential suppliers* to make *submissions*, when the process does not meet the rules for *open tender* or *prequalified tender*.
- 9.11 For *procurements* at or above the relevant *procurement threshold*, *limited tender* can only be conducted in accordance with paragraph 10.3, or when a *procurement* is exempt as detailed in Appendix A.

Defence Procurement Policy Directive

D35. For *procurements* at or above the relevant *procurement threshold*, a Defence official **must not** use a *limited tender* process unless a circumstance in paragraph 10.3 of the CPRs applies, or the *procurement* is otherwise exempt from this requirement.

D36. In undertaking a *limited tender*, Defence officials **must** ensure that, where practicable, the number of *potential suppliers* invited to participate in the process is sufficient to ensure a value for money outcome.

Notes: Many *procurements* related to the acquisition or sustainment of Defence major capital equipment are undertaken through *limited tender* processes, despite not meeting the requirements of paragraph 10.3 of the CPRs. Usually, this is because they are exempt *procurements* of goods or services (see Defence Procurement Policy Directives D2-D4).

A particular *procurement* may be categorised as a *limited tender*, irrespective whether or not a request for tender or similar *request documentation* is used to undertake the *procurement*. Further, a 'sole source' arrangement with a contractor constitutes a *limited tender* for the purposes of the CPRs. Similarly, each FMS case with the US Government constitutes a *limited tender*.

See paragraphs 37 to 47 in Chapter 2 of the DPPM for guidance about how the circumstances set out in paragraph 10.3 of the CPRs may apply so as to justify using a *limited tender* process.

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Where a limited tender procurement method has been utilised for a procurement valued at or above the relevant procurement threshold, the Contract Notice published on AusTender will include either:

- the exemption from Division 2 of the CPRs; or
- the condition from paragraph 10.3 of the CPRs.

CPR 9.12 – 9.13

Procurement from existing arrangements

Procurements from standing offers

- 9.12 Procurements from an existing standing offer must comply with Division 1.
- 9.13 *Officials* should report the original *procurement* method used to establish the *standing offer* when they report *procurements* from *standing offers*.

Defence Procurement Policy Directive

- D37. If a *standing offer* panel is established in Defence for *goods* or services, Defence *officials* **must** use the *standing offer* when procuring relevant *goods* or services, unless a Group Head has approved not doing so.
- D38. Defence *officials* **must not** use a *standing offer* panel to order *goods* or services that were not specified in the *request documentation* used to establish the arrangement, even if the relevant *supplier* may be able to provide the *goods* or services.

Notes: *Standing offer* panels provide an efficient and effective mechanism to enable Defence *officials* to procure relevant *goods* and services from industry. The benefit of these arrangements is eroded if *officials* seek to procure outside the panel, noting that panel members also have the reasonable expectation that Defence will use the panel rather than procure outside it. Nevertheless, there may be occasions when Defence *officials* may need to procure *goods* or services outside the panel, for example, where particular knowledge or expertise is required that is only available outside the panel. A valid reason could also include where a *standing offer* panel arrangement has been established by another Commonwealth agency which is able to be used by Defence and which offers better value for money than the corresponding Defence panel. For further information on *standing offers* and current Defence *standing offer* panel arrangements, Defence *officials* should refer to the factsheet on the Commercial Division [Fact Sheets and Guidance](#) intranet page and the Commercial Division Defence [Goods and Services Directory](#) intranet page.

The Department of Finance has established several whole of government coordinated *procurement* arrangements for various *goods* and services, for example, ICT, telecommunications, stationery and office supplies, and airline travel. Defence *officials* are required to use these arrangements unless specific exemptions apply (see paragraphs 4.9 and 4.10 of the CPRs and Defence Procurement Policy Directives D18 and D19 and related Notes). Defence *officials* can find more details at www.finance.gov.au/procurement

Chapter 5

Procurements valued at or above the procurement thresholds

Note: Chapter 5 of the DPPM incorporates all the rules from Division 2 of the CPRs.

Defence Procurement Policy Directive

D39. Defence *officials* **must** comply with the Defence Procurement Policy Directives in Chapter 5 of the DPPM (in addition to those in Chapters 1, 3 and 4) when undertaking *procurements* in Defence, if the *procurement* is valued at or above the relevant *procurement threshold* (unless otherwise specified in the relevant Defence Procurement Policy Directive).

Note: Defence Procurement Policy Directive D39 means that, even though Defence *officials* may be exempt from having to comply with the additional rules in Division 2 of the CPRs in relation to their *procurement*, Defence *officials* are still required to comply with the Defence Procurement Policy Directives that are set out in Chapter 5 of the DPPM, unless stated otherwise. This is because these Defence Procurement Policy Directives are of general application and compliance with them will help to ensure that Defence undertakes its *procurements* in an efficient, effective, economical and ethical manner as required by the PGPA Act.

10. Additional rules

CPR 10.1 – 10.8

Additional rules

- 10.1 The rules set out in Division 2 are additional to those in Division 1 and **must** not be interpreted or applied in a manner that diminishes or negates Division 1.
- 10.2 A *procurement*, except a *procurement* that is specifically exempt in accordance with Appendix A, is subject to the rules contained in Division 2 if the expected value of the *procurement* is at, or above, the relevant *procurement threshold*.

Conditions for limited tender

- 10.3 A *relevant entity* **must** only conduct a *procurement* at or above the relevant *procurement threshold* through *limited tender* in the following circumstances:
 - a. when, in response to an *approach to market*:
 - i. no *submissions*, or no *submissions* that represented value for money, were received,
 - ii. no *submissions* that met the minimum content and format requirements for submission as stated in the request documentation were received, or
 - iii. no *tenderers* satisfied the conditions for participation,and the *relevant entity* does not substantially modify the essential requirements of the *procurement*; or
 - b. when, for reasons of extreme urgency brought about by events unforeseen by the *relevant entity*, the *goods* and *services* could not be obtained in time under *open tender*; or
 - c. for *procurements* made under exceptionally advantageous conditions that arise only in the very short term, such as from unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy, or receivership, and which are not routine *procurement* from regular *suppliers*; or
 - d. when the *goods* and *services* can be supplied only by a particular business and there is no reasonable alternative or substitute for one of the following reasons
 - i. the requirement is for works of art,

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- ii. to protect patents, copyrights, or other exclusive rights, or proprietary information, or
- iii. due to an absence of competition for technical reasons; or
- e. for additional deliveries of *goods* and services by the original *supplier* or authorised representative that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services, or installations, when a change of *supplier* would compel the *relevant entity* to procure *goods* and services that do not meet requirements for compatibility with existing equipment or services; or
- f. for *procurements* in a *commodity market*; or
- g. when a *relevant entity* procures a prototype or a first *good* or service that is intended for limited trial or that is developed at the *relevant entity's* request in the course of, and for, a particular *contract* for research, experiment, study, or original development; or
- h. in the case of a *contract* awarded to the winner of a design contest, provided that
 - i. the contest has been organised in a manner that is consistent with these CPRs, and
 - ii. the contest is judged by an independent jury with a view to a design *contract* being awarded to the winner.

Note: See paragraphs 37 to 45 in Chapter 2 of the DPPM for guidance about how the circumstances set out in paragraph 10.3 of the CPRs may apply so as to justify using a *limited tender* process.

- 10.4 A *procurement* at or above the relevant *procurement* threshold conducted by *limited tender* is not required to meet the rules in paragraphs 10.6 -10.13 (*Request documentation*), 10.19-10.30 (Minimum time limits), or 10.36 (*Awarding contracts*).
- 10.5 In accordance with the general rules for accountability set out in these CPRs, for each *contract* awarded through *limited tender*, an **official must** prepare and appropriately file within the *relevant entity's* records management system a written report that includes:
 - a. the value and type of *goods* and services procured;
 - b. a statement indicating the circumstances and conditions that justified the use of *limited tender*, and
 - c. a record demonstrating how the *procurement* represented value for money in the circumstances.

Request documentation

- 10.6 **Request documentation must** include a complete description of:
 - a. the *procurement*, including the nature, scope and the quantity of the *goods* and services to be procured or, where the quantity is not known, the estimated quantity, and any requirements to be fulfilled, including any technical *specifications*, conformity certification, plans, drawings, or instructional materials;
 - b. any *conditions for participation*, including any financial guarantees, information and documents that *potential suppliers* are required to submit;
 - c. any *minimum content and format requirements*;
 - d. *evaluation criteria* to be considered in assessing *submissions* and, if applicable to the evaluation, the relative importance of those criteria;
 - e. any dates for the delivery of *goods* or supply of services, taking into account the complexity of the *procurement*; and
 - f. any other terms or conditions relevant to the evaluation of submissions.
- 10.7 However, relevant entities are not obligated to release confidential information, information sensitive to essential security or information that may impede competition.
- 10.8 Relevant entities **must** ensure that *potential suppliers* and *tenderers* are dealt with fairly and in a non-discriminatory manner when providing information leading to, or following,

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an *approach to market*. Relevant entities **must** promptly reply to any reasonable request from a *potential supplier* for relevant information about a *procurement*, and when responding to such enquiries **must** avoid a *potential supplier*, or group of *potential suppliers*, gaining an unfair advantage in a competitive *procurement* process.

Defence Procurement Policy Directives

- D40. Defence *officials* **must** ensure that the *request documentation* for a *procurement* is consistent with the approved *procurement* plan and includes all of the information necessary to enable *potential suppliers* to properly prepare and lodge *submissions*.
- D41. Defence *officials* **must** ensure that all *potential suppliers* are provided with the same information in the *request documentation*, including any amendments to the *request documentation*.
- D42. For all competitive *procurement* processes, Defence *officials* **must** prepare a tender evaluation plan that is commensurate with the scale, scope and risk of the *procurement*.
- D43. Defence *officials* **must** ensure that the tender evaluation plan for a *procurement* is approved by the relevant *official* no later than the opening of *submissions*.

Note: Defence officials should refer to Chapter 5 of the Complex Procurement Guide for more information about how to undertake a tender evaluation for a complex procurement.

CPR 10.9 – 10.12

Specifications

- 10.9 In prescribing *specifications* for goods and services, a *relevant entity* **must**:
- not use *specifications* or prescribe any conformity assessment procedure in order to create an unnecessary obstacle to trade;
 - when possible, set out the *specifications* in terms of performance and functional requirements; and
 - base technical *specifications* on international standards, when they exist and apply to the relevant *procurement*, except when the use of international standards would fail to meet the *relevant entity's* requirements or would impose greater burdens than the use of recognised Australian standards.
- 10.10 Where an Australian standard is applicable for *goods* or services being procured, tender responses **must** demonstrate the capability to meet the Australian standard, and *contracts* **must** contain evidence of the applicable standards (see paragraph 10.38).
- 10.11 A *specification* **must** not require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer, or *supplier*, unless there is no other sufficiently precise or intelligible way of describing the requirement. In an exceptional circumstance when this type of *specification* is used, words such as 'or equivalent' **must** be included in the *specification*.
- 10.12 A *relevant entity* may conduct market research and other activities in developing *specifications* for a particular *procurement* and allow a *supplier* that has been engaged to provide those services to participate in *procurements* related to those services. Relevant entities **must** ensure that such a *supplier* will not have an unfair advantage over other *potential suppliers*.

Defence Procurement Policy Directive

- D44. If essential requirements are specified in *request documentation*, Defence *officials* **must** exclude a *tenderer* from further consideration in the *procurement* process, if the *official* considers that the *tenderer* has not met those requirements (unless the *procurement* is exempt from Division 2 of the CPRs).

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Notes: Defence *officials* should refer to Chapter 3 of the Complex Procurement Guide for more information about the use of standards, *specifications* and essential requirements in *request documentation*. For *procurements* that are exempt from Division 2 of the CPRs, Defence Procurement Policy Directive D44 should be followed as good practice.

CPR 10.13 – 10.18Modification of evaluation criteria or specifications

10.13 When, during the course of a *procurement*, a *relevant entity* modifies the *evaluation criteria* or *specifications* set out in an *approach to market* or in *request documentation*, or amends or reissues an *approach to market* or *request documentation*, it **must** transmit all modifications or amended or reissued documents:

- a. to all the *potential suppliers* that are participating at the time the information is amended, if known, and, in all other cases, in the same manner as the original information; and
- b. in adequate time to allow *potential suppliers* to modify and re-lodge their *submissions*, if required.

Conditions for participation

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

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

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

- a. evaluate financial, commercial, and technical abilities on the basis of the *tenderer's* business activities, wherever they have occurred; and
- b. base its determination solely on the *conditions for participation* that the *relevant entity* has specified in either the *approach to market* or the *request documentation*.

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

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

- a. labour regulations, including ethical employment practices;
- b. occupational, health and safety; and
- c. environmental impacts.

Note: See the Notes following paragraph 4.8 of the CPRs.

Defence Procurement Policy Directive

D45. If *conditions for participation* are specified in *request documentation*, Defence *officials* **must** exclude a *tenderer* from further consideration in the *procurement* process, if the *official* considers that the *tenderer* has not met those conditions (unless the *procurement* is exempt from Division 2 of the CPRs).

Note: Defence *officials* should refer to Chapters 3 and 5 of the Complex Procurement Guide for more information about *conditions for participation*.

CPR 10.19 – 10.26**Minimum time limits**

- 10.19 *Potential suppliers must* be required to lodge *submissions* in accordance with a common deadline.
- 10.20 Relevant entities **must** provide sufficient time for *potential suppliers* to prepare and lodge *submissions* in response to an *approach to market*. Time limits discussed in this section represent minimum time limits to lodge *submissions* and should not be treated as default time limits.
- 10.21 The time limit for *potential suppliers* to lodge a *submission must* be at least 25 days from the date and time that a *relevant entity* publishes an *approach to market* for an *open tender*.
- 10.22 The 25 day period referred to in paragraph 10.21 **must** be extended by five days for each of the following circumstances:
- when a *relevant entity* does not make *request documentation* available electronically from the date that a *relevant entity* published an *approach to market*; and/or
 - when a *relevant entity* does not accept *submissions* electronically.
- 10.23 A *relevant entity* may establish a time limit that is less than 25 days but no less than 10 days under the following circumstances”
- when the *relevant entity* has published details of the *procurement* in an *annual procurement plan on AusTender*, at least 40 days and not more than 12 months in advance, and those details include a description of the *procurement*, the timing of the *approach to market* and the procedure to obtain *request documentation*;
 - when the *relevant entity* procures commercial goods and services; or
 - when a genuine state of urgency renders the normal time limit impracticable.
- 10.24 In the case of a *multi-stage procurement* each *approach to market must* comply with the time limits stated in paragraph 10.21 – 10.23.
- 10.25 When a *relevant entity* intends to specify *conditions for participation* that require *potential suppliers* to undertake a separate registration procedure, the *relevant entity must* state the time limit for responding to the registration in the *approach to market*. Any such *conditions for participation must* be published in sufficient time to enable all *potential suppliers* to complete the registration procedures within the time limit for the *procurement*.
- 10.26 When a *relevant entity* extends the time limit for registration or *submission*, or when negotiations are terminated and *potential suppliers* are permitted to lodge new *submissions*, the new time limit **must** apply equitably.

Defence Procurement Policy Directive

- D46. Defence *officials must* not grant an extension to a deadline for registration or lodgement of *submissions* once the closing date for registration or *submissions* has passed.

CPR 10.27 – 10.30**Late submissions**

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

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- 10.28 *Relevant entity* mishandling does not include mishandling by a courier or mail service provider engaged by a *potential supplier* to deliver a *submission*. It is the responsibility of the *potential supplier* to ensure that the *submission* is dispatched in sufficient time for it to be received by the *relevant entity* by the deadline.
- 10.29 Late *submissions* should be returned unopened to the *potential supplier* who submitted them, to:
- ensure that they are not evaluated or compared with *submissions* which were submitted by the due time and date;
 - demonstrate to other *tenderers* that the process for receiving *submissions* is fair and impartial; and
 - eliminate scope for any suggestion that the *submission* was rejected for any reason other than because it was late.
- 10.30 It may be necessary to open a late *submission* if there is no return address or any indication of which *approach to market* the *submission* relates. When a *submission* has been opened under such circumstances the *potential supplier* should be advised that the *submission* was rejected due to lateness and advised of the reason it was opened.

Defence Procurement Policy Directives

- D47. Defence *officials* **must** decide whether to accept a late *submission* before the relevant *submission* is opened.
- D48. For *procurements* not covered by Division 2 of the CPRs, Defence *officials* may accept a late *submission* if this is consistent with probity in the circumstances of the case.

Notes: Before accepting a late *submission*, Defence *officials* should seek specialist contracting or legal advice. Defence *officials* should refer to Chapters 4 and 5 of the Complex Procurement Guide for more information about the probity risks relating to the acceptance of late tenders.

There are three ways through which Division 2 of the CPRs will not apply to a *procurement*: First, the *procurement* is below the relevant *procurement threshold* (see paragraph 9.7 of the CPRs); second, the *procurement* is exempt through the application of the general exemptions listed in Appendix A to the CPRs (see Appendix A to the DPPM); and third, the *procurement* is exempt through the application of a Defence specific exemption as a result of a measure made by the Secretary under paragraph 2.6 of the CPRs (see Defence Procurement Policy Directives D2 - D4).

CPR 10.31 – 10.32

Value for money and broader benefits to the Australian economy

- 10.31 In addition to the considerations at paragraph 4.4, for *procurements* above \$4 million, Commonwealth *officials* are required to consider the economic benefit of the *procurement* to the Australian economy.
- 10.32 The policy operates within the context of relevant national and international agreements and *procurement* policies to which Australia is a signatory, including free trade agreements and the Australia and New Zealand Government Procurement Agreement.

Note: Defence *officials* should refer to paragraph 8 in Chapter 2 of the DPPM for guidance about the application of the 'economic benefit' requirement in relation to Defence *procurement*. The Department of Finance has also released guidance about paragraphs 10.31 and 10.32 of the CPRs on the [Department of Finance webpage](#).

CPR 10.33 – 10.35

Receipt and opening of submissions

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

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

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

Defence Procurement Policy Directive

D49. If *minimum content and format requirements* are specified in *request documentation*, Defence *officials* **must** exclude a *tenderer* from further consideration in the *procurement* process, if the *official* considers that the *tenderer* has not met those requirements, unless the *official* considers that there has been an unintentional error of form (or unless the *procurement* is exempt from Division 2 of the CPRs).

Note: Defence *officials* should refer to Chapters 3 and 5 of the Complex Procurement Guide for more information about *minimum content and format requirements* and unintentional errors of form.

CPR 10.36 – 10.37

Awarding contracts

10.36 Unless a *relevant entity* determines that it is not in the public interest to award a *contract*, it **must** award a *contract* to the *tenderer* that the *relevant entity* has determined:

- a. satisfies the *conditions for participation*;
- b. is fully capable of undertaking the *contract*; and
- c. will provide the best value for money, in accordance with the essential requirements and *evaluation criteria* specified in the *approach to market* and *request documentation*.

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

Notes: The CPRs state that public interest grounds generally arise in response to unforeseen events or new information that materially affects the objectives or reasons underlying the original procurement requirement as specified in the request document.

Defence *officials* should typically not make any public announcement regarding the selection of a preferred *tenderer* or *tenderers* until *contract* negotiations are completed, all necessary approvals have been obtained, the *contract* signed and unsuccessful *tenderers* have been notified. Defence's experience is that public announcements of preferred *tenderers* can significantly lengthen the time needed to finalise the negotiation of the *contract*.

CPR 10.38

Contract Management / Standard Verification

10.38 Where applying a standard (Australian, or in its absence, international) for *goods* or *services*, *relevant entities* **must** make reasonable enquiries to determine compliance with that standard:

- a. this includes gathering evidence of relevant certifications; and
- b. periodic auditing of compliance by an independent assessor.

Defence Procurement Policy Directives

Contract negotiations and management

- D50. Prior to entering into *contract* negotiations, Defence *officials* **must** document their negotiation strategy commensurately with the scale, scope and risk of the *procurement* to which the *contract* relates.
- D51. If *contract* negotiations result in a significant change to a *tenderer's* offer (including its technical solution, pricing, or commercial terms), Defence *officials* **must** consider whether the amended offer continues to represent best value for money.
- D52. Defence *officials* **must** not change the scope of a *contract* to obtain additional or different *goods* or services that fall outside the terms of the original *contract* approval, unless that change is approved by the relevant delegate as a *limited tender* and is otherwise consistent with the CPRs and the Defence Procurement Policy Directives in the DPPM.

Notes: For more complex *procurements*, the negotiation strategy will typically be documented in a *contract* negotiation directive that is endorsed by the relevant delegate for the *procurement*.

To exercise an option in an existing *contract* to procure additional quantities of *goods*, services or optional extras, Defence *officials* should follow the mechanism set out in the relevant *contract*.

Defence *officials* should refer to Chapters 6 of the Complex Procurement Guide for more information about how to undertake *contract* negotiations.

Defence *officials* should refer to the Defence Contract Management Framework to support them achieving best practice contract management. The Framework brings together the underpinning principles, policies, tools, templates, guidance and competencies required to support more collaborative business relationships with industry and deliver more effective contract outcomes. Defence *officials* should refer to Chapter 7 of the Complex Procurement Guide and the Defence Contract Management Handbook for guidance about how to undertake *contract* management.

Appendices

CPR Appendix A – Appendix B

Appendix A: Exemptions from Division 2 of the CPRs

Procurements that are exempt from the rules of Division 2 of the CPRs by the operation of Appendix A are still required to be undertaken in accordance with value for money and with the rules of Division 1 of the CPRs.

Division 2 does not apply to:

1. *procurement* including leasing of land, existing buildings or other immovable property or any associated rights (note: the *procurement* of *construction services* is not exempt);
2. *procurement* of *goods* and services by a *relevant entity* from another Commonwealth, state, territory or local government entity;
3. *procurements* funded by international grants, loans or other assistance, when the provision of such assistance is subject to conditions inconsistent with this document;
4. *procurements* funded by grants and sponsorship payments from non-Commonwealth entities;
5. *procurement* for the direct purpose of providing foreign assistance;
6. *procurement* of *research and development* services, but not the *procurement* of inputs to *research and development* undertaken by a *relevant entity*;
7. the engagement of an expert or neutral person, including engaging counsel or barristers, for any current or anticipated litigation or dispute;
8. *procurement* of *goods* and services (including construction) outside Australian territory, for consumption outside Australian territory;
9. acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt;
10. *procurement* of motor vehicles;
11. *procurement* by the Future Fund Management Agency of investment management, investment advisory, or master custody and safekeeping services for the purposes of managing and investing the assets of the Future Fund;
12. *procurement* of blood plasma products or plasma fractionation services;
13. *procurement* of government advertising services;
14. *procurement* of *goods* and services by, or on behalf of, the Defence Intelligence Organisation, the Australian Signals Directorate, or the Australian Geospatial Intelligence Organisation;
15. *contracts for labour hire*;
16. *procurement* of *goods* and services from a business that primarily exists to provide the services of persons with a disability; and
17. *procurement* of *goods* and services from an SME with at least 50 per cent Indigenous ownership.

Appendix B: Definitions

The following definitions apply for the purposes of the CPRs:

Accountable Authority – as defined in section 8 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act)

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

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

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

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

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

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

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

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

Contract – an arrangement, as defined by s23(2) of the PGPA Act, for the *procurement* of *goods* and services under which *relevant money* is payable or may become payable. Note: this includes *standing offers* and panels.

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

Corporate Commonwealth entities – as defined in section 8 of the PGPA Act.

Days – means calendar *days*.

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

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

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

GST – The Goods and Services Tax, as defined by the A New Tax Systems (Goods and Services Tax) Act 1999.

Legal Services Multi-use List – as defined in the *Legal Services Directions 2017*.

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

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

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

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

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

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

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

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

Prequalified tender – involves procurements from the *Legal Services Multi-use List*.

Procurement – refer to paragraphs 2.7 to 2.9 of the CPRs

Procurement thresholds – refer to paragraph 9.7 of the CPRs

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

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

Relevant entity – *non-corporate Commonwealth entities* and prescribed *corporate Commonwealth entities* (listed at Appendix B) that must comply with the CPRs when performing duties related to *procurement*.

Reporting thresholds – refer to paragraph 7.17 of the CPRs.

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

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

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

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

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

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

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

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

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Defence Procurement Policy Directive

D53. Terms that are defined in Appendix B of the CPRs and which are used in the DPPM, have the same meaning in the DPPM as they do in the CPRs, unless the contrary intention appears.

Note: Terms that are defined in Appendix B and which are used in the DPPM are generally identified through the use of italics text.

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Monitor and Review

This Manual will be reviewed whenever relevant sections of any of the identified references are updated or amended. All feedback and suggestions for improvement should be sent to:

Procurement.Policy@Defence.gov.au

Note to External Agencies

External agencies intending to use this template will need to tailor it in order to meet their specific procurement requirements (including relevant internal guidance) and should seek appropriate professional guidance as required.

Disclaimer

The information in this publication is provided by Defence for the purpose of disseminating procurement guidance to its staff. While every effort has been made to ensure the guidance in this publication is accurate and up-to-date, any external user should exercise independent skill and judgment before relying on it. Further, this publication is not a substitute for independent professional advice and users external to Defence should obtain appropriate advice relevant to their particular circumstances.

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Please note that while the Procurement Policy Help Desk can respond to DPPM policy questions, this service is not available to those outside of Defence. Contractors should, in the first instance, seek guidance from the relevant Contact Officer for their specific procurement.

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The terms under which the Coat of Arms can be used are detailed on the [It's an Honour](#) website.

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DPPM Amendment List

Version Number	Change	Date
Version 1.0	Original	1 April 2017
Version 1.1	Version 1.1 Matrix of Changes	19 December 2017
Version 1.2	Version 1.2 Matrix of Changes	8 November 2018
Version 1.3	Table of Changes to CPRs	1 January 2019

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Chapter 1

Introduction to the Defence Procurement Policy Manual

Overview

1. Welcome to the new version of the Defence Procurement Policy Manual (DPPM). The DPPM has been completely re-written to more clearly set out for Defence *officials* the mandatory policy that **must** be complied with when undertaking *procurement*.
2. The DPPM has also adopted a completely new structure and format. In particular, the DPPM now incorporates the Commonwealth Procurement Rules (CPRs) so that *officials* can find in one place the Commonwealth and Defence *procurement* related policy that applies to them.
3. There are many terms in *italics*. This normally means that the term is a defined term. Appendix B to the CPRs (and the DPPM) sets out the definitions of these terms.

Policy Statement

4. The DPPM incorporates both the CPRs and additional Defence Procurement Policy Directives that **must** be complied with by Defence *officials* in relation to *procurement*. Defence Procurement Policy Directives supplement specific CPRs in the context of the particular circumstances and needs of the Department of Defence ('Defence').

Defence Procurement Policy Directive

- D1. In addition to complying with the CPRs, Defence officials must comply with the Defence Procurement Policy Directives in the DPPM when undertaking procurement. Defence Procurement Policy Directives are generally denoted by the term 'must' (or 'must not').¹

5. Together with the guidance, templates, tools and other resources referred to in the DPPM, the DPPM is an internal control system that forms part of the framework that applies the principles and requirements of the resource management and *procurement* frameworks (focusing on Defence's operations). The DPPM provides primary operational instructions to Defence *officials* in carrying out their duties related to *procurement*, in a way that is tailored to Defence's particular circumstances and needs.

Scope and applicability of this manual

6. The DPPM applies to all Defence *officials*. In addition, a *contract* may extend the application of this manual to a *contractor*,² or a *contractor* may be prescribed to be a Defence *official* in accordance with Defence's Accountable Authority Instructions.

What is the purpose of this manual?

7. The purpose of the DPPM is to:
 - a. assist Defence *officials* to implement the requirements of the CPRs and Defence policy when undertaking *procurement*;
 - b. provide Defence *officials* with a plain English document that is simple to understand and use when undertaking *procurement*;
 - c. update Defence's approach to *procurement* to reduce red tape and costs to industry;
 - d. encourage *officials* to use more strategic approaches, commercial expertise and good practice, when procuring for Defence; and

¹ Where the term 'should' or 'may' is used in the DPPM, this generally indicates good practice. See also the section 'How do I read the DPPM' in this Chapter for more information.

² See further paragraph 4.15 of the CPRs and the related Note.

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- e. encourage *officials* to engage early with Defence industry to stimulate competition and innovation, and work with industry to develop better solutions and outcomes for Defence.

How do I read the DPPM?

8. The DPPM is divided into five chapters and has two appendices, as follows:

Chapter 1 – Introduction to the Defence Procurement Policy Manual – this chapter provides an overview of the role of the DPPM and how it is designed to be used;

Chapter 2 – An overview of the CPRs and the procurement lifecycle – this chapter provides an overview of the CPRs, including the key policy requirements as they apply to the *procurement* lifecycle, and provides a summary of the *procurement* life cycle to get into *contract*,

Chapter 3 – The procurement framework - this chapter incorporates all of the preliminary rules and guidance contained in the CPRs;

Chapter 4 – Achieving Value for Money in procurement – this chapter incorporates all the rules from Division 1 of the CPRs, as well as additional Defence Procurement Policy Directives;

Chapter 5 - Procurements above the procurement thresholds – this chapter incorporates all of the rules from Division 2 of the CPRs, as well as additional Defence Procurement Policy Directives;

Appendix A – Exemptions from Division 2 of the CPRs – this is Appendix A from the CPRs which sets out the list of *procurements* that are exempt from Division 2 of the CPRs;

Appendix B – Definitions – this is Appendix B from the CPRs which sets out the definitions of the terms used in the CPRs. These terms also have the same meaning when used in the DPPM.

9. Chapters 3 – 5 of the DPPM set out the individual CPR rules that **must** be complied with by all *officials* (including Defence *officials*) undertaking *procurement* for the Commonwealth. The CPR rules have been numbered as they appear in the CPRs, and are easily identifiable as having been drafted in the following format:

EXAMPLE ONLY

‘2. Procurement Framework

- 2.1 The Commonwealth Procurement Rules (CPRs) are issued by the Minister for Finance (Finance Minister) under section 105B(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).
- 2.2 *Officials* from *non-corporate Commonwealth entities* and prescribed *Corporate Commonwealth entities* listed in section 30 of the Public Governance, Performance and Accountability Rule 2014 must comply with the CPRs when performing duties related to *procurement*. These entities will collectively be referred to as relevant entities throughout the CPRs.’

10. Many of the CPR rules stand by themselves and need no further explanation or context. Also, in many cases, there are no additional Defence Procurement Policy Directives over and above the individual CPR rule.

11. In other cases, however, there may be one or more additional Defence Procurement Policy Directives that **must** also be complied with by Defence *officials*. These are also easily identifiable as they appear below the particular CPR rules to which they most closely relate, have been numbered with ‘D’ as an identifier, and have been drafted in the following format:

EXAMPLE ONLY

Defence Procurement Policy Directive

D3. If a Defence *official* determines that an exemption given under paragraph 2.6 of the CPRs applies to a *procurement*, the *official* must ensure that the reasons supporting that determination are appropriately documented.'

12. Also accompanying a CPR rule or Defence Procurement Policy Directive in many cases are 'Notes'. These Notes assist with the interpretation of, or provide more context for readers about, a particular CPR or Defence Procurement Policy Directives, and how they apply in the Defence *procurement* environment. An example of a Note is as follows:

EXAMPLE ONLY

Note: The DPPM also sets out the Defence Procurement Policy Directives that Defence *officials* must comply with when they procure *goods* and services for or on behalf of Defence. The DPPM also indicates *good practice*.'

13. These Notes do not form part of the mandatory policy that **must** be complied with under the DPPM. However, they can be used, along with the material in Chapters 1 and 2 of the DPPM, to assist with interpretation and to give greater context for the DPPM user.

14. The headings in the DPPM are usually the headings from the CPRs. However, other headings have also been included where appropriate to help guide the reader.

Commonwealth legislative and policy framework

15. As paragraph 2.10 of the CPRs notes, Defence and its *officials* operate in an environment of legislation and Commonwealth policy. Defence has numerous business policy owners that are responsible for ensuring Defence complies with applicable Commonwealth legislation and policy requirements, as well as with particular State and Territory legislation that may also apply to Defence activities. This legislation and policy often interacts with Defence *procurement* and in many cases is given effect to through *contracts*.

16. The DPPM refers to and incorporates by reference relevant Commonwealth legislation and policy, and other Defence policy, relating to *procurement*. Also, the endorsed Defence contracting templates have been drafted and are regularly updated to give effect to applicable Commonwealth legislation and policy (including the CPRs), and applicable Defence policy. These templates have been developed to assist Defence *officials* to comply with applicable legislation and policy requirements if used for the purposes for which they are intended. Where the *procurement* involves a unique or unusual requirement not within the contemplation of the endorsed templates, specialist advice should be sought to ensure any specific legislation and policy is addressed. The endorsed Defence contracting templates may be found on the [Commercial Division Tools and Templates intranet page](#).

17. There are also many policy or support areas in Defence that can assist in relation to specific aspects of *procurement* or on legislation and policy that intersect with *procurement* (eg contracting, legal, finance, environment, work health and safety, security, technical regulatory frameworks etc). These resources can be found by the procurement support areas link on the [Commercial Division Help Desk Kiosk](#) intranet page.

18. The Department of Finance's *Buying for the Australian Government* website provides further assistance on policies that interact with *procurement* (called 'Procurement-Connected Policies'). The Department of Finance also releases Resource Management Guides and Finance Circulars that provide additional guidance and interim policy updates. These resources may be found on the [Department of Finance webpage](#).

Resource management framework

19. The resource management framework is part of the broader Commonwealth legislative and policy environment, and consists of the legislation and policy (including the CPRs) governing the management of the Commonwealth's resources. The main elements of this framework are set out in Figure 3 of the CPRs.

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20. The resource management framework is primarily comprised of the PGPA Act and associated *Public Governance Performance and Accountability Rule 2014* (PGPA Rule 2014). The PGPA Act authorises the Secretary, as Defence's *Accountable Authority*, to issue Accountable Authority Instructions (AAIs) (PGPA Act, section 20A; see also paragraph 2.5 of the CPRs). The Secretary has issued the Defence AAIs under this authorisation. The PGPA Act also contains provisions dealing with the commitment of *relevant money* and *officials* entering into arrangements such as *contracts* and *deeds* (PGPA Act, section 23). Section 60 of the PGPA Act governs the granting by the Commonwealth of indemnities, warranties and guarantees ('contingent liabilities'). Sections 23 and 60 of the PGPA Act are key provisions relating to *procurement*.

21. The PGPA Framework requires Defence officials to:

- a not be inconsistent with the policies of the Australian Government (PGPA Act, section 21);
- b use and manage public resources in an efficient, effective, economical and ethical manner (PGPA Act section 8 and 15);
- c exercise 'care and diligence' in performing their duties (PGPA Act, section 25);
- d exercise powers, perform functions and discharge duties "honestly, in good faith and for a proper purpose" (PGPA Act, section 26);
- e not improperly use their position in performing their duties (PGPA Act, section 27);
- f not improperly use information (PGPA Act, section 28); and
- g disclose interests in relation to the performance of their duties (PGPA Act, section 29).

22. Section 21 of the PGPA Act requires the Secretary to govern Defence in a way that is 'not inconsistent with the policies of the Australian Government'. The 'policies of the Australian Government' is not a defined term and should be interpreted broadly, applying its ordinary dictionary meaning. Among other things, the term will likely include things like Cabinet decisions, or other Government approvals relating to a commitment of *relevant money*, to the extent that the decision or approval establishes a course or line of action.

23. Accordingly, Defence *officials* exercising delegations (especially those for the purposes of section 23 of the PGPA Act) should ensure that they do so consistent with the terms of any Australian Government decisions or approvals relevant to the *procurement*.

24. For a Defence *official* (including a contractor who is prescribed as a Defence *official*) to exercise a power conferred on or delegated to the Secretary under the PGPA Act in relation to *procurement*, they are required to have the delegated authority. These delegations are described in the [Defence AAIs](#) and issued in Financial Delegations Manual ([FINMAN 2](#)).

25. For the purposes of section 23(3) of the PGPA Act, delegated Defence *officials* may approve the commitment of *relevant money* (Commitment Approval delegation). This delegation is required to be exercised before the Commonwealth enters into the arrangement that commits *relevant money*. For the purposes of section 23(1) of the PGPA Act, Defence *officials* may enter into an arrangement on behalf of the Commonwealth (Enter into an Arrangement delegation). The Defence *official* exercises this delegation by the physical act of entering into an arrangement, after the proposed commitment has been approved by a Commitment Approval delegate. These delegations are mentioned in Defence Procurement Policy Directive D5.³ Defence *officials* should be aware that the section 23 PGPA Act delegations apply to all kinds of *procurements*. For example, both delegations will be required for each order placed under a *standing offer* arrangement.⁴

26. Also, a change to a *contract* (whether called a *contract* change, amendment or variation or some other terminology) may itself technically constitute a *procurement*. In any event, both delegations will be required to be exercised for each *contract* change, if the change involves the commitment of *relevant money*. If the *contract* change does not involve the commitment of *relevant*

³ If a *procurement* includes a contingent liability, Defence Procurement Policy Directive D6 requires the relevant delegate to authorise the granting of the contingent liability for the purposes of section 60 PGPA Act. In Defence (apart from CASG), the Commitment Approval delegate may do this as part of exercising this delegation. In CASG, a separate delegation is required in addition to the Commitment Approval delegation, both of which must be exercised before the exercise of the Enter into an Arrangement delegation.

⁴ The [Establishing and Using Standing Offers Fact Sheet](#) provides further information regarding delegations required for the establishment and use of *standing offer* arrangements.

money (that is, it is a 'nil-cost' *contract* change), only the Enter into an Arrangement delegation is required.⁵ However, even in this situation, the delegate should be satisfied that the proposed change represents proper use and management of *public resources* and is not inconsistent with the policies of the Australian Government (see further paragraph 6.1 of the CPRs).

27. In addition to these delegations under the PGPA Act, and in accordance with AAI 3, Defence *officials* are also required to obtain an 'Endorsement to Proceed' before undertaking certain *procurements* (see Defence Procurement Policy Directive D9). An Endorsement to Proceed process is part of Defence's internal controls (which are required by section 16 of the PGPA Act) to better ensure the proper use and management of *public resources*. Having a Defence *official* provide an Endorsement to Proceed for *procurements* above a certain value provides additional internal scrutiny through which Defence can satisfy itself that proceeding with the *procurement* would be an efficient, effective, economical and ethical use of *public resources*, and that it will not be inconsistent with the policies of the Australian Government. An [Endorsement to Proceed Fact Sheet](#) and template have been developed to assist Defence *officials* to deal with all the matters they need to consider when exercising this function.⁶

28. Defence has also developed templates to assist and guide Commitment Approval and Enter into Arrangement delegates (as well as any separate delegate authorising the granting of a contingent liability under section 60 of the PGPA Act) through all the considerations they need to be aware of when exercising their delegations.

Compliance with the DPPM

29. The DPPM sits within the procurement policy framework as set out in Figure 1.

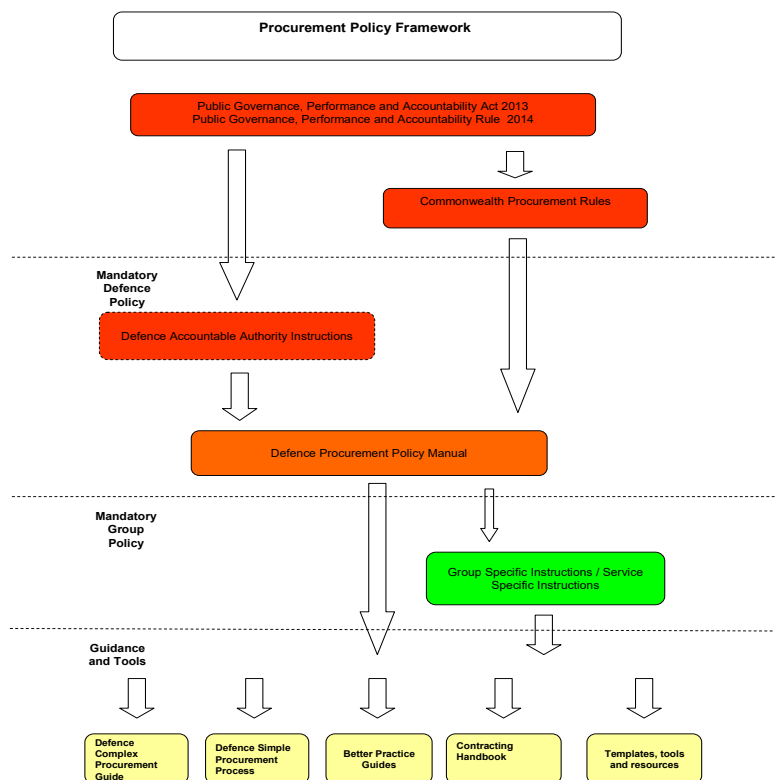


Figure 1

⁵ While only the Enter into an Arrangement delegation is required, AAI 2.4.1.8 and FINMAN 2 have the effect that not all Defence *officials* have the delegated authority to agree to enter into arrangements that are nil-cost contract changes. Defence *officials* should refer to AAI 2.4.1.8 and FINMAN 2 to make sure that these contract changes are authorised at the right level.
⁶ For further guidance, see Chapter 4 of the Complex Procurement Guide.

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30. If a Defence *official* departs from the DPPM in a way that results in a departure from the CPRs, (or the PGPA Act or PGPA Rule 2014), then the *official* will have contravened the law.

31. When considering a possible departure from a Defence Procurement Policy Directive contained in the DPPM, Defence *officials* should:

- a. consider whether a proposed departure from the policy requirement is reasonable and justified in the circumstances and would produce the same or better outcome for Defence;
- b. consult their supervisor, wherever practicable, about a proposed departure – a properly informed decision may involve consulting the policy owner; and
- c. be responsible and accountable for the consequences of departing from, or not adhering to, the content of a manual, including where such departure or non-adherence results in a breach of applicable laws or leads to adverse outcomes for Defence.

32. Officials are not permitted to depart from the mandatory requirements of the PGPA Act, PGPA rule, CPRs, AAI and FINMAN 2

33. Defence *officials* should consider whether contractors should be required to comply with the DPPM when undertaking procurement on behalf of Defence and communicate this requirement to the contractors, including the incorporation of appropriate provisions in *contracts*.⁷

Why do we have procurement rules?

34. The CPRs and Defence Procurement Policy Directives in the DPPM exist to assist Defence *officials* make proper use of *public resources* when undertaking *procurement* related activities for the Commonwealth. Defence *officials*, like *officials* from other Commonwealth agencies, are accountable for how they spend *relevant money* (also known as ‘public money’).

35. The DPPM provides a framework that promotes responsible and accountable spending by Defence *officials* when procuring *goods* and services for Defence. This framework supports the proactive management of the risks relating to *procurement*, as required by the CPRs.

Why are the CPRs and the DPPM drafted the way they are?

36. As noted at paragraph 2.14 of the CPRs, the CPRs give effect to Australia’s international treaty obligations. Access to overseas markets is secured through Free Trade Agreements (FTAs). Under FTAs, countries offer reciprocal access to their government *procurements*. The CPRs reflect Australia’s FTA commitments, and in particular are substantially based on the text of Chapter 15 of the Australia-USA FTA. The CPRs also align with the World Trade Organisation’s Agreement on Government Procurement (GPA). Accordingly, the CPRs include *procurement* related rules that give effect to Australia’s international obligations.

37. The CPRs also seek to ensure that Commonwealth agencies achieve value for money in their *procurement* activities, however they have not been specifically drafted to follow the logical order or timeline of the *procurement* life cycle, and it is very difficult to simply translate or allocate the CPR rules to the various parts of the life cycle. The Defence Procurement Policy Directives have been drafted to align with the structure of the CPRs, and therefore also do not follow the *procurement* life cycle. Chapter 2 of the DPPM provides an overview of the CPRs, including a discussion of the core principles underpinning Commonwealth *procurement*. Chapter 2 also provides an overview of how to plan and undertake a *procurement*.

38. By contrast, the [Simple Procurement Process](#) and [Complex Procurement Guide](#), which accompany the DPPM, have been based on the *procurement* life cycle so that Defence *officials* have a more intuitive sequenced guidance document to follow when planning for and undertaking *procurements*. The documents do not contain mandatory policy requirements, rather, along with the practitioner level Better Practice Guides and Handbooks on specific *procurement* topics, they provide more detailed ‘how to’ guidance to undertake good *procurement*, whether for a low risk, low value (‘simple’) *procurement* or for the more highly complex *procurements* that are often undertaken in Defence, whether in the materiel or non-materiel environment.

⁷ For more information about when it might be appropriate to require contractors to comply with the DPPM, see paragraph 4.15 of the CPRs and the related Note.

What is the *procurement* life cycle?

39. The *procurement* life cycle is simply the breakdown of the end-to-end *procurement* process into logical phases and stages. If each stage of the life cycle is planned for and executed well, Defence *officials* are more likely to achieve good outcomes from their *procurement* activities. The *procurement* lifecycle separates *procurement* into three phases: planning, sourcing and managing. These phases are further divided into seven distinct, but interrelated stages, which are:

Planning

1. Plan the procurement
2. Request documentation

Sourcing

3. Approach the market
4. Evaluation
5. Negotiation and contract signature

Managing

6. Contract management⁸
7. Disposal.

40. The *procurement* life cycle is represented by the following 'procurement wheel' (see figure 2).



Figure 2

41. While the *procurement* life cycle includes a Disposal stage, the actual disposal of *goods* (for example, Defence materiel at the end of its life of type) is not a *procurement* within the meaning of the CPRs. This is so even though paragraph 2.7 of the CPRs mentions a 'consideration of disposal of *goods*' as being part of *procurement*. Hence, disposal of *goods* is neither subject to the CPRs nor the Defence Procurement Policy Directives in the DPPM. For example, if the disposal strategy for a ship involves selling the ship by tender (see paragraph 2.9c of the CPRs) or through an auction, that process would not be a *procurement* and hence not subject to the CPRs.

⁸ Defence Officials should refer to the [Defence Contract Management Framework](#) and the [Defence Contract Management Handbook](#) for guidance about the contract management stage of the procurement life cycle.

42. However, there may be occasions where Defence *officials* wish to engage services to assist with the planning or conduct of a disposal activity. The engagement of these services may constitute a *procurement* under the CPRs. For instance, in the example of a ship disposal, if the strategy involves engaging services to decommission and scrap the ship, then the *procurement* of these services would constitute a *procurement* for the purposes of the CPRs.

43. What paragraph 2.7 of the CPRs requires is that Defence *officials* undertaking a *procurement* of *goods* consider how the *goods* will be disposed of at the end of life (including any potential costs) as part of the decision about whether and how to proceed with the *procurement*⁹.

44. In Defence, the policy governing disposal of *goods* is set out in AAI 10.12, the Defence Logistics Manual (see [DEFLOGMAN, Part 2, Volume 5, Chapter 10](#)) and the [Electronic Supply Chain Manual](#) ('ESCM'). For guidance and templates on contracting processes for disposals, including sale by tender and gifting or transfer by deed, Defence *officials* should refer to [Materiel Logistics, Disposals and Sales Branch](#).

Guidance, tools, templates and resources

45. The [Complex Procurement Guide](#) has been developed to align with the *procurement* life cycle. Each section of the *procurement* life cycle is represented by a Chapter of the Complex Procurement Guide.

46. The [Simple Procurement Process](#) also follows the *procurement* lifecycle and guides users undertaking a simple *procurement* activity through a step by step process. By following the process, Defence *officials* can rely on this as satisfying their obligations under the CPRs and DPPM.

47. The DPPM also refers to and contains links to further guidance, templates and tools to assist Defence *officials* to meet the requirements of the DPPM and to facilitate better *procurement* outcomes. These materials can be found on the Commercial Division [Commercial Policy Framework](#) intranet page.

48. Collectively, the DPPM and the related guidance, templates, tools and other resources, provide a framework that supports accountability for spending, sound commercial practice and better outcomes for Defence, the Australian Government and the taxpayer.

⁹ The intention of paragraph 2.7 of the CPRs is to ensure disposal costs and related matters are adequately considered and understood (where predictable) to inform the acquiring of goods through the procurement process. For example, Defence may need to factor into the original procurement decision the need for additional funding to cover the costs of making the goods safe for disposal.

Chapter 2

An overview of the CPRs and the procurement life cycle

1. As noted in Chapter 1, the CPRs have not been specifically drafted to follow the logical order or timeline of the *procurement* life cycle. Paragraph 2.7 of the CPRs describes the *procurement* life cycle as covering all aspects of acquiring and delivering *goods* and services - it starts with identifying the need for a *procurement* and finishes with either the end of the related services *contract* or the end of the useful life and disposal of the *goods* that were procured. While the CPRs do not follow the *procurement* life cycle, the CPRs include a number of core principles that underpin Commonwealth *procurement* across the life cycle.

2. This Chapter provides a brief overview of the CPRs and the *procurement* life cycle, and discusses these core principles in the context of Defence *procurement*. This Chapter is not intended to replicate the CPRs and does not attempt to discuss all the CPR rules. Also, even though this Chapter discusses the CPRs, the terms '**must**' and '**must not**' are not used in this Chapter to avoid any confusion about whether this Chapter gives rise to additional mandatory policy requirements. The CPR rules and Defence Procurement Policy Directives in Chapters 3-5 of the DPPM (and Defence Procurement Policy Directive D1 in Chapter 1) stand on their own and apply according to their terms.¹⁰

CPRs – an overview

3. The CPRs provide all entities governed by the PGPA Act – which includes the Department of Defence - with the policy framework and associated rules for conducting *procurement* activities. The CPRs are a 'legislative instrument', which means that they are part of the law of the Commonwealth.

4. The CPRs are divided into an introductory section and two Divisions - which are set out in Chapters 3, 4 and 5 respectively of the DPPM - and two Appendices (which are included as the Appendices to the DPPM). Division 1 of the CPRs applies to all Commonwealth *procurements* and Division 2 sets out 'additional rules' which apply to *procurements* that are valued at or above the relevant *procurement threshold* - unless a *procurement* is exempted from having to comply with these additional rules. Many Defence *procurements* are exempt from Division 2. The main obligation of the additional rules is to require *officials* to undertake *procurements* by way of an *open tender* in most circumstances, as well as setting out particular requirements for how the tender is undertaken.

5. The introductory section of the CPRs (in Chapter 3 of the DPPM) covers the purpose, scope and legislative and policy framework of the CPRs.

6. Division 1 of the CPRs (in Chapter 4 of the DPPM) sets out rules that apply to all *procurements*. This means that all Defence *procurements* are required to comply with Division 1 (and the additional Defence Procurement Policy Directives in Chapter 4 of the DPPM). This Division establishes 'value for money' as the core requirement of Commonwealth *procurement*. Defence *officials* responsible for a *procurement* need to be satisfied, after reasonable inquiries, that the *procurement* achieves value for money.

Value for money framework

7. Division 1 provides a framework for determining 'value for money'.¹¹ Under this framework, *procurements* should:

- encourage competition and be non-discriminatory;
- use *public resources* in an efficient, effective, economical and ethical manner that is not inconsistent with the policies of the Commonwealth;
- facilitate accountable and transparent decision making;
- encourage appropriate engagement with risk; and
- be commensurate with the scale and scope of the business requirement.

¹⁰ See also the section 'How do I read the DPPM' in Chapter 1 for more information.

¹¹ See section 4 of the CPRs (in Chapter 4 of the DPPM).

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8. In addition to these considerations, for *procurements* valued above \$4 million, *officials* are also required to consider the economic benefit of the *procurement* to the Australian economy as part of the framework for determining value for money.¹² However, this additional requirement does not apply if the *procurement* is exempt from the additional rules in Division 2 of the CPRs. This means that the requirement does not apply, for example, to those *procurements* for which there is a Defence specific exemption.¹³ For these Defence *procurements*, the consideration of economic benefit occurs through the evaluation of the Australian Industry Capability (AIC) requirements of the *procurement*.¹⁴ In particular, tenderers are required to submit an AIC plan which sets out the tenderers' Local Industry Activities (LIAs) to meet the specified Industry Requirements of the *procurement*. Tenderers are required to describe the benefits of their LIAs, including the significance of the work, the skills and knowledge that will be transferred, the training that will be provided, the new technologies or innovations that will be introduced, and the contribution to Australian company competitiveness, including access to global supply chains, technical data and intellectual property.

9. Price is not the sole factor when assessing value for money, value for money does not automatically mean the lowest price *goods* or services. When conducting a *procurement*, *officials* are required to consider the relevant financial and non-financial costs and benefits of each *submission*, including matters such as:¹⁵

- the quality of the *goods* and services;
- fitness for purpose of the proposal;
- the *potential supplier's* relevant experience and performance history;
- flexibility of the proposal (including innovation and adaptability over the lifecycle of the *procurement*);
- environmental sustainability of the proposed *goods* and services (such as energy efficiency, environmental impact and use of recycled products); and
- whole-of life costs.

Valuing a procurement – relevant procurement thresholds

10. The additional rules in Division 2 (and the Defence Procurement Policy Directives in Chapter 5 of the DPPM) apply only to *procurements* that are valued at or above a certain threshold (see paragraph 14 below). This means that Defence *officials* need to estimate the value of their *procurement* to know whether it has to comply with the additional rules.

11. The *procurement* value is the maximum anticipated value of the proposed *contract*, including options, extensions, renewals or other mechanisms that may be executed over the life of a *contract*. The estimated value includes:¹⁶

- all forms of remuneration, including any premiums, fees, commissions, interest, allowances and other revenue streams that may be provided for in the proposed *contract*;
- the total maximum value of the property or services being procured, including the value of any options in the proposed *contract*; and
- any taxes or charges (including GST).

12. If a *procurement* is being conducted in multiple parts with *contracts* awarded either at the same time or over a period of time, with one or more *suppliers* (for example, a *standing offer* panel arrangement), the expected value of the *goods* and services being procured has to include the maximum value of all of the *contracts*. Further, Defence *officials* cannot split a *procurement* into separate parts just to try and avoid the relevant *procurement* threshold.

¹² See paragraphs 10.32 and 10.33 of the CPRs, and the guidance on the [Department of Finance webpage](#).

¹³ See Defence Procurement Policy Directives D2-D4 and the related Notes.

¹⁴ See Defence Procurement Policy Directive D15 and the related Note.

¹⁵ See paragraphs 4.5 and 4.6 of the CPRs.

¹⁶ Defence *officials* should be aware that the way in which they value a *procurement* for the purposes of the CPRs is different to the way they need to value it for the purposes of completing the AE643 form to record a contract in ROMAN. See Complex Procurement Guide, Chapter 6 Appendix A for further details.

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13. In any case, where the maximum value of a *procurement* over its entire duration cannot be estimated (for example, a *standing offer* panel arrangement), Defence *officials* are required to treat the *procurement* as being valued above the relevant *procurement* threshold.

14. The value thresholds are:

- for *procurements* other than for *construction services* - \$80,000 (including GST);
- for *procurements of construction services* by relevant entities the *procurement* threshold is \$7.5 million (including GST).

Exemptions from the additional rules in Division 2

15. As noted above, some *procurements* may be exempt from having to comply with the additional rules in Division 2 of the CPRs. There are two ways in which a Defence *procurement* may be exempt:

- first, the *procurement* may be covered by one of the general exemptions listed in Appendix A of the CPRs (discussed further below); or
- second, a Defence specific exemption may apply as a result of a measure made by the Secretary under paragraph 2.6 of the CPRs. This is discussed further in Chapter 4 of the DPPM. These Defence specific exemptions relate mainly to the acquisition and sustainment of Defence materiel.

16. However, even if exempt from Division 2 of the CPRs, Defence *officials* still have to make sure that they undertake their *procurements* in accordance with Division 1 of the CPRs. Also, Defence *officials* still have to comply with all applicable Defence Procurement Policy Directives contained in this manual.

17. While the full list of general exemptions is set out in Appendix A to the CPRs (see Appendix A to the DPPM), some of the main exemptions relevant to Defence business include:

- leasing or purchase of real property or accommodation (noting that the *procurement of construction services* is not exempt);
- *procurement of goods* or services from another Commonwealth entity, or a state, territory or local government entities where no commercial market exists or where legislation or Commonwealth policy requires the use of a government provider (for example, legal services which are tied to the Australian Government Solicitor);
- *procurement* for the direct purpose of providing foreign assistance;
- procurement of research and development services, but not the procurement of inputs to research and development undertaken by Defence;¹⁷
- the engagement of an expert or neutral person, including engaging counsel or barristers, for any current or anticipated litigation or dispute;
- *procurement of goods* or services (including construction) outside Australian territory, for consumption outside Australian territory;¹⁸
- *procurement of goods* or services by, or on behalf of, the Defence Intelligence Organisation, the Australian Signals Directorate, or the Australian Geospatial-Intelligence Organisation;
- *contracts* for labour hire (noting that this does not include the engagement of consultants);¹⁹
- *procurement of goods* or services from a business that primarily exists to provide the services of persons with a disability; and

¹⁷ This exemption would be relevant mainly for Defence Science and Technology Group.

¹⁸ This exemption would cover *procurements of goods* or services by the Offices of the Counsellor Defence Materiel in Washington and London that are needed for the ongoing operation of those Offices.

¹⁹ A 'contract for labour hire' is a contract under which Defence engages an individual to provide labour, when the individual is engaged either directly or through a firm which primarily exists to provide the services of only that individual (that is, the individual's own company). This includes the appointment of an eminent individual to a special role by the Secretary, or the Secretary's appointment of individuals to a governance committee (for example, an audit committee, ethics committee or steering committee), but does not include the engagement of consultants.

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- *procurement of goods or services* from a Small to Medium Enterprise with at least 50 per cent Indigenous ownership.

Indigenous business exemption and the Indigenous Procurement Policy

18. The purpose of the Indigenous Procurement Policy (IPP) is to stimulate indigenous entrepreneurship and business development, providing indigenous Australians with more opportunities to participate in the economy through the awarding of Australian Government *contracts*.

19. Appendix A of the CPRs (item 16) permits Defence to procure *goods or services* directly from a small to medium enterprise with at least 50 per cent indigenous ownership ('indigenous enterprise'), without running an *open tender* process, if the proposed *procurement* represents value for money.

20. The IPP builds on the Appendix A exemption and has two components that apply to *procurement*:

- a mandatory 'set-aside' that applies to certain *procurements* conducted on or after 1 July 2015 and which may result in *contracts* being directly sourced to indigenous enterprises; and
- mandatory minimum requirements that apply to certain high value *procurements* aimed at enhancing indigenous participation for certain Commonwealth *contracts*.

21. [Supply Nation](#) maintains a non-exhaustive list of indigenous enterprises that meet this definition. If an enterprise states that it is an indigenous enterprise and is not listed with Supply Nation, Defence *officials* will need to make sufficient inquiries to satisfy themselves that the enterprise satisfies the IPP definition of an indigenous enterprise.

22. In general terms, the mandatory set-aside part of the IPP applies to *procurements* where the majority (by value) of the *goods or services* will be delivered in a Remote Area (except for transactions paid for by credit cards), and other domestic *procurements* where the estimated value is between \$80,000 and \$200,000 (GST inclusive). The set-aside requirement does not apply to Defence exempt *procurements* (under paragraph 2.6 of the CPRs) and some other specific *procurements*.²⁰

23. If the set-aside requirement applies, Defence *officials* are required to first determine whether an indigenous enterprise could deliver the required *goods or services* on a value for money basis before making any approach to the market. If satisfied that value for money can be achieved, then the Defence *official* should procure the *goods or services* from the indigenous enterprise (as permitted by Appendix A of the CPRs, item 16). If not, then the Defence *official* may procure through non-indigenous enterprises.

24. In general terms, the mandatory minimum requirements apply to *procurements* (except Defence exempt *procurements*) where the *contract* will be performed in Australia and has an estimated value of \$7.5 million (GST inclusive) or more, and where more than half of the value of the *contract* is anticipated to be spent in one or more of the following industry sectors:

- Building, construction and maintenance services;
- Transportation, storage and mail services;
- Education and training services;
- Industrial cleaning services;
- Farming and fishing and forestry and wildlife contracting services;
- Editorial and design and graphic and fine art services;
- Travel and food and lodging and entertainment services;
- Politics and civic affairs services.

25. The policy requires that the *request documentation for procurements* that are subject to the 'mandatory minimum requirements' include clauses (in both the conditions of tender and *contract*) that meet the IPP requirements. Model clauses that meet these requirements are available on the Commercial Division [Minimum Requirements intranet page](#).

²⁰ For more information about the kinds of *procurements* to which the IPP does not apply, refer to the IPP resources at the Commercial Division [Mandatory Set-Aside intranet page](#).

26. Defence *officials* can find further information and resources, including links to IPP fact sheets and Remote Area maps, on the Commercial Division [Indigenous Procurement intranet page](#).

Disability business exemption

27. The Australian Government's National Disability Strategy 2010 - 2020 sets out a ten year national policy framework for improving the lives of Australians with disability, their families and carers, including by providing people with a disability with more opportunities to participate in the economy through the awarding of Australian Government *contracts*.

28. Appendix A of the CPRs (item 15) permits Defence to procure *goods* or services directly from a business that primarily exists to provide the services of persons with a disability ('disability business'), without running an *open tender* process, if the proposed *procurement* represents value for money.

29. Similar to the IPP, Defence *officials* should determine whether a disability business could deliver the required *goods* or services on a value for money basis before making any approach to the market. If satisfied that value for money can be achieved, then the Defence *official* should procure the *goods* or services from the disability business. If not, then the Defence *official* may procure through a non-disability enterprise. A list of Australian disability businesses can be found at the Australian Disability Enterprises website www.ade.org.au.

Procurement methods

30. Under the CPRs, there are two *procurement* methods:

- an *open tender* – where Defence approaches the open market and invites *submissions*; and
- a *limited tender* - where Defence approaches only **one or more potential suppliers** to make *submissions*.

31. Identifying the *procurement* method does no more than categorise the *procurement* for the purposes of the CPRs, with some different rules applying depending on whether the *procurement* is categorised as an *open tender* or *limited tender*. Under the CPRs, the default position is that *procurement* should be undertaken by way of *open tender*. If it is not an *open tender*, then by definition it will be categorised as a *limited tender*, even if the *procurement* is undertaken with only one *supplier* (often called a 'sole source'²¹ *procurement*). Similarly, a *procurement* process undertaken between two or more (but not all) *potential suppliers* will be a *limited tender* process, even if Defence does not release a formal request for tender to approach the market and instead seeks a different form of response from industry. If Defence establishes a *standing offer* panel arrangement through an *open tender*, then each *procurement* from the panel is categorised as an *open tender*, irrespective of whether the Defence *official* seeks quotes from one, some or all members of the panel.²²

32. The categorisation of a *procurement* as an *open tender* or *limited tender* does not determine what *approach to market* Defence *officials* may wish to use (which could be done through a request for tender, request for proposal, request for quote under a *standing offer* panel, competitive evaluation, some other form of iterative engagement process, or other form of documentation), nor the project delivery model (for example, prime *contract*, managing contractor, design and construct *contract*, alliance *contract* and so on). Defence *officials* should determine the appropriate *approach to market* strategy and project delivery model during the planning stage of the *procurement*.

33. Also, and as discussed below, a *limited tender* will still be a competitive process as long as it involves more than one *supplier*.

34. While the CPRs generally require an *open tender* process for *procurements* valued at or above the relevant *procurement* threshold, many Defence *procurements* are exempt from this requirement.²³ Accordingly, in circumstances where an *open tender* is not mandatory, the following factors are generally relevant to the selection of a *procurement* method:

- the nature and structure of the market;
- the extent of competition (that is, the number of genuinely competitive *suppliers*);
- schedule, cost or other constraints (for example, intellectual property, security etc).

²¹ When the term 'sole source' is used in the DPPM, it is not being used to indicate a *procurement* method, rather to indicate a situation where Defence is proposing to approach only one supplier for a *procurement*.

²² See CPRs, paragraph 9.13.

²³ See DPPM, Defence Procurement Policy Directive D2. Appendix A to the CPRs also provides for other exemptions.

35. Based on an assessment of these factors, Defence *officials* may still determine that an *open tender* process should be conducted as the best mechanism to deliver a value for money outcome.

Limited tenders

36. *Limited tenders* may only be undertaken in circumstances where the value of the *procurement*:

- is below the relevant *procurement* threshold – see chapter 2 para 4 above; ;
- is at or above the relevant *procurement* threshold but exempt from the additional rules in Division 2 of the CPRs (see Chapter 2 paragraphs 15 – 17); or
- is above the relevant procurement threshold and subject to the additional rules in Division 2 of the CPRs, but satisfies the Conditions for limited tender in paragraph 10.3 of the CPRs.

37. If a *procurement* is subject to the additional rules in Division 2 of the CPRs, Defence *officials* will normally be required to use an *open tender* for the *procurement*. There are only very limited circumstances in which a Defence *official* may decide to use a *limited tender*. These are set out in paragraph 10.3 of the CPRs. Of these, there are probably four main circumstances on which a Defence *official* may rely to conduct a *limited tender*.

38. First, there is the circumstance of ‘reasons of extreme urgency’ (paragraph 10.3b of the CPRs). A *limited tender* can be undertaken if there are reasons of extreme urgency that have been brought about by events unforeseen by Defence, such that the *goods* and services could not be obtained in time under *open tender*. A good example of where this provision might be used is where a natural disaster or other unexpected event has occurred and Government has directed Defence to procure *goods* or services in support of its emergency response.

39. However, paragraph 10.3b of the CPRs cannot validly be used in circumstances where Defence *officials* have not planned well enough in advance and now find themselves in a situation where they may not be able to undertake an *open tender* process in time to obtain the *goods* or services when they are needed. Defence *officials* cannot use poor *procurement* planning as a valid justification for running a *limited tender* process. The underlying principle is that the event giving rise to the need to undertake a *procurement* should have arisen at short notice and could not have reasonably been foreseen by Defence.

40. The second main circumstance is for ‘unsolicited innovative proposals’ where the *procurement* can be categorised as having been made under ‘exceptionally advantageous conditions that arise only in the very short term’ and which is not ‘routine *procurement* from regular *suppliers*’. (paragraph 10.3c of the CPRs). Sometimes industry will have an innovative idea that offers real value to Defence, even though it is not something that Defence has identified as a current need or priority. Paragraph 10.3c of the CPRs offers a mechanism for encouraging industry to put forward these ideas and, if Defence considers the idea of benefit, to procure directly from the relevant company without having to openly test the market.

41. However, Defence companies may sometimes seek to use this mechanism as a way of pitching their *goods* or services to Government without having to compete for a contract. If Defence *officials* act on these proposals without testing the market, then it may be unfair to other suppliers of similar *goods* or services, as well as being difficult to demonstrate value for money. Accordingly, Defence *officials* need to be cautious when using this circumstance to justify undertaking a *limited tender*. It is difficult to give definitive guidance about the kind of proposals that will meet this circumstance, however, as a general rule, it would cover most proposals that are unique or otherwise not readily obtainable in the market place. By contrast, the circumstance should not be used where the proposal is effectively an advance proposal for a requirement that Defence has already identified for *procurement* in the market. Defence *officials* should seek specialist contracting or legal advice before accepting an unsolicited proposal.

42. While Defence business units should be open to receiving and considering unsolicited innovative proposals from industry, Defence has also put in place a formal mechanism to manage these kinds of proposals from industry. This is the Centre for Defence Industry Capability (CDIC) which hosts the Defence Innovation Portal, the primary gateway for companies seeking to submit innovation proposals or ideas to the Defence Innovation Hub and Next Generation Technology Fund. For further information about the CDIC and the Defence Innovation Hub, Defence *officials* should refer to www.business.gov.au/cdic.

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43. The third main circumstance is where there is no real alternative because of an 'absence of competition for technical reasons' (Paragraph 10.3d of the CPRs). Normally, this circumstance is used where only one *supplier* can provide the relevant *goods* or services because of intellectual property or other restrictions. This circumstance cannot validly be used by a Defence *official* based simply on the *official's* perceived overall knowledge of the market. An 'absence of competition for technical reasons' has to be something more than an *official's* mere assertion that there is only one *supplier* in the market who is capable of providing the *goods* or services. It requires objective, demonstrable evidence. An example could be a situation where Defence is seeking to procure specialised medical equipment, and there are only two manufacturers of the equipment in the world because of its specialised nature. Defence could defensibly undertake a *limited tender* between the two manufacturers because there would be an absence of competition for technical reasons.

44. The fourth main circumstance is for additional deliveries of *goods* and services by the original *supplier* or authorised representative that are for replacement parts or continuing services for existing equipment, software, services or installations, when a change of *supplier* would mean the *goods* or services would be incompatible with the existing equipment or services' (Paragraph 10.3e of the CPRs). This circumstance is often used in the context of ICT *procurements* where Defence needs spare parts for the installed ICT system, or wants to upgrade the system. The parts or upgrades may be available only from the original *supplier* of the system. The underlying matters giving rise to this circumstance will often also support the circumstance discussed above dealing with an absence of competition for technical reasons.

45. Defence *officials* may sometimes seek to use this circumstance to justify the extension or continuation of consultancy or other professional services, whether or not related to ICT systems, equipment, software or support services. As a general rule, this would normally not be a valid use of this circumstance to justify (as a *limited tender*) the extension or continuation of these kinds of services, and would be an example of where the relevant Defence *officials* have not planned their procurement well enough in advance. For instance, *officials* should have built into the original *approach to market* the necessary options to extend the service period, or for the contractor to provide additional services. As noted above, Defence *officials* cannot use poor *procurement* planning as a valid justification for running a *limited tender* process.

46. Justifications for using a *limited tender procurement* method will be reported on AusTender, and made publically available in accordance with Defence's AusTender reporting requirements. Consequently, Defence *officials* should ensure that the decision to use a *limited tender procurement* method complies with the CPRs, is approved by an appropriate delegate, is defensible and the justification is recorded.

The procurement life cycle - core principles

47. The CPRs have some core principles that Defence *officials* need to consider when planning and undertaking their *procurement* activities. These are discussed below.

Value for money

48. As noted above, value for money does not necessarily mean the lowest price. In most Defence *procurements* of any complexity, determining value for money will mean assessing tenders against all the *evaluation criteria* stated in the *request documentation* and determining on the balance of all the assessments which one delivers best value for the Commonwealth. In undertaking this assessment, *officials* need to look at the total cost of ownership of the solutions. Value for money is about getting the best possible outcome over the whole-of-life of the *goods* or services.²⁴

49. The standard conditions of tender in the [endorsed Defence contracting templates](#) include *evaluation criteria* that meet the requirements of the CPRs for determining value for money, and in particular enable Defence *officials* to properly consider the relevant financial and non-financial costs and benefits of tenders. In major Defence *procurements*, particularly materiel *procurements*, one of the criteria to be considered in determining value for money is Australian Industry Capability (AIC). This is an explicit criterion in ASDEFCON tendering and contracting templates. The ability for the Australian Government to maintain an AIC program is provided for under our free trade agreements as an express exception to the non-discrimination principle (which is discussed below). Indeed, even before Defence releases *request documentation*, Defence *officials* will consider during the planning

²⁴ See paragraphs 4.5 and 4.6 of the CPRs.

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stage of the *procurement* the requirement or potential for Australian industry involvement in the *procurement*, consistent with the Government's defence and industry policy.

50. During the evaluation stage of a *procurement*, Defence *officials* will evaluate tenders against the stated *evaluation criteria* in accordance with the process and methodology set out in the tender evaluation plan. If the assessment of tenders against the non-price *evaluation criteria* leaves little or no discrimination between the tenders, then it is likely that the lowest priced tender will be the best value for money. However, the assessment of value for money can become more difficult where, for example, one *tenderer* offers a high level of capability or performance at a higher price, than other tenders which meet the minimum requirements but offer a lower level of capability or performance at a lower price. Effectively, the question for Defence *officials* becomes whether the higher level of capability or performance at the higher price is 'worth' more or less to Defence than the lower level of capability or performance at the lower price. This is a subjective assessment and *officials* need to make sure that they can properly articulate the reasons for why they make their decision. As long as the reasons are sensible and logical and in accordance with the PGPA Act framework requirements and duties, then the decision itself will be defensible.

51. Defence *officials* also need to make sure that when making these decisions, they are comparing 'apples with apples'. *Officials* need to ensure that all omissions and risks relating to a tender have been properly understood, considered, and if necessary quantified and 'priced in' to that tender, so as to ensure that when comparing with another tender that does not have those omissions or risks, the comparison is being done on an equivalent basis. For more guidance about how to undertake tender evaluation, Defence *officials* should refer to the [Complex Procurement Guide](#)²⁵.

52. Selecting the most appropriate *procurement* process that is commensurate with the scope, scale and risk of the *procurement* will also help Defence *officials* achieve value for money. This will normally involve some form of competition.

Competition

53. As paragraph 5.1 of the CPRs notes, competition is a key element of the Australian Government's *procurement* framework. A competitive *procurement* process is normally the mechanism by which Defence ensures that it is receiving value for money. Competition is important because time and again it has been shown to be the most effective motivator for industry to reduce costs and improve performance. Whilst early contractor selection and sole source *procurement* can also be an effective and efficient execution strategy in appropriate cases, it should not be used solely to avoid the need for competitive tendering, especially when a viable competition can be held. Sound commercial judgment, not convenience, should determine the right approach.

54. However, competition does not necessarily mean an *open tender*. Any process involving more than one *supplier* will be competitive. Accordingly, if an open competition is not feasible, Defence *officials* should explore opportunities for a limited competition (known under the CPRs as a *limited tender*). However, as discussed earlier in this Chapter, for a *procurement* that is subject to Division 2 of the CPRs, unless it is exempt, there are only very limited grounds on which Defence *officials* are permitted to conduct a *limited tender* (whether sole source or competitive).²⁶

55. Competition is important as under competitive processes (whether *open tender* or *limited tender*), *suppliers* put forward their best solution and price. *Suppliers* know that if they don't do so then it is likely that one of their competitors will win the work instead. Effective competition creates the incentive for *suppliers* to deliver quality *goods* or services at more competitive prices. In other words, value for money is driven by the market.

56. This is so even when Defence *officials* are procuring from *standing offer* panel arrangements. If the *standing offer* is established through an *open tender* process, then Defence *officials* may procure from the panel by approaching one, some or all of the *suppliers* on the panel for a quote or proposal. It is often tempting for Defence *officials* to seek a quote from just one panellist, particularly if the panellist is known to them. However, it is also important to provide opportunities for all capable *suppliers*, particularly small to medium enterprises, as this helps maintain a strong Defence industrial base, as well as incentivising best value performance. Accordingly, the right approach to procuring from a panel will depend on the circumstances of each case. For more information about establishing and using

²⁵ See Chapter 5 of the Guide.

²⁶ See paragraph 10.3 of the CPRs.

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standing offer panel arrangements, Defence *officials* should refer to the factsheet on the [Commercial Division Fact Sheets and Guidance](#) intranet page.

57. Also, the Defence panel manager will usually have established the business rules for the panel to ensure that it is accessed and used appropriately, *suppliers* on the panel have a fair and equitable chance of being engaged through the arrangement, and Defence is able to demonstrate the panel is delivering value for money. Defence *officials* should make themselves aware of and comply with these business rules to ensure that Defence panels are used appropriately.

58. While awarding *contracts* through full and open competition is key to ensuring that the Government efficiently acquires *goods* and services to best meet its needs, there are certain circumstances when competition may not be practical. This can especially be the case given the nature of major Defence *procurement*, and particularly (but not exclusively) in complex materiel related *procurements*. For instance, a competitive process will be unable to be undertaken if Defence requires a unique product or service such that there is only one *supplier* that offers the required capability or solution. This will be the case where, for example, a *supplier* has the patent for a particular product, or because of other intellectual property rights a *supplier* is the only one that is able to install or maintain a particular system or network.

59. A sole source *procurement* may also arise because it is a follow-on *contract* and only the incumbent contractor can continue the work due to intellectual property restrictions or because the contractor is the only one with the necessary skills and expertise. This kind of 'supplier lock in' may be able to be avoided if Defence has acquired sufficient technical data and associated intellectual property rights to enable a competition to be undertaken. Avoiding 'supplier lock in' promotes value for money by establishing competitive tension across the lifecycle of the procured *goods* or services.

60. Accordingly, Defence *officials* should consider during the planning stage of the *procurement* how to maintain the competitive environment not only at the outset of the *procurement*, but over the life of the program or activity. Conducting market research to understand the market and the scope for competition is critical. In addition, early and ongoing engagement with industry around Defence's requirements is also important, particularly as this may allow new entrants to enter the market in time to meet those requirements. The importance of market research and ongoing industry engagement is discussed in the Complex Procurement Guide.²⁷

61. For major Defence *procurements*, a key to being able to avoid *supplier* lock in of the kind mentioned above and to remove barriers to future competition, is for Defence *officials* to have an effective intellectual property and technical data strategy that covers the whole of the lifecycle of the *goods* being procured. For example, for a major ICT project or major materiel acquisition, securing the necessary technical data and associated intellectual property rights (in particular, the ability to licence to third parties) in the initial *procurement* process will maximise competitive alternatives across the whole of life of the capability, including future *procurement* of additional systems or spares, operation and training, maintenance and repair, integration with other systems, and future updates, upgrades or modifications.

62. If proposing to undertake a sole source *procurement*, Defence *officials* will need to justify this in their *procurement* plan or Endorsement to Proceed, noting that the Commitment Approval delegate (see section 23(3) of the PGPA Act) will also need to be satisfied as to the *procurement* method (which would be a *limited tender*). Defence *officials* should consider what mechanisms are available to drive value for money outcomes from their engagement with industry, especially if this is done in a non-competitive environment. In particular, in this context Defence *officials* will need to be able to demonstrate how the price has been determined to be fair and reasonable for the required *goods* or services, and should consider seeking [specialist financial advice](#) to determine this.

63. Achieving value for money in a non-competitive environment can be particularly challenging, and [specialist procurement advice](#) should be sought to develop appropriate sourcing strategies to achieve a value for money outcome across the life of the *goods* or services being procured.

Non-discrimination

64. Effective competition also requires non-discrimination.²⁸ This principle means that Defence is normally unable to require in its *request documentation* that particular work be done in Australia, or done by Australian based *suppliers*, or that *suppliers* use Australian materials. The intent behind the

²⁷ See Chapter 2 of the Guide. See also the Early Industry Engagement Better Practice Guide.

²⁸ See paragraph 5.1 of the CPRs.

principle is that the market will work out how best to meet the requirement being sought by Defence. In many cases, the work will need to be performed in Australia, and indeed at particular locations in Australia, however, this should not prevent foreign companies from being able to bid to undertake the work as long as they are able to meet Defence's service delivery requirements in those locations.

65. Specific exemptions can be sought from the non-discrimination principle in appropriate cases (for example, through a measure under paragraph 2.6 of the CPRs), or through other mechanisms such as the AIC policy (mentioned above), or other specific Government policy decisions. These exemptions are most likely to be found in major capital equipment acquisition decisions (for example, naval shipbuilding).²⁹ Defence Procurement Policy Directive D15 requires Defence *officials* to comply with the Defence AIC policy (see also the Note following paragraph 5.6 of the CPRs). Importantly, these exemptions have to be consistent with Australia's obligations under its FTAs.³⁰

Ethical behaviour – the balance between probity and industry engagement

66. Section 6 of the CPRs (see Chapter 4 of the DPPM) sets out the requirement for Defence *officials* to properly use and manage *public resources*. 'Proper' means efficient, effective, economical and ethical.³¹

67. Attention to probity is integral to ensuring the defensibility, transparency and success of Defence *procurements*. Defence *procurements*, particularly those relating to major capital acquisitions, ICT projects and major facilities, are under increasing scrutiny by *tenderers*, the Australian National Audit Office, Senate Estimates and other Parliamentary Committees, and the media.

68. Probity is the evidence of ethical behaviour, and can be defined as complete and confirmed integrity, uprightness and honesty in a particular process. The [Department of Finance website](#) lists a number of principles which underpin ethics and probity in Australian Government *procurement*.

69. Defence *officials* need to put in place appropriate and sensible mechanisms to assure the probity of Defence *procurement* processes in line with the scope, scale, risk and sensitivity of the particular *procurement*. External legal process or probity advisers can be engaged when necessary. Occasionally, Defence may also wish to appoint an external probity auditor, either at the conclusion of the *procurement* process or at a key point during the process, to audit whether Defence *officials* followed the process and probity requirements set out in the documentation governing the *procurement*.

70. However, it is very important that Defence *officials* do not use probity as a reason or excuse not to engage appropriately with the market or *tenderers* throughout a *procurement* process. As long as it is done fairly and consistently, there is no reason why a *procurement* process cannot build in mechanisms (in the *request documentation*) for ongoing engagement with industry and *tenderers* throughout a *procurement* process. This might include engagement before tender release around Defence's requirements or to understand the market's capacity or capability, or engagement during the tender process, such as through *tenderer* clarification activities or mechanisms to allow *tenderers* to update and improve their offers (sometimes called 'offer definition and improvement activities').

71. A key factor in delivering good *procurement* outcomes is early market engagement and continued open dialogue with *suppliers* throughout the *procurement* process. Understanding *suppliers* and the market is part of the planning necessary to develop the right *approach to market*. Defence *procurement* should be supported by robust *procurement* plans that have a level of detail commensurate with the scope, scale and risk of the *procurement*. This is the first stage of the *procurement* life cycle.³² Good *procurement* also results from proactively managing *supplier* and other key stakeholder relationships throughout the *procurement* process and for the duration of the *contract*.

72. Defence *officials* may sometimes be approached by *tenderers* or contractors to sign a confidentiality agreement or deed (sometimes called a Non-Disclosure Agreement) either on behalf of the Commonwealth or in their personal capacity prior to receiving information from the *tenderer* or contractor. Defence *officials* are already subject to legal obligations to protect and not misuse

²⁹ As noted in Chapter 1 of the DPPM, specific Government policy decisions may be found in Cabinet decisions, or other Government approvals relevant to a commitment of relevant money, to the extent that the decision or approval establishes a course or line of action.

³⁰ This is why paragraph 10.32 of the CPRs provides that the economic benefit requirement set out in paragraph 10.31 of the CPRs has to operate 'within the context of' (that is, subject to) Australia's FTAs.

³¹ See paragraph 6.1 of the CPRs.

³² More guidance on industry engagement and *procurement* planning is set out in Chapter 2 of the Complex Procurement Guide and the Early Industry Engagement Better Practice Guide.

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information obtained as a result of their employment with Defence (for example, under the *Public Service Act 1999*; see also PGPA Act, section 28). Therefore, Defence *officials* are under no obligation to sign such agreements and should not do so without first seeking legal advice from Defence Legal. In particular, *officials* should be aware that confidentiality agreements will often contain an indemnity from the *official* (or Commonwealth) in favour of the person disclosing the information.

73. As part of Defence's probity framework for major *procurement* processes, Defence *officials* may be requested (for example, by the legal process or probity adviser) to sign a statement confirming that they are aware of their legislative and policy obligations to properly protect confidential information (and to declare any actual or perceived conflicts of interests). It is appropriate for Defence *officials* to sign such a confirmation in these circumstances, noting that the statement does not constitute a formal agreement.

74. There are some senior Defence officials who will have regular access to sensitive information related to Defence *procurements*, in particular the members of the Defence Committee, Investment Committee and Enterprise Business Committee. In addition, Defence's Contestability organisation may also be required to have access to this information to perform its function. As part of Defence's probity framework, members of these Committees and the Contestability organisation acknowledge under their respective business rules the legislative and policy obligations that apply in relation to confidential information and conflicts of interests. Accordingly, these Defence *officials* are not required to receive *procurement* specific probity briefings or sign individual probity statements.

75. The legislative and policy obligations related to probity include:

- the general duties of *officials* set out in sections 25 to 29 of the PGPA Act (dealing with due care, diligence, good faith, declaring interests etc);
- the APS Values and APS Code of Conduct (see *Public Service Act 1999*, sections 10 and 13);
- Defence Instruction (General) - PERS 25-4 - *Notification of Post Separation Employment*;
- Defence Instruction (General) - PERS 25-6 - *Conflicts of Interest and declarations of interests*; and
- Defence Instruction (General) - PERS 25-7 - *Gifts, Hospitality and Sponsorship* (see also AAI 10 - Managing Relevant Property).

76. Legal process and probity advisers can be engaged to help ensure that the processes, procedures and documentation used in implementing a major Defence *procurement* are robust, transparent and capable of external audit. However, there is no requirement for Defence *officials* to engage an external probity or process adviser, or that they be independent of another adviser (for example, the legal adviser). Depending on the nature of the *procurement*, internal personnel (for example, contracting officers or Defence Legal officers) can potentially perform the role of a probity adviser for a Defence *procurement*.

77. In relation to 'high risk' *procurements*, the Australian National Audit Office takes the view that a probity adviser should not have any actual or perceived conflicts of interest that could compromise their duty to give candid advice about the probity aspects of the project. A perceived conflict could include simultaneously serving as both probity and legal adviser. The decision about whether to have an independent probity or legal process adviser should be made based on the individual circumstances of the case, and in particular, whether the *procurement* is likely to be high profile, high value, controversial or sensitive.

78. The main reason to have a 'legal process adviser' as opposed to a 'probity adviser' is to maintain legal professional privilege in relation to the 'probity' advice. Non-lawyers cannot provide legal advice, so no legal professional privilege would apply to their advice if there is a challenge to the *procurement* process. Advice from a lawyer in relation to probity/process would be covered by the same rules as other legal advice.³³

79. A template probity/legal process plan can be found on the Commercial Division [Tools and Templates](#) intranet page.

³³ For more information about legal professional privilege (LPP), Defence *officials* should refer to the [Defence Legal LPP Fact Sheet](#).

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Risk management

80. A key principle of the CPRs is risk management, and in particular that risks should be borne by the party best placed to manage them.³⁴ Depending on the nature of the *procurement*, the risks that may need to be considered could include technical, operational, industrial, managerial, work health and safety, financial, legal, commercial, or probity risks. These risks need to be considered across the *procurement* lifecycle. For instance, the Complex Procurement Guide discusses the importance of risk identification and management in the planning stage of the *procurement* life cycle, as well as risk assessment during the tender evaluation stage.³⁵

81. In the planning stage, Defence *officials* will consider the risks relating to the conduct of the *procurement* process itself and what is being procured, and how these can be addressed through the *procurement* strategy. During evaluation and *contract* negotiation, Defence *officials* will be more focussed on assessing and addressing the risks in relation to the requirements of the *contract*, and the allocation of commercial and other risk under the *contract*, and considering how these risks can best be managed through setting up the contract management arrangements for the *contract*.³⁶

82. In relation to *procurements* that are required to be considered by the Defence Investment Committee (for example, Major Capital Equipment, and major ICT and infrastructure procurements), the ['Smart Buyer' framework](#) sets out various risk categories that should be considered when developing the Project Execution Strategy and the *procurement* and contracting strategies for the *procurement*.

83. Defence also has formalised policy and processes for the assessment and management of risk in the Defence environment. For instance, in relation to materiel *procurement*, Defence *officials* should follow the [Defence Materiel Manual \(PROJ\) \(DMM\(PROJ\)\) – 11-0-002- CASG Project Risk Management Manual](#) and [DMM\(LOG\)-04-0- 003- Materiel Logistics Manual Volume 3 – Risk Management in Sustainment](#).

84. The endorsed Defence contracting templates set out the standard Defence approach to risk allocation between the Commonwealth and its contractors. The templates have been drafted in accordance with the above principle that risks should be borne by the party best placed to manage them. In many cases, this will be the contractor, noting that companies are able to take out insurance (or self-insure) for most *contract* related risks.

85. However, given the scope, scale, value and risk of many Defence contracts, it is not unusual for contractors to seek to limit their liability, particularly under ICT *contracts*, and *contracts* for the acquisition or sustainment of major capital equipment. In these circumstances, Defence *officials* need to undertake a risk assessment in relation to the proposed limitation of liability to understand the implications for the Commonwealth and to quantify any potential exposure. For instance, the limitation may mean that the Commonwealth will be unable to sue the contractor for its normal entitlement to damages for breach of *contract*. The Defence contracting templates make clear which categories of liability the Commonwealth may consider limiting and by contrast those categories in relation to which it will not consider limiting the contractor's liability (for example, personal injury or death).

86. Defence has developed tools and guidance to assist Defence *officials* with the conduct of [liability risk assessments](#).

87. The [endorsed Defence contracting templates](#) also contain provisions requiring contractors to take out necessary insurances to cover their work for Defence. Again, depending on the nature of the Defence *contract*, the contractor's insurance arrangements can be both complex and costly (noting that the costs will be passed on to Defence through the *contract* price). Defence has developed tools and guidance to assist Defence *officials* with determining and managing *contract* insurance requirements which can be found on the Commercial Division [Approved Contractor Insurance Program Initiative](#) intranet page.

88. In relation to materiel *procurement*, Defence has established the Approved Contractor Insurance Program (ACIP) as a joint Defence and Industry *procurement* reform initiative that involves a periodic centralised review of participating Defence companies' global/group and local insurance

³⁴ See section 8 of the CPRs (in Chapter 3 of the DPPM).

³⁵ See Chapters 2 and 5 of the Complex Procurement Guide.

³⁶ See the [Defence Contract Management Framework](#). For further guidance on the contract management stage of the procurement lifecycle, Defence *officials* should refer to Chapter 7 of the Complex Procurement Guide and the Defence Contract Management Handbook.

programs. The purpose of the review is to pre-qualify a participating company's insurance program, if Defence is satisfied with the company's insurances. This helps to reduce the costs of tendering for both industry and Defence as well as improve risk management within Defence in respect of insurable risks that arise in connection with the performance of major Defence *contracts*. Companies granted ACIP status are taken to comply with insurance requirements in individual *contracts* and do not have to provide evidence about their insurances during tendering and *contract* management phases of a *procurement*. The ACIP initiative is open to the 'top' 6-7 major Defence companies and participation by the companies is voluntary. The ACIP Register lists those companies currently holding ACIP status. For more information see the Commercial Division [Risk Assessments and Liabilities intranet page](#).

Accountability and transparency

89. The Australian Government is committed to ensuring accountability and transparency in its *procurement* activities. Accountability involves Defence *officials* being responsible for their *procurement* actions and decisions and related outcomes, while transparency involves Defence enabling appropriate scrutiny of its *procurement* activities.³⁷ Accordingly, the CPRs require Defence *officials* to meet certain record-keeping, reporting and other requirements before and after entering into a *contract* with a supplier, including documenting relevant approvals and other *procurement* related decisions and actions, and *AusTender* and other reporting requirements. *AusTender* is the Australian Government's *procurement* information system.

90. The [Complex Procurement Guide](#) provides guidance for Defence *officials* about how they can meet their accountability and transparency requirements as they progress through the *procurement* life cycle.

The procurement life cycle – overview of how to plan and undertake a procurement

Introduction

91. Good *procurement* practice is not about just mechanically applying the CPRs or the additional Defence Procurement Policy Directives in the DPPM. It is about developing a strong understanding of all aspects of the *procurement* lifecycle and using judgement to apply this understanding in each case to deliver the best outcomes. While Defence *officials* need to comply with the CPRs and the DPPM, *officials* should design each *procurement* process in a way that is commensurate with the scope, scale and risk of the relevant *procurement*.

92. So, for instance, *procurements* that are valued below the relevant *procurement threshold* will normally be low risk, routine *procurements* of goods or services. They are often called 'simple *procurements*' in Defence. However, many *procurements* valued at or above the relevant *procurement threshold* may also be simple in nature. For example, a *procurement* of more spare parts from an existing *supplier* may be valued at a lot higher than the *procurement threshold*, but would normally be a simple purchasing exercise. Accordingly, using a *procurement* process that involves significant cost, time and resources for both Defence and *suppliers* would not be sensible or represent value for money for these kinds of *procurements*. The concept of value for money is not limited to the *procurement* outcome, but is also a consideration when designing a *procurement* process.

93. By contrast, many Defence *procurements* are highly complex undertakings because of the nature of the goods, works or services being sought. The process for these *procurements* needs to be designed and undertaken in light of the scope, scale and risk of what is being procured.

94. The Complex Procurement Guide provides more in-depth guidance about how these kinds of *procurements* should be planned and executed across the life cycle. The following discussion provides an overview of the guidance for undertaking a *procurement* process.

Guidance overview

95. For more complex *procurements*, Defence *officials* will normally be required to prepare three main documents:

- a *procurement* plan;
- *request documentation*; and
- an evaluation plan.

³⁷ See section 7 of the CPRs (in Chapter 3 of the DPPM).

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96. The *procurement* plan details the process that will be undertaken. It differs from a business case in that the business case explains why a *procurement* is being undertaken, including its value proposition, while the *procurement* plan explains how the *procurement* is to be undertaken. However, for convenience, and depending on the scope, scale and risk of the particular *procurement*, Defence *officials* may sometimes include the *procurement* plan as part of, or as an attachment to, the business case.

97. The *procurement* plan will normally cover the following:

- a description of the *procurement*;
- the *procurement* method to be used (for example, *open tender*, *limited tender*), including reasons;
- proposed probity arrangements;
- proposed governance arrangements, such as the need for a steering committee;
- the *procurement* risk assessment; and
- indicative time-lines and resources (including budgeting of funds to support the *procurement*).

98. The level of detail in the *procurement* plan should reflect the scope, scale and risk of the *procurement*. For less complex *procurements*, the Endorsement to Proceed document may be sufficient to serve as the *procurement* plan. For *procurements* that are required to be considered by the Defence Investment Committee (for example, Major Capital Equipment, and major ICT and infrastructure procurements), the *procurement* plan will be informed by the [Smart Buyer Project Execution Strategy](#).

99. The *request documentation* sets out the rules for the *procurement*. It describes to *potential suppliers*, the specifics of the *procurement*, the manner in which *submissions* are to be forwarded to Defence (for instance, through *AusTender*) and how *submissions* will be evaluated. If there is a possibility that other agencies will access the resulting *contract* (for example, a *standing offer* arrangement), Defence *officials* need to ensure the *request documentation* includes a statement to that effect.

100. The *request documentation* will usually be the primary information source used by *potential suppliers* when developing a *submission*. After reviewing the *request documentation*, the *potential suppliers* should be able to understand Defence's requirements and how the *procurement* is to provide value for money. This is why the CPRs, in effect, require that *request documentation* include all information necessary to permit *suppliers* to prepare and lodge responsive *submissions*.³⁸

101. *Request documentation* will normally include:

- a description of the requirement (for example, the statement of work), including any essential requirements;
- any *conditions for participation* or *minimum content and format requirements*;
- *evaluation criteria* and methodology;
- the other rules of the process; and
- the draft *contract*.

102. The statement of work should describe:

- the nature, scope and, where known, quantity of the *goods*, works or services required;
- specific requirements to be fulfilled or provided, including certification, test and evaluation, plans, drawings and training materials;
- any applicable technical *specifications* (in which case, these should be described in terms of function and performance requirements, rather than specific designs, trademarks, or product descriptions) and the related standards on which the *specifications are based*.³⁹

³⁸ While this discussion about *request documentation* applies to *procurements* to which the additional rules in Division 2 of the CPRs apply, it is also good practice for all *procurements*.

³⁹ In relation to specifications and standards, see paragraphs 10.9, 10.10, 10.11, 10.12 and 10.39 of the CPRs

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- whether any of the requirements are 'essential requirements' (in which case, if *suppliers* are not able to meet the requirements, they will be excluded from consideration);
- the timeframes expected for the delivery of the required *goods*, works or services.

103. *Conditions for participation*⁴⁰ are mandatory requirements which describe minimum standards or essential characteristics that *potential suppliers* have to meet for their *submissions* to be considered. Defence *officials* should take great care when deciding whether to include *conditions for participation* and what these might be, as the CPRs require that Defence reject any *submission* that does not meet the *conditions for participation*. *Conditions for participation* are limited to those assuring the legal, financial, technical or commercial capabilities of the *supplier* to meet the particular requirements of the *procurement*.

104. Defence *officials* may also decide to set out *minimum content and format requirements*⁴¹ in their *request documentation*, for example:

- in relation to minimum content – Defence may require the *tenderer* to provide a certificate of insurance or a particular licence to support the *submission*; or
- in relation to formatting – Defence may require *submissions* to be submitted electronically through *AusTender*.

105. If the *tenderer's submission* does not meet the *minimum content and format requirements*, Defence *officials* will normally be required to exclude the *submission* from further consideration, unless the *officials* consider that the failure to meet the requirement has been due to an unintentional error of form in the *submission*. If so, Defence *officials* have the discretion to allow the *submission* to be corrected, subject to ensuring that all *tenderers* are treated fairly and equitably.

106. The *request documentation* will also set out the *evaluation criteria*. These set the foundation for a fair and equitable assessment of *submissions*. What the appropriate criteria are depends on the nature of the particular *procurement* and should flow from the planning stage.

107. Evaluation of *tenderers* should be based on a balance of all the criteria, or if a weighting methodology is used, on the relative importance of each criterion. If a weighting methodology is used, Defence *officials* should consider setting this out in the *request documentation* so that *potential suppliers* can appropriately focus their responses. This will make the process more transparent, which should limit misunderstandings that may result in complaints.

108. The *request documentation* should also set out the rules around lodgement of *submissions*, whether this is through *AusTender* or other means, including the closing time for *submissions*. Adherence to deadlines is important in maintaining the integrity and probity of the tender process. Therefore, Defence *officials* are not normally able to accept late *submissions*, unless there has clearly been a mishandling of the *submission* by Defence.

109. During the time that the tender process is open, Defence *officials* will need to be in a position to answer queries on the *procurement*. This needs to be done fairly and impartially in a manner that does not create an unfair advantage for any *potential supplier*. Therefore, the *request documentation* should explain the rules for answering questions and distributing responses.

110. At least in request for tender processes, Defence normally requires *tenderers* to indicate their compliance (or non-compliance) with a draft *contract* which contains the terms and conditions on which Defence is willing to enter into a *contract* for the requirement. Defence *officials* should assess the risk with the *tenderers'* non-compliances with the draft *contract* to enable *tenderers* to be evaluated against a common baseline.

111. The evaluation plan is an internal Defence document that sets out the methodology and processes to be followed by Defence when evaluating *submissions*. To reduce the risks of a perceived or actual bias in the *procurement* process, Defence *officials* should preferably develop and finalise the plan before an approach is made to the market, but in any event before *submissions* are opened.⁴² The Complex Procurement Guide provides guidance about the contents of an evaluation plan.⁴³

⁴⁰ While this discussion about *conditions for participation* applies to *procurements* to which the additional rules in Division 2 of the CPRs apply, it is also good practice for all *procurements*.

⁴¹ While this discussion about *minimum content and format requirements* applies to *procurements* to which the additional rules in Division 2 of the CPRs apply, it is also good practice for all *procurements*.

⁴² See Defence Procurement Policy Directive D44.

⁴³ See Chapters 3 and 5 of the Guide.

112. The evaluation plan will normally identify the organisation that is responsible for the evaluation, and recommend a preferred *supplier* (or a shortlist of *potential suppliers*). Depending on the nature and complexity of the evaluation, the evaluation organisation may comprise a steering committee, an evaluation board or team and subordinate evaluation working groups. The evaluation organisation may also include internal or external advisers or experts to assist with elements of the evaluation, for example, the technical requirements, financial viability or price.

113. When receiving *submissions*, Defence *officials* need to use a mechanism that assures fairness and impartiality of the *procurement* process. *Submissions* should only be received into a secure environment. This can be through *AusTender* or other secure electronic system, or a physical tender box or tender room. Any *submissions* received after the closing time should be considered late and should generally not be accepted (see paragraph 108 above).

114. The evaluation committee should first check the *submissions* to make sure they satisfy any mandatory requirements, such as *minimum content and format requirements* and *conditions for participation*, and should then proceed to undertake the detailed evaluation of *submissions* against the *evaluation criteria*.

115. The evaluation of *submissions* is the most important aspect of determining value for money in a *procurement*. When evaluating *submissions*, the evaluation committee needs to make sure that it faithfully applies the *evaluation criteria*, methodology and procedures that have been set out in the *request documentation* and the evaluation plan. If the committee does not then this could compromise the evaluation outcome and give rise to a complaint or legal action by an affected *tenderer*, and require Defence to set aside the evaluation and possibly the whole *procurement* process, as well as incurring additional costs in dealing with the complaint.

116. The CPRs require Defence *officials* to maintain appropriate documentation of the decision-making process for each *procurement*. Therefore, the evaluation committee should be accurate and scrupulous in recording the evaluation and the reasons underlying its decisions. As a general rule, officials should ensure that there is sufficient documentation to provide an understanding of why the *procurement* was necessary, the process that was followed and all relevant decisions made, including approvals, and the basis of those decisions.

117. The evaluation committee should therefore prepare an evaluation report to document the evaluation process and the recommendation of a preferred *tenderer* (or shortlist of *tenderers*). The report can also assist in the future when providing feedback to *tenderers* through the debriefing process.

118. The evaluation report will normally contain:

- a summary of the evaluation process;
- a summary of the assessment of each *submission*;
- reasons for the exclusion of a *submission* from further consideration;
- recommendations concerning the preferred *tenderer(s)* based on value for money;⁴⁴ and
- details of any issues which need resolution during subsequent contract negotiations.

119. The evaluation committee members will normally sign the report and submit this for endorsement by the relevant delegate.

120. The CPRs require Defence *officials* to notify affected *tenderers* promptly of the rejection of their *submission* or the award of a *contract*, and if requested, provide a debrief to the *tenderers* (both successful and unsuccessful *tenderers*).⁴⁵ A debrief (whether verbal or written) should include, as appropriate:

- an explanation of why the *submission* was unsuccessful (or successful);
- areas of weakness or non-compliance in the offer;
- suggestions as to how future *submissions* can be improved; and

⁴⁴ For *procurements* to which the additional rules in Division 2 of the CPRs apply, Defence *officials* are required to award the *contract* to the *tenderer* that is assessed to provide the best value for money in accordance with the *request documentation*, including compliance with any *conditions for participation* and essential requirements. (See CPRs, paragraph 10.34 to 10.38).

⁴⁵ CPRs, paragraph 7.17.

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- in the case of unsuccessful *tenderers*, if the *contract* has already been successfully negotiated, the name of the successful *supplier* and total *contract* price (noting that this needs to be reported on *AusTender* in any event, if valued at or above \$10,000).

121. Defence *officials* should keep a written record of the debriefing.

122. The final stage in the *procurement* process itself relates to the negotiation and award of the *contract* with the preferred *tenderer*. During *contract* negotiations, Defence *officials* should seek to resolve any issues that were identified during the evaluation.

123. At any time during the *procurement* process, Defence can determine that awarding a *contract* is not in the public interest.⁴⁶ Public interest grounds generally arise in response to new information or unforeseen events which materially affect the objectives or reasons underlying the original *procurement* requirement as specified in the *request documentation*. Examples of situations in which it may not be in the public interest to award the *contract* could include:

- a Government decision to cancel or vary the program to which the *procurement* relates;
- unforeseen technological or environmental changes affecting the business case for the *procurement*;
- discovery of new information materially affecting the policy behind or operational effectiveness of the project or *procurement*.

124. However, termination of a *procurement* process is a serious step with potential legal and management risks that should be considered and addressed before any decision is made. At the least, it can harm Defence's credibility with *suppliers* that, in turn, may discourage *suppliers'* participation in future *procurements*. On the other hand, termination may be compelled in order to protect the integrity of the *procurement* process and avoid the awarding of a *contract* in a manner inconsistent with the stated evaluation process.

125. Defence *officials* cannot terminate a *procurement* process simply because they may be dissatisfied with the outcome of the evaluation conducted in accordance with the stated rules, conditions and criteria set out in the *request documentation* and evaluation plan.

126. If Defence cancels a *procurement* on the basis that it is not in the public interest to award a *contract*, it should normally provide *potential suppliers* with reasons. In any case, prior to cancelling a *procurement*, Defence *officials* should seek specialist legal or contracting advice.

127. Once Defence has entered into a *contract*, Defence *officials* need to ensure that they manage the *contract* effectively so that all parties to the *contract* (including Defence) fully meet their respective obligations as efficiently and effectively as possible, and to deliver the business and operation objectives required by the parties. Effective contract management is a key enabler to delivering value for money, as well as supporting proper governance and risk management across the life of the *contract*. Defence *officials* should refer to the Defence Contract Management Framework and the Defence Contract Management Handbook to support them achieving best practice contract management. The Framework brings together the underpinning principles, policies, tools, templates, guidance and competencies required to support more collaborative business relationships with industry and deliver more effective contract outcomes. Defence *officials* should apply the Framework and use the Handbook when undertaking contract management.

⁴⁶ For *procurements* to which the additional rules in Division 2 of the CPRs apply, this is the only ground on which a Defence *official* can decide not to award a *contract* in relation to the *procurement*. (See CPRs, paragraphs 10.37 and 10.38).

Chapter 3

The procurement framework

2. Procurement framework

CPR 2.1 – 2.6

Procurement framework

- 2.1 The Commonwealth *Procurement Rules* (CPRs) are issued by the Minister for Finance (Finance Minister) under section 105B(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).
- 2.2 *Officials* from *non-Corporate Commonwealth entities* and prescribed *corporate Commonwealth entities* listed in section 30 of the *Public Governance, Performance and Accountability Rule 2014* **must** comply with the CPRs when performing duties related to *procurement*. These entities will collectively be referred to as *relevant entities* throughout the CPRs.
- 2.3 Rules that **must** be complied with in undertaking *procurement* are denoted by the term '**must**'. *Non-corporate Commonwealth entities* **must** report non-compliance with the rules of the CPRs through the Commonwealth's compliance reporting process. The term 'should' indicates good practice.
- 2.4 The CPRs are the core of the *procurement* framework, which also includes:
 - a. [web-based guidance](#), developed by the Department of Finance (Finance) to assist entities to implement the *procurement* framework;
 - b. [Resource Management Guides](#), which advise of key changes and developments in the *procurement* framework; and
 - c. templates, such as the Commonwealth Contracting Suite, which simplify and streamline processes, creating uniformity across Commonwealth contracts to reduce the burden on businesses when contracting with the Commonwealth.
- 2.5 An *Accountable Authority* may use [Accountable Authority Instructions](#) to set out entity-specific operational rules to ensure compliance with the rules of the *procurement* framework.

Note: As the Defence *Accountable Authority*, the Secretary has issued Defence's AAs. The AAs set out specific operational rules dealing with *procurement*.

- 2.6 Nothing in any part of these CPRs prevents an *official* from applying 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.

Defence Procurement Policy Directives

- D2. For paragraph 2.6 of the CPRs, the Secretary has determined that the procurement of the *goods* and services listed in Table 1 below are exempt from the operation of Division 2 of the CPRs.
- D3. If a Defence *official* determines that an exemption given under paragraph 2.6 of the CPRs applies to a *procurement*, the *official* **must** ensure that the reasons supporting that determination are appropriately documented.
- D4. If a Defence *official* seeks to exempt a particular *procurement* (not otherwise covered by an existing exemption) from all or part of the CPRs, the *official* **must** seek the Secretary's written approval.

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Table 1

<p>Goods</p> <p>The <i>procurement</i> of goods that fall within the following US Federal Supply Codes (FSC):</p>	<ul style="list-style-type: none"> - FSC 10 Weapons; - FSC 12 Fire Control Equipment; - FSC 13 Ammunition and Explosives; - FSC 14 Guided Missiles; - FSC 15 Aircraft and Airframe Structural Components; - FSC 16 Aircraft Components and Accessories; - FSC 17 Aircraft Launching, Landing, and Ground Handling Equipment; - FSC 18 Space Vehicles; - FSC 19 Ships, Small Craft, Pontoons and Floating Docks; - FSC 20 Ships and Marine Equipment; - FSC 23 Ground Effect Vehicles, Motor Vehicles, Trailers and Cycles; - FSC 28 Engines, Turbines, and Components; - FSC 29 Engine Accessories; - FSC 31 Bearings; - FSC 46 Water Purification and Sewage Treatment Equipment; - FSC 48 Valves; - FSC 49 Maintenance and Repair Shop Equipment; - FSC 54 Prefabricated Structures and Scaffolding; - FSC 58 Communication, Detection, and Coherent Radiation Equipment; - FSC 59 Electrical and Electronic Equipment Components; - FSC 60 Fibre Optics Materials, Components, Assemblies, and Accessories; - FSC 61 Electric Wire, and Power and Distribution Equipment; - FSC 63 Alarm, Signal and Security Detection Systems; - FSC 66 Instruments and Laboratory Equipment; and - No code - Specialty Metals.
<p>Services</p> <p>The <i>procurement</i> of the following kinds of services:</p>	<ul style="list-style-type: none"> - design, development, integration, test, evaluation, maintenance, repair, modification, rebuilding and installation of military systems and equipment; - operation of Government-owned facilities; - space services; and - services in support of military forces overseas.

Notes: Paragraph 2.6 of the CPRs allows the Secretary to determine that specific *procurements* should not be subject to all or part of the CPRs. Usually, a measure made under this paragraph will exempt a *procurement* from the rules in Division 2 of the CPRs (in particular, the obligation to undertake an *open tender* process). This exemption mechanism is provided for in the Australia-US Free Trade Agreement (AUSFTA), and is consistent with the market access arrangements agreed by Australia in its other FTAs.

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Notes (cont): In the case of Defence, the AUSFTA (Chapter 15, Annex A) specifically provides for various Defence *procurements* to be exempt from the operation of the *procurement* rules in Chapter 15 of the AUSFTA (which rules are now mainly in Division 2 of the CPRs, and which are consistent with the *procurement* rules agreed by Australia in its other FTAs). This exemption is permitted on the grounds of 'essential security' (Article 22.2 of the AUSFTA). To give effect to this exemption, the Secretary has made a measure under paragraph 2.6 of the CPRs to determine that the *procurement* of the various *goods* or services listed in Table 1 above are exempt from the operation of Division 2 of the CPRs. The list in Table 1 replicates the list in Chapter 15, Annex A of the AUSFTA. Further details of the FSC codes mentioned in Table 1 can be found in the [Exemptions Fact Sheet](#) on the Commercial Division intranet site.

Even if a *procurement* is exempt from Division 2 of the CPRs, Defence *officials* are still required to undertake their procurements in accordance with Division 1 of the CPRs. In addition, Defence *officials* are still required to comply with all applicable Defence Procurement Policy Directives contained in this manual (see Defence Procurement Policy Directive D39).

CPR 2.7 – 2.9

Procurement

- 2.7 *Procurement* encompasses the whole process of procuring *goods* and services. It begins when a need has been identified and a decision has been made on the *procurement* requirement. *Procurement* continues through the processes of risk assessment, seeking and evaluating alternative solutions, the awarding of a *contract*, the delivery of and payment for the *goods* and services and, where relevant, the ongoing management of the *contract* and consideration of disposal of *goods*.
- 2.8 In addition to the acquisition of *goods* and services by a *relevant entity* for its own use, *procurement* includes the acquisition of *goods* and services on behalf of another *relevant entity* or a third party.
- 2.9 *Procurement* does not include:
- grants (whether in the form of a *contract*, conditional gift or deed);
 - investments (or divestments);
 - sales by tender;
 - loans;
 - procurement of goods* and services for resale or *procurement of goods* and services used in the production of *goods* for resale;
 - any property right not acquired through the expenditure of *relevant money* (for example, a right to pursue a legal claim for negligence);
 - statutory appointments;
 - appointments made by a Minister using the executive power (for example, the appointment of a person to an advisory board); or
 - the engagement of employees, such as under the *Public Service Act 1999*, the *Parliamentary Services Act 1999*, a *relevant entity's* enabling legislation or the common law concept of employment.

Notes: Paragraph 2.9a of the CPRs makes clear that grants are not *procurements*. Defence manages a number of grant programs and therefore these programs, and the individual grants made under them, are not *procurements* for the CPRs. For example, to give effect to the Australian Government's defence and industry policy, Defence undertakes various grants programs under which Defence companies and other entities receive payments. In undertaking these programs, Defence *officials* are required to comply with the [Commonwealth Grant Rules and Guidelines](#), rather than the CPRs and the Defence Procurement Policy Directives in the DPPM. Defence grant programs also have their own rules that govern their operation.

For guidance on contracting processes for disposals, including sale by tender (see paragraph 2.9c of the CPRs) and gifting or transfer by deed, Defence *officials* should refer to the [Materiel Logistics, Disposals and Sales Branch intranet page](#).

CPR 2.10 – 2.13**Resource management framework**

- 2.10 *Relevant entities* and *officials* operate in an environment of legislation and Commonwealth policy. Within that broad context, the resource management framework consists of the legislation and policy governing the management of the Commonwealth's resources.
- 2.11 The *procurement* framework is a subset of the resource management framework related to the *procurement* of goods and services.
- 2.12 Section 16 of the PGPA Act outlines an *Accountable Authority's* duty to establish appropriate internal control systems for their *relevant entity*. The CPRs provide the necessary framework for Accountable Authorities when issuing Accountable Authority Instructions and operational requirements in relation to *procurement*. In the area of *procurement*, an *Accountable Authority* should provide a mechanism to:
- a. apply the principles and requirements of the resource management and *procurement* frameworks, focusing on the *relevant entity's* operations; and
 - b. provide primary operational instructions to *relevant entity officials* in carrying out their duties related to *procurement*, in a way that is tailored to a *relevant entity's* particular circumstances and needs.
- 2.13 Non-compliance with the requirements of the resource management framework, including in relation to *procurement*, may attract a range of criminal, civil or administrative remedies including under the *Public Service Act 1999* and the *Crimes Act 1914*.

Defence Procurement Policy Directives

- D5. When conducting a *procurement*, Defence *officials must* ensure that the following two delegations are exercised in the following order, unless the *procurement* does not involve the commitment of *relevant money* (for example, a 'nil-cost' contract change) in which case only the FINMAN 2 Schedule 2 -Enter into an Arrangement delegation is required:
- FINMAN 2 Schedule 1 (Section 23(3) of the PGPA Act) – To Approve the Commitment of Relevant Money (Commitment Approval): a Defence official must exercise this delegation before the Commonwealth enters into the arrangement that commits *relevant money*; and
 - FINMAN 2 Schedule 2 (Section 23(1) of the PGPA Act) – To Enter into an Arrangement: a Defence *official must not* exercise this delegation (Enter into an Arrangement) unless a Commitment Approval delegation has been exercised for the *procurement* to which the arrangement relates.
- D6. Prior to agreeing to a contingent liability in favour of a third party (for example, granting an indemnity, guarantee or warranty), Defence *officials must*:
- undertake a liability risk assessment in relation to the contingent liability, including considering the full potential cost of the liability to the Commonwealth; and
 - ensure that the relevant delegate (Under FINMAN 2 Schedule 1 or FINMAN 2 Schedule 1A) (or the Finance Minister, if necessary) authorises the contingent liability under section 60 of the PGPA Act.

Notes: Chapter 1 of the DPPM discusses the resource management framework in more detail.

If a *procurement* includes a contingent liability, the effect of Defence Procurement Policy Directive D6 is that the relevant delegate must authorise the granting of the contingent liability for the purposes of section 60 PGPA Act. In Defence (apart from CASG), the Commitment Approval delegate may do this as part of exercising this delegation. In CASG, a separate delegation is required in addition to the Commitment Approval delegation, both of which must be exercised before the exercise of the Enter into an Arrangement delegation.

Notes (cont): If a *procurement* is being undertaken through the Foreign Military Sales (FMS) system, the standard FMS conditions require the Commonwealth to grant an indemnity to the US Government. Accordingly, Defence Procurement Policy Directive D6 dealing with contingent liabilities applies to each FMS case. For guidance on conducting liability risk assessments for FMS cases see the Commercial Division [Risk Assessments and Liabilities intranet page](#).

Agreeing to a contingent liability in favour of a third party is one kind of limitation of liability. The Commonwealth may also limit a third party's liability in other ways, for instance, by agreeing to one or more financial caps on different heads of loss or damage that a contractor may be exposed to under a contract (for example, for personal injury, property damage, delay or other contractual non-performance). Accordingly, in addition to the requirement under Defence Procurement Policy Directive D6 to undertake a liability risk assessment in relation to contingent liabilities, Defence Procurement Policy Directive D24 requires Defence *officials* to undertake a liability risk assessment prior to agreeing to any limitation on a third party's liability under a *contract*. Defence has developed [guidance and tools](#) to assist Defence *officials* with the conduct of liability risk assessments.

The Department of Finance's [Resource Management Guide \(RMG\) No 414](#), together with [Defence AAI 2.6](#) and [FINMAN 2](#), set out Commonwealth and Defence policy in relation to indemnities, guarantees and warranties that give rise to 'contingent liabilities'. Consistently with RMG 414 and AAI 2.6, Defence has developed streamlined processes for undertaking liability risk assessments for certain kinds of contingent liabilities, namely indemnities contained in FMS cases and venue hire agreements. Defence *officials* should refer to the liability risk assessment [guidance and tools](#) for these streamlined processes.

CPR 2.14

International obligations

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

Note: Paragraph 2.14 of the CPRs means that Defence *officials* can refer to the CPRs as the single source of Australia's international commitments on government *procurement* and do not need to refer directly to the various treaties and other agreements. See also the Notes following paragraph 2.6 of the CPRs.

3. How to use the Commonwealth Procurement Rules

CPR 3.1 – 3.4

How to use the Commonwealth Procurement Rules

- 3.1 The CPRs set out the rules that *officials must* comply with when they procure *goods* and services. The CPRs also indicate good practice. The CPRs have been designed to provide *officials* with flexibility in developing and implementing *procurement* processes that reflect their *relevant entity's* needs.
- 3.2 Achieving value for money is the core rule of the CPRs. This requires the consideration of the financial and non-financial costs and benefits associated with *procurement*.
- 3.3 Further information and guidance on applying the CPRs are available on Finance's *procurement* policy website at www.finance.gov.au/procurement.
- 3.4 *Relevant entities* may have additional rules, guidance, templates or tools that apply when conducting *procurements*.

Note: For paragraph 3.4 of the CPRs, the DPPM sets out 'additional rules' in relation to the conduct of Defence *procurement* that Defence *officials must* comply with when they procure *goods* and services for Defence. These additional rules are set out under the heading 'Defence Procurement Policy Directives' in the DPPM. The DPPM also refers to guidance, templates, tools and other resources to further assist Defence *officials* undertaking *procurement*. Defence *officials* should have regard to these resources when undertaking *procurement*.

CPR 3.5 – 3.8**Compliance with the two divisions of the CPRs**

- 3.5 *Officials of non-corporate Commonwealth entities must* comply with the ‘rules for all *procurements*’ listed in Division 1, regardless of the *procurement* value. *Officials must* also comply with the ‘additional rules’ listed in Division 2 when the estimated value of the *procurement* is at or above the relevant *procurement threshold* and when an Appendix A exemption has not been utilised.
- 3.6 *Officials of corporate Commonwealth entities* prescribed in section 30 of the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) as having to comply with the CPRs *must* comply with the ‘rules for all *procurements*’ listed in Division 1 and the ‘additional rules’ listed in Division 2 when the expected value of the *procurement* is at or above the relevant *procurement threshold* and when an Appendix A exemption has not been utilised.
- 3.7 Despite being prescribed *corporate Commonwealth entities*, Australian Digital Health Agency, Australian Human Rights Commission, National Portrait Gallery of Australia, Old Parliament House and Regional Investment Corporation *must* apply a *procurement threshold* and *reporting threshold* of \$80,000 for *procurements* other than the procurement of *construction services*. They may opt-in to coordinated procurements and must only comply with those policies of the Commonwealth that specify compliance by *corporate Commonwealth entities*.
- 3.8 Despite being a corporate *Commonwealth entity*, paragraph 3.7 also applies to the Commonwealth Superannuation Corporation in regards to its administrative functions only.

Note: The Department of Defence (‘Defence’) is a *non-corporate Commonwealth entity*. Hence, paragraph 3.5 of the CPRs applies to Defence *officials* (including a contractor who is prescribed as a Defence *official*). In addition to an Appendix A exemption referred to in paragraph 3.5 of the CPRs, a Defence specific exemption may also be utilised (See Defence Procurement Policy Directives D2 and D4).

CPR 3.9**Using an Appendix A exemption**

- 3.9 When an Appendix A exemption applies, and the *relevant entity* chooses to utilise the exemption, the procurement is exempt from the additional rules for procurements at or above the relevant procurement threshold (Division 2) but *must* still comply with the rules for all procurements (Division 1).

Defence Procurement Policy Directive

- D7. If a Defence *official* determines that an exemption under Appendix A of the CPRs applies to a *procurement*, the *official must* ensure that the reasons supporting that determination are appropriately documented.

Notes: Items 16 and 17 of Appendix A permit Defence *officials* to procure directly from disability businesses and indigenous businesses, respectively. See further Chapter 2 of the DPPM, and Defence Procurement Policy Directive D13 (and the related Notes).

In addition to the exemptions provided for in Appendix A, various other kinds of Defence related *procurements* may be exempt from Division 2 of the CPRs. In particular, see Defence Procurement Policy Directives D2 and D4 (and the related Table 1 for a list of Defence *goods* and services that are exempt).

Chapter 4

Achieving value for money in procurement

Note: Chapter 4 of the DPPM incorporates all the rules from Division 1 of the CPRs.

4. Value for Money

CPR 4.1 – 4.3

Considering value for money

- 4.1 A thorough consideration of value for money begins by *officials* clearly understanding and expressing the goals and purpose of the *procurement*.
- 4.2 When a business requirement arises, *officials* should consider whether a *procurement* will deliver the best value for money. It is important to take into consideration:
 - a. stakeholder input;
 - b. the scale and scope of the business requirement;
 - c. the *relevant entity's* resourcing and budget;
 - d. obligations and opportunities under other existing arrangements;
 - e. relevant Commonwealth policies; and
 - f. the market's capacity to competitively respond to a *procurement*.

Notes: Defence officials should refer to Chapter 2 of the DPPM, and the Complex Procurement Guide, for more guidance about value for money.

Defence *officials* should be aware that 'Commonwealth policies' (paragraph 4.2e.) may include Cabinet decisions and other formal directions issued by the Government (whether through the Minister for Defence or otherwise).

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

Defence Procurement Policy Directives

- D8. Defence *officials* undertaking *procurement* valued at or above \$200,000 (including GST) **must** develop a written *procurement* plan for the *procurement* commensurate with its scale, scope and risk, and which takes account of the *procurement* life cycle, including cost of ownership and disposal considerations.
- D9. Defence *officials* **must** obtain an 'Endorsement to Proceed' prior to approaching the market for *procurements* to establish a *standing offer* arrangement, and all other *procurements* that are valued at or above \$200,000 (including GST).
- D10. Prior to approaching the market to procure a Contractor, Consultant or Outsourced Service Provider, Defence officials **must**:
 - obtain Senior Executive Service (SES) Band 1 or 1 Star Officer or above approval that the procurement is justified; and
 - advise the Secretary when the daily rate of the Contractor, Consultant or Outsourced Service Provider is at or above \$4,500 (including GST).
- D11. Prior to approaching the market to establish a strategic standing offer panel, Defence officials **must**:
 - obtain written endorsement of the business need from First Assistant Secretary Procurement and Contracting; then
 - obtain written approval to establish the strategic standing offer panel from the Enterprise Business Committee.

Notes: See paragraphs 96 to 98 in Chapter 2 of the DPPM for guidance about *procurement* plans, including that the Endorsement to Proceed document may be sufficient to serve as the *procurement* plan for less complex *procurements*. More detailed guidance is set out in Chapter 2 of the Complex Procurement Guide.

Defence *officials* should refer to paragraphs 9.2 – 9.6 of the CPRs in relation to estimating the value of a *procurement*.

An Endorsement to Proceed may also be required to place an order under a *standing offer*. Defence *officials* should refer to the [Endorsement to Proceed Fact Sheet](#).

Defence *officials* should refer to [Defence Instruction Administrative Policy](#) for the definition of Contractors, Consultants and Outsourced Service Providers. Defence *officials* should refer to the [Engaging Contractors, Consultants and Outsourced Service Providers – Decision Making Governance Fact Sheet](#) for further guidance on the evidence required to justify the procurement of Contractors, Consultants or Outsourced Service Providers.

The [Establishing and Using Standing Offers Fact Sheet](#) contains further guidance on the establishment of strategic standing offer panels.

CPR 4.4 – 4.8

Achieving value for money

- 4.4 Achieving value for money is the core rule of the CPRs. *Officials* responsible for a *procurement* **must** be satisfied, after reasonable enquires, that the *procurement* achieves a value for money outcome. *Procurements* should:
- encourage competition and be non-discriminatory;
 - use *public resources* in an efficient, effective, economical and ethical manner that is not inconsistent with the policies of the Commonwealth;
 - facilitate accountable and transparent decision making;
 - encourage appropriate engagement with risk; and
 - be commensurate with the scale and scope of the business requirement.
- 4.5 Price is not the sole factor when assessing value for money. When conducting a *procurement*, an *official* **must** consider the relevant financial and non-financial costs and benefits of each *submission* including, but not limited to:
- the quality of the *goods* and services;
 - fitness for purpose of the proposal;
 - the *potential supplier's* relevant experience and performance history;
 - flexibility of the proposal (including innovation and adaptability over the lifecycle of the *procurement*);
 - environmental sustainability of the proposed *goods* and services (such as energy efficiency, environmental impact and use of recycled products); and
 - whole-of-life costs.
- 4.6 Whole-of-life costs could include:
- the initial purchase price of the *goods* and services;
 - maintenance and operating costs;
 - transition out costs;
 - licensing costs (when applicable);
 - the cost of additional features procured after the initial *procurement*;
 - consumable costs; and
 - disposal costs.

Procurement-connected policies

- 4.7 *Procurement*-connected policies are policies of the Commonwealth for which *procurement* has been identified as a means of delivery. To assist *relevant entities* in complying with policies of the Commonwealth, Finance maintains a list of procurement-connected policies, which can be found at www.finance.gov.au/procurement.
- 4.8 Generally, procurement-connected policies are the responsibility of entities other than Finance. The relevant policy-owning entity is responsible for administering, reviewing and providing information on the policy as required.

Notes: Defence contracting templates are drafted and regularly updated to give effect to applicable Commonwealth legislation and policy (including the CPRs), and applicable Defence policy. If using an endorsed Defence contracting template (for example, ASDEFCON, the Defence Facilities and Infrastructure Suite of Contracts or the Commonwealth Contracting Suite) for a *procurement* for which the template is intended, Defence *officials* may rely on the template as meeting applicable legislation and policy requirements. The endorsed Defence contracting templates may be found on the Commercial Division [Tools and Templates intranet page](#).

Defence has numerous business policy owners that are responsible for ensuring Defence complies with applicable Commonwealth legislation and policy requirements, as well as with particular State and Territory legislation that may also apply to Defence activities. This legislation and policy often interacts with Defence *procurement* and in many cases is given effect through *contracts*. There are many policy or support areas in Defence that that can assist in relation to this legislation and policy that intersects with *procurement* (eg contracting, legal, finance, environment, work health and safety, security, technical regulatory frameworks etc). These resources can be found on the procurement support areas link on the [Commercial Division Help Desk Kiosk](#) intranet page.

Defence Procurement Policy Directives

Trade sanctions

D12. Defence *officials* undertaking a *procurement* **must** ensure that the *procurement* does not breach any current [Australian Government trade sanctions](#).

Indigenous Procurement Policy

D13. Prior to approaching the market, Defence *officials* must determine whether the Indigenous Procurement Policy (IPP) applies to the *procurement* and if so comply with the IPP (see also Appendix A, item 16 of the CPRs).

Notes: The IPP is a procurement connected policy.

In addition, while not a Defence Procurement Policy Directive, Defence *officials* should also determine whether a disability business could deliver the required *goods* or services on a value for money basis before making any *approach to market*. If satisfied that value for money can be achieved, then the Defence *official* should procure the *goods* or services from the disability business (as permitted by Appendix A of the CPRs, item 15). If not, then the Defence *official* may procure through normal means. A list of Australian disability businesses can be found at the Australian Disability Enterprises website www.ade.org.au.

See Chapter 2 of the DPPM for more information about the IPP and the disability business exemption.

Workplace gender equality

D14. Defence *officials* undertaking a *procurement* at or above the relevant *procurement threshold* **must not** purchase *goods* or services from [contractors that do not comply](#) with the *Workplace Gender Equality Act 2012*.

Note: Workplace gender equality is a procurement connected policy.

Australian Industry Capability (AIC)

D15. Defence *officials* **must** comply with the Defence Australian Industry Capability (AIC) policy for *procurements* valued at or above \$20 million (including GST), and in particular ensure that the successful *supplier* in the *procurement* implements an AIC plan.

Note: Currently, only the ASDEFCON contracting templates incorporate provisions that give effect to the AIC program, including requiring *tenderers* to submit AIC plans as part of the tender process. The successful *tenderer* is required to give effect to the agreed AIC plan under the *contract*. The AIC program is currently being updated following the [Defence Industry Policy Statement 2016](#). For further information about the AIC program, Defence *officials* should refer to the [Defence Industry Policy Division intranet page](#). Australian Industry Participation Plans (AIP) for Government Procurement is a procurement connected policy, which was developed in accordance with the AIP National Framework. The AIP National Framework is available at www.industry.gov.au/aip. The Department of Industry, Innovation and Science's User Guide for AIP Plans states that the AIP policy 'may also be applied to Department of Defence non-materiel procurement'.

Code for the Tendering and Performance of Building Work 2016

D16. Defence *officials* **must** comply with the Code for the Tendering and Performance of Building Work 2016 (Building Work Code) when undertaking *procurements* for building work to which the Building Work Code applies.

Note: The Building Work Code is a procurement connected policy. In summary, the Building Work Code prevents Commonwealth agencies such as Defence from permitting companies to tender or enter into *contracts* for Commonwealth funded building work, unless the companies meet the requirements of the Building Work Code. In Defence, *procurements* for building work are normally managed by the Defence Estate and Infrastructure Group. The Defence Facilities and Infrastructure Suite of Contracts include provisions to ensure that Defence complies with the Building Work Code.

Public-private partnerships (PPP) policyD17. Defence *officials* **must**:

- consider using a public-private partnership (PPP) for all project proposals having an estimated capital cost over \$50 million where there is an opportunity to enter into a long term *contract* (for example, 15-30 years) with a focus on the delivery of services to government (for example, making materiel or facilities available for use by Defence); and
- comply with the [National PPP Policy and Guidelines](#) (December 2008), and complete a [PPP Suitability Checklist](#).

Note: More guidance on PPPs is set out in the [Procurement Delivery Models Better Practice Guide](#). PPPs (or Private Finance Initiatives or 'PFIs') involve the creation of an asset through financing and ownership control by a private party and private sector delivery of related services that may normally have been provided by the Commonwealth. The Commonwealth may contribute to establishing the infrastructure, for example through land, capital works or risk sharing. The service delivered may be paid for by the Commonwealth or directly by the end user. Defence *officials* should consult with the [Public Private Partnership Centre of Expertise](#), and engage the Resource Assurance and Analysis Branch, in Chief Finance Officer Group (CFOG) for an independent review of financial and budgetary impact. Building work that involves a PPP or PFI for the delivery of functions or services of the Commonwealth is also subject to the Building Work Code (see Defence Procurement Policy Directive D16).

CPR 4.9 – 4.10Coordinated procurement

- 4.9 Coordinated *procurement* refers to whole-of-government arrangements for procuring *goods* and services. A list of coordinated *procurements* can be found at www.finance.gov.au/procurement.
- 4.10 *Non-corporate Commonwealth entities* **must** use coordinated *procurements*. Exemptions from coordinated *procurements* can only be granted jointly by the requesting *non-corporate Commonwealth entity's* Portfolio Minister and the Finance Minister when a *non-corporate Commonwealth entity* can demonstrate a special need for an alternative arrangement. Prescribed *Corporate Commonwealth entities* may opt-in to coordinated *procurements*.

Defence Procurement Policy Directives

- D18. Prior to selecting a *procurement* method, Defence *officials* **must** determine whether a coordinated *procurement* arrangement has been established for the *goods* or services to be procured.
- D19. If a coordinated *procurement* arrangement has been established for *goods* or services, Defence *officials* **must** use the arrangement when procuring relevant *goods* or services unless an exemption is in place.

Notes: The Department of Finance has established several whole of government coordinated *procurement* arrangements for various *goods* and services, for example, ICT, telecommunications, stationery and office supplies, and airline travel. Defence *officials* can find more details at www.finance.gov.au/procurement.

Specialised military and classified telecommunications products and services (for military or intelligence agencies) fall outside the operation of the telecommunications coordinated *procurement* arrangements. For information about these exemptions Defence *officials* should refer to [CIOG Non Materiel Procurement Services](#).

CPR 4.11 – 4.13Cooperative procurement

- 4.11 Cooperative *procurements* involve more than one *relevant entity* as the buyer. *Relevant entities* can procure cooperatively by approaching the market together or by joining an existing *contract* of another *relevant entity*.
- 4.12 If a *relevant entity* intends to join an existing *contract* of another *relevant entity*, the initial *request documentation* and the *contract* **must** have already specified potential use by other *relevant entities*.
- 4.13 *Relevant entities* joining an existing *contract* **must** ensure that:
- value for money is achieved;
 - the *goods* and services being procured are the same as provided for within the contract; and
 - the terms and conditions of the *contract* are not being materially altered.

Notes: The Defence Support Services panel (DSS Panel) is an example of a cooperative *procurement*. The panel was established so as to be able to be accessed by other Commonwealth agencies, and as a result many agencies have used and continue to use this panel for a range of support services.

Defence *officials* who are planning to establish a new *standing offer* arrangement with multiple *suppliers* should consider whether it would be appropriate for other Commonwealth agencies to be able to use the proposed panel for their needs. If so, the *approach to market* for the panel (and the panel deed) will need to expressly advise the *potential suppliers* that the panel may be used not only by Defence, but also by other agencies. However, in such circumstances, Defence *officials* will also need to consider the administrative arrangements for how the panel may be used, the extent to which this will impose an additional resource burden on Defence, and whether there will be any administrative fee charged to other agencies to cover Defence's costs of managing the panel.

CPR 4.14 – 4.16Contract end dates

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

Third-party procurement

- 4.15 *Procurement* by third parties on behalf of a *relevant entity* can be a valid way to procure *goods* and services, provided it achieves value for money.
- 4.16 *Relevant entities* **must** not use third-party arrangements to avoid the rules in the CPRs when procuring *goods* and services.

Note: Under Defence *contracts*, it is not unusual for contractors to be required to undertake *procurements* on behalf of Defence. In many cases, this is simply part of the contractor's overall contracted responsibility to deliver a particular capability or outcome to Defence. In these cases, Defence does not usually intervene to specify that the contractors comply with CPR requirements, although Defence may wish to approve or specify under the *contract* the key subcontractors that the contractor will use, and further impose obligations on the contractor to ensure value for money is obtained, for example, by requiring the contractor to undertake competitive *procurements*. In other cases, the Commonwealth may task a contractor to undertake *procurement* activity that Defence *officials* might normally undertake themselves; that is, Defence is outsourcing the *procurement* function itself. In these cases, it may be appropriate to require the contractor to comply with the CPRs as if they were bound by them. If not, it could be argued that Defence was outsourcing the *procurement* function simply to avoid the operation of the CPRs. Defence is always under an obligation to ensure that its *procurement* activities (whether outsourced or not) deliver value for money to the Commonwealth.

5. Encouraging Competition

CPR 5.1 – 5.2

Encouraging competition

- 5.1 Competition is a key element of the Australian Government's *procurement* framework. Effective competition requires non-discrimination and the use of competitive *procurement* processes.
- 5.2 Participation in *procurement* imposes costs on relevant entities and *potential suppliers*. Those costs should be considered when designing a process that is commensurate with the scale, scope and risk of the proposed *procurement*.

Note: Chapter 2 of the DPPM discusses the importance of competition and selecting an appropriate *procurement* process to achieve value for money outcomes.

CPR 5.3 – 5.4

Non-discrimination

- 5.3 The Australian Government's *procurement* framework is non-discriminatory.
- 5.4 All *potential suppliers* to government **must**, subject to these CPRs, be treated equitably based on their commercial, legal, technical and financial abilities and not be discriminated against due to their size, degree of foreign affiliation or ownership, location, or the origin of their *goods* and services.

Note: See Chapter 2 of the DPPM for more information about the non-discrimination principle.

CPR 5.5 – 5.6

Small and Medium Enterprises

- 5.5 To ensure that *Small and Medium Enterprises* (SMEs) can engage in fair competition for Australian Government business, *officials* should apply *procurement* practices that do not unfairly discriminate against SMEs and provide appropriate opportunities for SMEs to compete. *Officials* should consider, in the context of value for money:
 - a. the benefits of doing business with competitive SMEs when specifying requirements and evaluating value for money;
 - b. barriers to entry, such as costly preparation of *submissions*, that may prevent SMEs from competing;
 - c. SMEs' capabilities and their commitment to local or regional markets; and
 - d. the potential benefits of having a larger, more competitive *supplier* base.
- 5.6 The Australian Government is committed to *non-corporate Commonwealth entities* sourcing at least 10 per cent of *procurement* by value from SMEs.

Notes: In the Defence context, the Australian Government's policy relating to small to medium enterprises (SMEs) is given effect to through the Defence Industry Policy 2016, and in particular, the Australian Industry Capability (AIC) program. As noted in Chapter 2 of the DPPM, the AIC program is identified as a specific exemption from the 'non-discrimination' principle (reflected in paragraph 5.3 of the CPRs) in the Australia-US Free Trade Agreement (AUSFTA), and other FTAs to which Australia is a party. The AUSFTA (Chapter 15, Annex A) provides that 'the Australian Government reserves the right to maintain the Australian Industry Involvement program and its successor programs and policies.' The AIC program is a successor to the previous Australian Industry Involvement (All) program.

The ASDEFCON templates incorporate provisions that give effect to the AIC program, including requiring *tenderers* to submit AIC plans as part of the tender process. The successful *tenderer* is required to give effect to the agreed AIC plan under the *contract*. See also Defence Procurement Policy Directive D15 and the related note following.

6. Efficient, effective, economical and ethical procurement

CPR 6.1 – 6.8

Efficient, effective, economical and ethical procurement

- 6.1 The Australian Government promotes the proper use and management of *public resources*. Proper means efficient, effective, economical and ethical. For *non-corporate Commonwealth entities*, this would also include being not inconsistent with the policies of the Commonwealth.
- 6.2 Efficient relates to the achievement of the maximum value for the resources used. In *procurement*, it includes the selection of a *procurement* method that is the most appropriate for the *procurement* activity, given the scale, scope and risk of the *procurement*.
- 6.3 Effective relates to the extent to which intended outcomes or results are achieved. It concerns the immediate characteristics, especially price, quality and quantity, and the degree to which these contribute to specified outcomes.
- 6.4 Economical relates to minimising cost. It emphasises the requirement to avoid waste and sharpens the focus on the level of resources that the Commonwealth applies to achieve outcomes.
- 6.5 Ethical relates to honesty, integrity, probity, diligence, fairness and consistency. Ethical behaviour identifies and manages conflicts of interests, and does not make improper use of an individual's position.

Note: Chapter 2 of the DPPM, the Complex Procurement Guide, and the Early Industry Engagement Better Practice Guide provide more guidance about probity and effective industry engagement.

Ethical behaviour

- 6.6 In particular, *officials* undertaking *procurement* **must** act ethically throughout the *procurement*. Ethical behaviour includes:
 - a. recognising and dealing with actual, potential and perceived conflicts of interest;
 - b. dealing with *potential suppliers*, *tenderers* and *suppliers* equitably, including by:
 - i. seeking appropriate internal or external advice when probity issues arise, and
 - ii. not accepting inappropriate gifts or hospitality;
 - c. carefully considering the use of *public resources*; and
 - d. complying with all directions, including *relevant entity* requirements, in relation to gifts or hospitality, the Australian Privacy Principles of the *Privacy Act 1988* and the security provisions of the *Crimes Act 1914*.
- 6.7 Relevant entities **must** not seek to benefit from *supplier* practices that may be dishonest, unethical or unsafe. This includes not entering into *contracts* with *tenderers* who have had a judicial decision against them (not including decisions under appeal) relating to employee entitlements and who have not satisfied any resulting order. *Officials* should seek declarations from all *tenderers* confirming that they have no such unsettled orders against them.

Note: The [endorsed Defence contracting templates](#) contain the necessary provisions and form of statutory declaration to give effect to paragraph 6.7 of the CPRs.

- 6.8 If a complaint about *procurement* is received, relevant entities **must** apply timely, equitable and non-discriminatory complaint-handling procedures, including providing acknowledgment soon after the complaint has been received. Relevant entities should aim to manage the complaint process internally, when possible, through communication and conciliation.

Defence Procurement Policy Directive

D20. If a Defence *official* receives a complaint from a third party in relation to a Defence *procurement*, the *official* **must** ensure that the complaint is managed in accordance with the Defence Procurement Complaints Handling Process.

Note: The Defence Procurement Complaints Handling Process can be found on the Commercial Division [Fact Sheets and Guidance intranet page](#). A *procurement* complaint in itself does not constitute a formal 'claim' against the Commonwealth that would need to be managed in accordance with [AAIs](#) and the Attorney General's Legal Services Directions. A 'claim' would normally not arise until legal action has been commenced against the Commonwealth.

7. Accountability and transparency in procurement

CPR 7.1 – 7.5

Accountability and transparency in procurement

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

Records

- 7.2 *Officials* **must** maintain a level of documentation commensurate with the scope, scale and risk for each *procurement*.
- 7.3 Documentation should provide accurate and concise information on:
- the requirement for the *procurement*;
 - the process that was followed;
 - how value for money was considered and achieved;
 - relevant approvals; and
 - relevant decisions and the basis of those decisions.
- 7.4 Relevant entities **must** have access to evidence of agreements with *suppliers*, in the form of one or a combination of the following documents: a written *contract*, a purchase order, an invoice or a receipt.
- 7.5 Documentation **must** be retained in accordance with the *Archives Act 1983*.

Note: For Defence policy in relation to record keeping, Defence *officials* should refer to the [Defence Records Management Manual](#) (RECMAN). RECMAN takes a principles based approach to records management and does not include information about practices and procedures – which are proposed to be set out in a Records Management Operations Guide (under development). For further information, Defence *officials* should contact Directorate of Records Management Policy at DRMP.Policy@defence.gov.au.

CPR 7.6 – 7.9

AusTender

- 7.6 *AusTender*, the Australian Government's *procurement* information system, is a centralised web-based facility that publishes a range of information, including relevant entities' planned *procurements*, *open tenders* and *contracts* awarded. It also supports secure electronic tendering to deliver integrity and efficiency for relevant entities and *potential suppliers*.
- 7.7 *AusTender* is the system used to enable relevant entities to meet their publishing obligations under the CPRs. It also enables relevant entities to monitor and review their

AusTender-based *procurements*, including approaches to market, publication of *contracts*, and amendments to *contracts*.

Annual procurement plans

- 7.8 In order to draw the market's early attention to potential *procurement* opportunities, each *relevant entity* **must** maintain on *AusTender* a current *procurement* plan containing a short strategic *procurement* outlook.
- 7.9 The *annual procurement plan* should include the subject matter of any significant planned *procurement* and the estimated publication date of the *approach to market*. *Relevant entities* should update their plans regularly throughout the year.

Notes: The *Annual Procurement Plan* (APP) is a tool that facilitates early *procurement* planning and notifies *potential suppliers* to the planned Defence *procurements*. The APP includes a short strategic *procurement* outlook for Defence supported by details of any planned *procurements*. The APP includes only those opportunities that are planned as *open tender* as there are linkages between the APP and subsequent *approaches to market*.

For practical reasons (given the volume of Defence *procurement*), Defence includes in its APP only those *procurements* valued at or above \$1,000,000 (GST inclusive). *Procurements* of a lesser value can be included if advance notice to industry is desired, but this is not mandatory.

Details regarding the coordination and publication of Defence's APP can be found on the [AusTender Publishing intranet page](#). Defence *officials* should refer to the intranet page for more information about the APP process.

CPR 7.10 – 7.15

Notifications to the market

- 7.10 *Relevant entities* **must** use *AusTender* to publish *open tenders* and, to the extent practicable, to make relevant *request documentation* available.
- 7.11 *Relevant entities* may use *AusTender* to publish *limited tender approaches to market* and make relevant *request documentation* available.

Note: All open *approaches to market* (*open tenders*) from Capability Acquisition and Sustainment Group (CASG) to be published on *AusTender* are managed centrally through the [CASG e-tendering service](#). Defence *officials* from other Groups and Services can submit requests for *AusTender* publication for open *approaches to market* to defence.procurement@defence.gov.au. For further information about *AusTender* publication, Defence *officials* should refer to the Commercial Division [AusTender intranet page](#).

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

Defence Procurement Policy Directive

D21. Defence *officials* undertaking a *procurement* **must** ensure that the *evaluation criteria* advertised in the *request documentation* are the criteria used for the evaluation of *submissions*.

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

Note: The [Department of Finance's Resource Management Guide No 407](#) sets out Commonwealth policy in relation to advertising open *approaches to market* in the media. As a general rule, such advertising is not permitted, although exemptions from the policy may be granted on a case by case basis.

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

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

CPR 7.16 – 7.17**Providing information**

- 7.16 *Officials must*, on request, promptly provide, to eligible *potential suppliers*, *request documentation* that includes all information necessary to permit the *potential supplier* to prepare and lodge *submissions*.
- 7.17 Following the rejection of a *submission* or the award of a *contract*, *officials must* promptly inform affected *tenderers* of the decision. Debriefings *must* be made available, on request, to unsuccessful *tenderers* outlining the reasons the *submission* was unsuccessful. Debriefings *must* also be made available, on request, to the successful *supplier(s)*.

Note: Defence *officials* should refer to Chapter 5 of the Complex Procurement Guide for guidance about when to inform an affected *tenderer* of a decision in relation to a *procurement* process.

CPR 7.18 – 7.20Reporting arrangements

- 7.18 Relevant entities *must* report *contracts* and amendments on *AusTender* within 42 days of entering into (or amending) a *contract* if they are valued at or above the reporting threshold.
- 7.19 The *reporting thresholds* (including GST) are:
- a. \$10,000 for *non-corporate Commonwealth entities*; and
 - b. for prescribed *corporate Commonwealth entities* ,
 - i. \$400,000 for procurements other than procurement of construction services, or
 - ii. \$7.5 million for procurement of construction services.
- 7.20 Regardless of value, *standing offers* must be reported on *AusTender* within 42 days of the *relevant entity* entering into or amending such arrangements. Relevant details in the *standing offer* notice, such as *supplier* details and the names of other relevant entities participating in the arrangement, must be reported and kept current.

Defence Procurement Policy Directive

D22. To enable Defence to meet its accountability and transparency requirements (including *AusTender* reporting), for all new *contracts* and *contract* amendments that meet the *AusTender reporting thresholds*, Defence *officials must* complete the AE643 Defence Purchasing form.

Notes: The reporting threshold in paragraph 7.19a of the CPRs applies to the Department of Defence as a *non-corporate Commonwealth entity*.

The CPR reporting requirements apply equally to *contract* changes (whether called a *contract* change, amendment or variation or some other terminology) that are valued at or above the relevant *reporting threshold* as they do to the original *contracts*. However, the reporting requirements do not apply to *contracts* or *contract* changes for *goods* or services procured outside Australia to be used completely outside of Australia.

To assist Defence to meet its *AusTender* reporting requirements, Defence has developed the [AE643 form](#) and related *AusTender* reporting procedure. The form and procedure covers the proper recording of *contracts* and amendments that may be undertaken or processed through ROMAN, MILIS and the CMS financial management system. Defence *officials* should refer to the Commercial Division [AusTender intranet page](#) for more information about *AusTender* reporting requirements, including in relation to *standing offer* notices.

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For *procurement* of Contractors, Consultants or Outsourced Service Providers, the AE643 records that a Senior Executive Service (SES) Band 1 or a 1 Star Officer or above has endorsed the requirement in accordance with Defence Procurement Policy Directive D10.

CPR 7.21

Subcontractors

- 7.21 *Relevant entities must* make available on request, the names of any subcontractor(s) engaged by a contractor in respect of a *contract*.
- a. Relevant entities **must** require contractors to agree to the public disclosure of the names of any subcontractors engaged to perform services in relation to a *contract*.
 - b. Contractors **must** be required to inform relevant subcontractors that the subcontractor's participation in fulfilling a *contract* may be publicly disclosed.

Note: The [endorsed Defence contracting templates](#) contain the necessary provisions to give effect to paragraph 7.21 of the CPRs.

CPR 7.22 – 7.25

Treatment of confidential information

- 7.22 When conducting a *procurement* and awarding a *contract*, *relevant entities* should take appropriate steps to protect the Commonwealth's confidential information. This includes observing legal obligations, such as those under the *Privacy Act 1988*, and statutory secrecy provisions.
- 7.23 *Submissions must* be treated as confidential before and after the award of a *contract*. Once a *contract* has been awarded the terms of the *contract*, including parts of the *contract* drawn from the *supplier's submission*, are not confidential unless the *relevant entity* has determined and identified in the *contract* that specific information is to be kept confidential in accordance with the 'confidentiality test' set out in the guidance on *Confidentiality Throughout the Procurement Cycle* at www.finance.gov.au/procurement.
- 7.24 The need to maintain the confidentiality of information should always be balanced against the public accountability and transparency requirements of the Australian Government. It is therefore important for *officials* to plan for, and facilitate, appropriate disclosure of *procurement* information. In particular, *officials* should:
- a. include provisions in *request documentation* and contracts that alert *potential suppliers* to the public accountability requirements of the Australian Government, including disclosure to the Parliament and its committees;
 - b. when relevant, include a provision in *contracts* to enable the Australian National Audit Office to access contractors' records and premises to carry out appropriate audits; and
 - c. consider, on a case-by-case basis, any request by a *supplier* for material to be treated confidentially after the award of a *contract*, and enter into commitments to maintain confidentiality only when such commitments are appropriate.
- 7.25 When confidential information is required to be disclosed, for example following a request from a parliamentary committee, reasonable notice in writing **must** be given to the party from whom the information originated.

Note: The [endorsed Defence contracting templates](#) contain the necessary provisions to give effect to the CPR requirements on treatment of confidential information. Defence *officials* should refer to the Commercial Policy [Fact Sheets and Guidance intranet page](#) for more guidance on how to determine what information is actually 'confidential' and the use of confidentiality provisions in Defence *contracts*.

CPR 7.26

Other obligations

- 7.26 Other reporting and disclosure obligations apply to *officials* undertaking *procurement*, including:
- a. disclosure of *procurement* information for *relevant entity* annual reporting purposes;

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- b. disclosure of non-compliance with the CPRs through the Commonwealth's compliance reporting process;
- c. disclosure to the Parliament and its committees, as appropriate, in line with the Government Guidelines for *Officials Witnesses before Parliamentary Committees and Related Matters*;
- d. disclosure of information consistent with the *Freedom of Information Act 1982*; and
- e. disclosure of discoverable information that is relevant to a case before a court.

8. Procurement risk

CPR 8.1 – 8.4

Procurement risk

- 8.1 Risk management comprises the activities and actions taken by a *relevant entity* to ensure that it is mindful of the risks it faces, that it makes informed decisions in managing these risks, and identifies and harnesses potential opportunities.
- 8.2 Relevant entities **must** establish processes for the identification, analysis, allocation and treatment of risk when conducting a *procurement*. The effort directed to risk assessment and management should be commensurate with the scale, scope and risk of the *procurement*. Relevant entities should consider risks and their potential impact when making decisions relating to value for money assessments, approvals of proposals to spend *relevant money* and the terms of the *contract*.
- 8.3 Relevant entities should consider and manage their procurement security risk in accordance with the *Australian Government's Protective Security Policy Framework*.
- 8.4 As a general principle, risks should be borne by the party best placed to manage them; that is, relevant entities should generally not accept risk which another party is better placed to manage. Similarly, when a *relevant entity* is best placed to manage a particular risk, it should not seek to inappropriately transfer that risk to the *supplier*.

Defence Procurement Policy Directives

- D23. For all *procurements* at or above the relevant *procurement threshold*, Defence *officials must*:
- undertake a risk assessment so that they are properly informed about the risks associated with the *procurement*; and
 - subject to the risk assessment, develop and implement a risk management plan to manage the risks.
- D24. Defence *officials must* undertake a liability risk assessment prior to agreeing to limit a third party's liability under a *contract*.

Notes: Chapter 2 of the DPPM provides guidance on risk management. The endorsed Defence contracting templates enable Defence officials to allocate risks to the parties best placed to manage them.

The Commonwealth may limit a third party's (including a contractor's) liability in various ways, for instance, by agreeing to one or more financial caps on different heads of loss or damage that a contractor may be exposed to under a contract (for example, for personal injury, property damage, delay or other contractual non-performance). Defence has developed tools and guidance to assist Defence *officials* with undertaking [liability risk assessments](#). See also Defence Procurement Policy Directive D6 which requires Defence *officials* to undertake a liability risk assessment in relation to contingent liabilities.

9. Procurement method

CPR 9.1

Procurement method

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

Defence Procurement Policy Directives

- D25. In deciding on the *procurement* method for a *procurement*, Defence *officials must* ensure that the method is commensurate with the scope, scale, and risk of the *procurement* and is consistent with value for money.
- D26. Defence *officials must* ensure that all *procurement* method decisions are appropriately documented.

Note: For *procurements* valued at or above \$200,000 (GST inclusive), the Endorsement to Proceed template is normally the mechanism by which *procurement* method decisions are documented. The Commitment Approval delegate (see section 23(3) of the PGPA Act) would also confirm the *procurement* method decision as part of the exercise of their delegation.

CPR 9.2 – 9.7

Requirement to estimate value of procurement

- 9.2 The expected value of a *procurement must* be estimated before a decision on the *procurement* method is made. The expected value is the maximum value (including GST) of the proposed *contract*, including options, extensions, renewals or other mechanisms that may be executed over the life of the *contract*.
- 9.3 The maximum value of the *goods* and services being procured **must** include:
- all forms of remuneration, including any premiums, fees, commissions, interest, allowances and other revenue streams that may be provided for in the proposed *contract*;
 - the value of the *goods* and services being procured, including the value of any options in the proposed *contract*; and
 - any taxes or charges.
- 9.4 When a *procurement* is to be conducted in multiple parts with *contracts* awarded either at the same time or over a period of time, with one or more *suppliers*, the expected value of the *goods* and services being procured **must** include the maximum value of all of the *contracts*.
- 9.5 A *procurement must* not be divided into separate parts solely for the purpose of avoiding a relevant *procurement* threshold.
- 9.6 When the maximum value of a *procurement* over its entire duration cannot be estimated the *procurement must* be treated as being valued above the relevant *procurement* threshold.

Procurement thresholds

- 9.7 When the expected value of a *procurement* is at or above the relevant *procurement threshold* and an exemption in Appendix A is not utilised, the rules in Division 2 **must** also be followed. The *procurement thresholds* (including GST) are:
- for *non-corporate Commonwealth entities*, other than for *procurements of construction services*, the *procurement* threshold is \$80,000;
 - for prescribed *corporate Commonwealth entities*, other than for *procurements of construction services*, the *procurement* threshold is \$400,000; or

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

Defence Procurement Policy Directives

Procurements under \$10,000 (GST inclusive) - Defence Purchasing Card

- D27. For *procurements* valued under \$10,000 (GST inclusive), Defence *officials must* use the Defence Purchasing Card (DPC), unless there are valid reasons for not doing so.
- D28. Defence *officials must* not use the DPC for *procurements* made through MILIS (the core logistics management system in Defence).

Procurements under \$200,000 (GST inclusive) - Commonwealth Contracting Suite

- D29. For *procurements* valued under \$200,000 (GST inclusive), Defence *officials must* use the Department of Finance's Commonwealth Contracting Suite (CCS), unless the *procurement* has been assessed as exempt from this requirement by applying the Defence specific CCS Decision Tree.
- D30. If the *procurement* is exempt from using the CCS, the *official must* use an endorsed Defence contracting template.

Procurements valued at or above \$200,000 (GST inclusive)

- D31. For *procurements* valued between \$200,000 and \$1 million (GST inclusive), officials must consider using the CCS as the basis for the procurement. If the CCS is unsuitable or the procurement is valued at or above \$1 million (GST inclusive), if an endorsed Defence contracting template exists for the type of *procurement* being undertaken, Defence *officials must* use that template as the basis for the *procurement*.
- D32. If a Defence *official* intends to use a form of *contract* other than an endorsed Defence contracting template, the *official must* ensure the *contract* is appropriate for the requirement, and capable of achieving an appropriate risk allocation consistent with the Commonwealth resource management framework.

Procurements through the US Foreign Military Sales (FMS) system

- D33. If a Defence *official* is undertaking a *procurement* through the FMS system, the *official must* consult with the Office of the Counsellor Defence Materiel (Washington) (DEFMAT (W)) prior to establishing or amending the FMS case.

Notes: Defence *officials* should follow the [Simple Procurement Process](#) when undertaking low risk, low value (or 'simple') *procurements*.

For Defence Procurement Policy Directive D29, the Department of Finance's Commonwealth Contracting Suite (CCS) and the Defence specific CCS Decision Tree can be found at the Department of Finance's [Commonwealth Contracting Suite](#) webpage.

The endorsed Defence contracting templates and guidance on appropriate template selection can be found on the Commercial Policy [Tools and Templates](#) intranet page.

The US Foreign Military Sales (FMS) program is a form of security assistance authorised by the US Arms Export Control Act (AECA) and is part of US foreign policy. Under Section 3, of the AECA, the US may sell defence articles and services to foreign countries like Australia when to do so will strengthen the security of the US and promote world peace. For more information about the FMS system see the [Support Office Foreign Military Sales](#) intranet page.

The Capability Acquisition and Sustainment Group has a Washington office (CASG-W) which is the focal point for Defence materiel related activity in North America, providing acquisition and sustainment support to Defence and other Australian government agencies. DEFMAT (W) provides acquisition advice to the Head of Australian Defence Staff (Washington) (HADS(W)) and is the representative of Deputy Secretary CASG in North America. The office supports a range of activities, including FMS and direct commercial *procurements*. For more information and contact details see the [Support Office Foreign Military Sales](#) intranet page.

CPR 9.8**Procurement methods**Method 1 – Open tender

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

Defence Procurement Policy Directive

- D34. Defence officials **must** use an *open tender* process for all *procurements* at or above the relevant *procurement threshold*, unless the conditions for a *limited tender* can be satisfied, or the *procurement* is otherwise exempt from this requirement.

Note: See Defence Procurement Policy Directive D2 (and the related Table 1) for Defence *procurements* that are exempt from the *open tender* requirement. Appendix A of the CPRs also sets out various kinds of *procurements* that do not require *open tender* processes.

See paragraphs 30 to 36 in Chapter 2 of the DPPM for guidance about *procurement* methods.

CPR 9.9 – 9.11Method 2 – Limited tender

- 9.9 *Limited tender* involves a *relevant entity* approaching one or more *potential suppliers* to make *submissions*, when the process does not meet the rules for *open tender*.
- 9.10 For *procurements* at or above the relevant *procurement threshold*, *limited tender* can only be conducted in accordance with paragraph 10.3, or when a *procurement* is exempt as detailed in Appendix A.
- 9.11 When conducting a limited tender in accordance with paragraph 9.10, the relevant exemption or limited tender condition **must** be reported on AusTender.

Defence Procurement Policy Directive

- D35. For *procurements* at or above the relevant *procurement threshold*, a Defence official **must not** use a *limited tender* process unless a circumstance in paragraph 10.3 of the CPRs applies, or the *procurement* is otherwise exempt from this requirement.
- D36. In undertaking a *limited tender*, Defence officials **must** ensure that, where practicable, the number of *potential suppliers* invited to participate in the process is sufficient to ensure a value for money outcome.

Notes: Many *procurements* related to the acquisition or sustainment of Defence major capital equipment are undertaken through *limited tender* processes, despite not meeting the requirements of paragraph 10.3 of the CPRs. Usually, this is because they are exempt *procurements* of goods or services (see Defence Procurement Policy Directives D2-D4).

A particular *procurement* may be categorised as a *limited tender*, irrespective whether or not a request for tender or similar *request documentation* is used to undertake the *procurement*. Further, a 'sole source' arrangement with a contractor constitutes a *limited tender* for the purposes of the CPRs. Similarly, each FMS case with the US Government constitutes a *limited tender*.

See paragraphs 37 to 47 in Chapter 2 of the DPPM for guidance about how the circumstances set out in paragraph 10.3 of the CPRs may apply so as to justify using a *limited tender* process.

Where a limited tender procurement method has been utilised for a procurement valued at or above the relevant procurement threshold, the Contract Notice published on AusTender will include either:

- the exemption from Division 2 of the CPRs; or
- the condition from paragraph 10.3 of the CPRs.

CPR 9.12 – 9.13

Procurement from existing arrangements

Procurements from standing offers

- 9.12 Procurements from an existing *standing offer* are not subject to the rules in Division 2 of these CPRs. However, these procurements **must** comply with the rules in Division 1.
- 9.13 *Officials* should report the original *procurement* method used to establish the *standing offer* when they report *procurements* from *standing offers*.

Defence Procurement Policy Directive

- D37. If a *standing offer* panel is established in Defence for *goods* or services, Defence *officials* **must** use the *standing offer* when procuring relevant *goods* or services, unless a Group Head has approved not doing so.
- D38. Defence *officials* **must not** use a *standing offer* panel to order *goods* or services that were not specified in the *request documentation* used to establish the arrangement, even if the relevant *supplier* may be able to provide the *goods* or services.

Notes: *Standing offer* panels provide an efficient and effective mechanism to enable Defence *officials* to procure relevant *goods* and services from industry. The benefit of these arrangements is eroded if *officials* seek to procure outside the panel, noting that panel members also have the reasonable expectation that Defence will use the panel rather than procure outside it. Nevertheless, there may be occasions when Defence *officials* may need to procure *goods* or services outside the panel, for example, where particular knowledge or expertise is required that is only available outside the panel. A valid reason could also include where a *standing offer* panel arrangement has been established by another Commonwealth agency which is able to be used by Defence and which offers better value for money than the corresponding Defence panel. For further information on *standing offers* and current Defence *standing offer* panel arrangements, Defence *officials* should refer to the factsheet on the Commercial Division [Fact Sheets and Guidance](#) intranet page and the Commercial Division Defence [Goods and Services Directory](#) intranet page.

The Department of Finance has established several whole of government coordinated *procurement* arrangements for various *goods* and services, for example, ICT, telecommunications, stationery and office supplies, and airline travel. Defence *officials* are required to use these arrangements unless specific exemptions apply (see paragraphs 4.9 and 4.10 of the CPRs and Defence Procurement Policy Directives D18 and D19 and related Notes). Defence *officials* can find more details at www.finance.gov.au/procurement

Chapter 5

Procurements valued at or above the procurement thresholds

Note: Chapter 5 of the DPPM incorporates all the rules from Division 2 of the CPRs.

Defence Procurement Policy Directive

D39. Defence *officials* **must** comply with the Defence Procurement Policy Directives in Chapter 5 of the DPPM (in addition to those in Chapters 1, 3 and 4) when undertaking *procurements* in Defence, if the *procurement* is valued at or above the relevant *procurement threshold* (unless otherwise specified in the relevant Defence Procurement Policy Directive).

Note: Defence Procurement Policy Directive D39 means that, even though Defence *officials* may be exempt from having to comply with the additional rules in Division 2 of the CPRs in relation to their *procurement*, Defence *officials* are still required to comply with the Defence Procurement Policy Directives that are set out in Chapter 5 of the DPPM, unless stated otherwise. This is because these Defence Procurement Policy Directives are of general application and compliance with them will help to ensure that Defence undertakes its *procurements* in an efficient, effective, economical and ethical manner as required by the PGPA Act.

10. Additional rules

CPR 10.1 – 10.8

Additional rules

- 10.1 The rules set out in Division 2 are additional to those in Division 1 and **must** not be interpreted or applied in a manner that diminishes or negates Division 1.
- 10.2 A *procurement*, except a *procurement* that is specifically exempt in accordance with Appendix A, is subject to the rules contained in Division 2 if the expected value of the *procurement* is at, or above, the relevant *procurement threshold*.

Conditions for limited tender

- 10.3 A *relevant entity* **must** only conduct a *procurement* at or above the relevant *procurement threshold* through *limited tender* in the following circumstances:
 - a. when, in response to an *open approach to market*:
 - i. no *submissions*, or no *submissions* that represented value for money, were received,
 - ii. no *submissions* that met the minimum content and format requirements for submission as stated in the request documentation were received, or
 - iii. no *tenderers* satisfied the conditions for participation,and the *relevant entity* does not substantially modify the essential requirements of the *procurement*; or
 - b. when, for reasons of extreme urgency brought about by events unforeseen by the *relevant entity*, the *goods* and *services* could not be obtained in time under *open tender*; or
 - c. for *procurements* made under exceptionally advantageous conditions that arise only in the very short term, such as from unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy, or receivership, and which are not routine *procurement* from regular *suppliers*; or
 - d. when the *goods* and *services* can be supplied only by a particular business and there is no reasonable alternative or substitute for one of the following reasons
 - i. the requirement is for works of art,

- ii. to protect patents, copyrights, or other exclusive rights, or proprietary information, or
- iii. due to an absence of competition for technical reasons; or
- e. for additional deliveries of *goods* and services by the original *supplier* or authorised representative that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services, or installations, when a change of *supplier* would compel the *relevant entity* to procure *goods* and services that do not meet requirements for compatibility with existing equipment or services; or
- f. for *procurements* in a *commodity market*; or
- g. when a *relevant entity* procures a prototype or a first *good* or service that is intended for limited trial or that is developed at the *relevant entity's* request in the course of, and for, a particular *contract* for research, experiment, study, or original development; or
- h. in the case of a *contract* awarded to the winner of a design contest, provided that
 - i. the contest has been organised in a manner that is consistent with these CPRs, and
 - ii. the contest is judged by an independent jury with a view to a design *contract* being awarded to the winner.

Note: See paragraphs 37 to 45 in Chapter 2 of the DPPM for guidance about how the circumstances set out in paragraph 10.3 of the CPRs may apply so as to justify using a *limited tender* process.

- 10.4 A *procurement* at or above the relevant *procurement threshold* conducted by *limited tender* is not required to meet the rules in paragraphs 10.6 -10.8 (*Request documentation*), 10.20-10.31 (Minimum time limits), or 10.37 (*Awarding contracts*).
- 10.5 In accordance with the general rules for accountability set out in these CPRs, for each *contract* awarded through *limited tender*, an *official must* prepare and appropriately file within the *relevant entity's* records management system a written report that includes:
 - a. the value and type of *goods* and services procured;
 - b. a statement indicating the circumstances and conditions that justified the use of *limited tender*, and
 - c. a record demonstrating how the *procurement* represented value for money in the circumstances.

Request documentation

- 10.6 *Request documentation must* include a complete description of:
 - a. the *procurement*, including the nature, scope and the quantity of the *goods* and services to be procured or, where the quantity is not known, the estimated quantity, and any requirements to be fulfilled, including any technical *specifications*, conformity certification, plans, drawings, or instructional materials;
 - b. any *conditions for participation*, including any financial guarantees, information and documents that *potential suppliers* are required to submit;
 - c. any *minimum content and format requirements*;
 - d. *evaluation criteria* to be considered in assessing *submissions* and, if applicable to the evaluation, the relative importance of those criteria;
 - e. any dates for the delivery of *goods* or supply of services, taking into account the complexity of the *procurement*; and
 - f. any other terms or conditions relevant to the evaluation of submissions.
- 10.7 However, relevant entities are not obligated to release confidential information, information sensitive to essential security or information that may impede competition.
- 10.8 Relevant entities **must** ensure that *potential suppliers* and *tenderers* are dealt with fairly and in a non-discriminatory manner when providing information leading to, or following,

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an *approach to market*. Relevant entities **must** promptly reply to any reasonable request from a *potential supplier* for relevant information about a *procurement*, and when responding to such enquiries **must** avoid a *potential supplier*, or group of *potential suppliers*, gaining an unfair advantage in a competitive *procurement* process.

Defence Procurement Policy Directives

- D40. Defence *officials* **must** ensure that the *request documentation* for a *procurement* is consistent with the approved *procurement* plan and includes all of the information necessary to enable *potential suppliers* to properly prepare and lodge *submissions*.
- D41. Defence *officials* **must** ensure that all *potential suppliers* are provided with the same information in the *request documentation*, including any amendments to the *request documentation*.
- D42. For all competitive *procurement* processes, Defence *officials* **must** prepare a tender evaluation plan that is commensurate with the scale, scope and risk of the *procurement*.
- D43. Defence *officials* **must** ensure that the tender evaluation plan for a *procurement* is approved by the relevant *official* no later than the opening of *submissions*.

Note: Defence officials should refer to Chapter 5 of the Complex Procurement Guide for more information about how to undertake a tender evaluation for a complex procurement.

CPR 10.9 – 10.13

Specifications

- 10.9 A *relevant entity* **must** not use specifications or prescribe any conformity assessment procedure in order to create an unnecessary obstacle to trade.
- 10.10 In prescribing *specifications* for *goods* and services, a *relevant entity* **must**, where appropriate:
- set out the *specifications* in terms of performance and functional requirements; and
 - base technical *specifications* on international *standards*, when they exist and apply to the relevant *procurement*, except when the use of international standards would fail to meet the *relevant entity's* requirements.
- 10.11 Where an Australian *standard* is applicable for *goods* or services being procured, tender responses **must** demonstrate the capability to meet the Australian *standard*, and *contracts* **must** contain evidence of the applicable standards (see paragraph 10.39).
- 10.12 A *specification* **must** not require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer, or *supplier*, unless there is no other sufficiently precise or intelligible way of describing the requirement. In an exceptional circumstance when this type of *specification* is used, words such as 'or equivalent' **must** be included in the *specification*.
- 10.13 A *relevant entity* may conduct market research and other activities in developing *specifications* for a particular *procurement* and allow a *supplier* that has been engaged to provide those services to participate in *procurements* related to those services. Relevant entities **must** ensure that such a *supplier* will not have an unfair advantage over other *potential suppliers*.

Defence Procurement Policy Directive

- D44. If essential requirements are specified in *request documentation*, Defence *officials* **must** exclude a *tenderer* from further consideration in the *procurement* process, if the *official* considers that the *tenderer* has not met those requirements (unless the *procurement* is exempt from Division 2 of the CPRs).

Notes: Defence *officials* should refer to Chapter 3 of the Complex Procurement Guide for more information about the use of standards, *specifications* and essential requirements in *request documentation*. For *procurements* that are exempt from Division 2 of the CPRs, Defence Procurement Policy Directive D44 should be followed as good practice.

CPR 10.14 – 10.19

Modification of evaluation criteria or specifications

10.14 When, during the course of a *procurement*, a *relevant entity* modifies the *evaluation criteria* or *specifications* set out in an *approach to market* or in *request documentation*, or amends or reissues an *approach to market* or *request documentation*, it **must** transmit all modifications or amended or reissued documents:

- a. to all the *potential suppliers* that are participating at the time the information is amended, if known, and, in all other cases, in the same manner as the original information; and
- b. in adequate time to allow *potential suppliers* to modify and re-lodge their *submissions*, if required.

Conditions for participation

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

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

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

- a. evaluate financial, commercial, and technical abilities on the basis of the *tenderer's* business activities, wherever they have occurred; and
- b. base its determination solely on the *conditions for participation* that the *relevant entity* has specified in either the *approach to market* or the *request documentation*.

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

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

- a. labour regulations, including ethical employment practices;
- b. workplace health and safety; and
- c. environmental impacts.

Note: See the Notes following paragraph 4.8 of the CPRs.

Defence Procurement Policy Directive

D45. If *conditions for participation* are specified in *request documentation*, Defence *officials* **must** exclude a *tenderer* from further consideration in the *procurement* process, if the *official* considers that the *tenderer* has not met those conditions (unless the *procurement* is exempt from Division 2 of the CPRs).

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Note: Defence *officials* should refer to Chapters 3 and 5 of the Complex Procurement Guide for more information about *conditions for participation*.

CPR 10.20 – 10.27**Minimum time limits**

- 10.20 *Potential suppliers* **must** be required to lodge *submissions* in accordance with a common deadline.
- 10.21 Relevant entities **must** provide sufficient time for *potential suppliers* to prepare and lodge *submissions* in response to an *approach to market*. Time limits discussed in this section represent minimum time limits to lodge *submissions* and should not be treated as default time limits.
- 10.22 The time limit for *potential suppliers* to lodge a *submission* **must** be at least 25 *days* from the date and time that a *relevant entity* publishes an *approach to market* for an *open tender*.
- 10.23 The 25 *day* period referred to in paragraph 10.22 **must** be extended by five *days* for each of the following circumstances:
- when a *relevant entity* does not make *request documentation* available electronically from the date that a *relevant entity* published an *approach to market*; and/or
 - when a *relevant entity* does not accept *submissions* electronically.
- 10.24 A *relevant entity* may establish a time limit that is less than 25 *days* but no less than 10 *days* under the following circumstances”
- when the *relevant entity* has published details of the *procurement* in an *annual procurement plan on AusTender*, at least 40 *days* and not more than 12 months in advance, and those details include a description of the *procurement*, the timing of the *approach to market* and the procedure to obtain *request documentation*;
 - when the *relevant entity* procures *commercial goods and services* (unless the *relevant entity* does not accept the *submissions* electronically, in which case the minimum time limit **must** be no less than 13 *days*); or
 - when a genuine state of urgency renders the normal time limit impracticable.
- 10.25 In the case of a *multi-stage procurement* each *approach to market* **must** comply with the time limits stated in paragraph 10.22 – 10.24.
- 10.26 When a *relevant entity* intends to specify *conditions for participation* that require *potential suppliers* to undertake a separate registration procedure, the *relevant entity* **must** state the time limit for responding to the registration in the *approach to market*. Any such *conditions for participation* **must** be published in sufficient time to enable all *potential suppliers* to complete the registration procedures within the time limit for the *procurement*.
- 10.27 When a *relevant entity* extends the time limit for registration or *submission*, or when negotiations are terminated and *potential suppliers* are permitted to lodge new *submissions*, the new time limit **must** apply equitably.

Defence Procurement Policy Directive

D46. Defence *officials* **must** not grant an extension to a deadline for registration or lodgement of *submissions* once the closing date for registration or *submissions* has passed.

CPR 10.28 – 10.31Late submissions

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

- 10.29 *Relevant entity* mishandling does not include mishandling by a courier or mail service provider engaged by a *potential supplier* to deliver a *submission*. It is the responsibility of the *potential supplier* to ensure that the *submission* is dispatched in sufficient time for it to be received by the *relevant entity* by the deadline.
- 10.30 Late *submissions* should be returned unopened to the *potential supplier* who submitted them, to:
- ensure that they are not evaluated or compared with *submissions* which were submitted by the due time and date;
 - demonstrate to other *tenderers* that the process for receiving *submissions* is fair and impartial; and
 - eliminate scope for any suggestion that the *submission* was rejected for any reason other than because it was late.
- 10.31 It may be necessary to open a late *submission* if there is no return address or any indication of which *approach to market* the *submission* relates. When a *submission* has been opened under such circumstances the *potential supplier* should be advised that the *submission* was rejected due to lateness and advised of the reason it was opened.

Defence Procurement Policy Directives

- D47. Defence *officials* **must** decide whether to accept a late *submission* before the relevant *submission* is opened.
- D48. For *procurements* not covered by Division 2 of the CPRs, Defence *officials* may accept a late *submission* if this is consistent with probity in the circumstances of the case.

Notes: Before accepting a late *submission*, Defence *officials* should seek specialist contracting or legal advice. Defence *officials* should refer to Chapters 4 and 5 of the Complex Procurement Guide for more information about the probity risks relating to the acceptance of late tenders.

There are three ways through which Division 2 of the CPRs will not apply to a *procurement*: First, the *procurement* is below the relevant *procurement threshold* (see paragraph 9.7 of the CPRs); second, the *procurement* is exempt through the application of the general exemptions listed in Appendix A to the CPRs (see Appendix A to the DPPM); and third, the *procurement* is exempt through the application of a Defence specific exemption as a result of a measure made by the Secretary under paragraph 2.6 of the CPRs (see Defence Procurement Policy Directives D2 - D4).

CPR 10.32 – 10.33

Value for money and broader benefits to the Australian economy

- 10.32 In addition to the considerations at paragraph 4.4, for *procurements* above \$4 million, Commonwealth *officials* are required to consider the economic benefit of the *procurement* to the Australian economy.
- 10.33 The policy operates within the context of relevant national and international agreements and *procurement* policies to which Australia is a signatory, including free trade agreements and the Australia and New Zealand Government Procurement Agreement.

Note: Defence *officials* should refer to paragraph 8 in Chapter 2 of the DPPM for guidance about the application of the 'economic benefit' requirement in relation to Defence *procurement*. The Department of Finance has also released guidance about paragraphs 10.32 and 10.33 of the CPRs on the [Department of Finance webpage](#).

CPR 10.34 – 10.36

Receipt and opening of submissions

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

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

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

Defence Procurement Policy Directive

D49. If *minimum content and format requirements* are specified in *request documentation*, Defence *officials* **must** exclude a *tenderer* from further consideration in the *procurement* process, if the *official* considers that the *tenderer* has not met those requirements, unless the *official* considers that there has been an unintentional error of form (or unless the *procurement* is exempt from Division 2 of the CPRs).

Note: Defence *officials* should refer to Chapters 3 and 5 of the Complex Procurement Guide for more information about *minimum content and format requirements* and unintentional errors of form.

CPR 10.37 – 10.38

Awarding contracts

10.37 Unless a *relevant entity* determines that it is not in the public interest to award a *contract*, it **must** award a *contract* to the *tenderer* that the *relevant entity* has determined:

- a. satisfies the *conditions for participation*;
- b. is fully capable of undertaking the *contract*; and
- c. will provide the best value for money, in accordance with the essential requirements and *evaluation criteria* specified in the *approach to market* and *request documentation*.

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

Notes: The CPRs state that public interest grounds generally arise in response to unforeseen events or new information that materially affects the objectives or reasons underlying the original procurement requirement as specified in the request document.

Defence *officials* should typically not make any public announcement regarding the selection of a preferred *tenderer* or *tenderers* until *contract* negotiations are completed, all necessary approvals have been obtained, the *contract* signed and unsuccessful *tenderers* have been notified. Defence's experience is that public announcements of preferred *tenderers* can significantly lengthen the time needed to finalise the negotiation of the *contract*.

CPR 10.39

Contract Management / Standard Verification

10.39 Where applying a *standard* for *goods* or services, *relevant entities* **must** make reasonable enquiries to determine compliance with that *standard*:

- a. this includes gathering evidence of relevant certifications; and
- b. periodic auditing of compliance by an independent assessor.

Defence Procurement Policy Directives

Contract negotiations and management

- D50. Prior to entering into *contract* negotiations, Defence *officials must* document their negotiation strategy commensurately with the scale, scope and risk of the *procurement* to which the *contract* relates.
- D51. If *contract* negotiations result in a significant change to a *tenderer's* offer (including its technical solution, pricing, or commercial terms), Defence *officials must* consider whether the amended offer continues to represent best value for money.
- D52. Defence *officials must* not change the scope of a *contract* to obtain additional or different *goods* or services that fall outside the terms of the original *contract* approval, unless that change is approved by the relevant delegate as a *limited tender* and is otherwise consistent with the CPRs and the Defence Procurement Policy Directives in the DPPM.

Notes: For more complex *procurements*, the negotiation strategy will typically be documented in a *contract* negotiation directive that is endorsed by the relevant delegate for the *procurement*.

To exercise an option in an existing *contract* to procure additional quantities of *goods*, services or optional extras, Defence *officials* should follow the mechanism set out in the relevant *contract*.

Defence *officials* should refer to Chapters 6 of the Complex Procurement Guide for more information about how to undertake *contract* negotiations.

Defence *officials* should refer to the Defence Contract Management Framework to support them achieving best practice contract management. The Framework brings together the underpinning principles, policies, tools, templates, guidance and competencies required to support more collaborative business relationships with industry and deliver more effective contract outcomes. Defence *officials* should refer to Chapter 7 of the Complex Procurement Guide and the Defence Contract Management Handbook for guidance about how to undertake *contract* management.

Appendices

CPR Appendix A – Appendix B

Appendix A: Exemptions from Division 2 of the CPRs

Procurements that are exempt from the rules of Division 2 of the CPRs by the operation of Appendix A are still required to be undertaken in accordance with value for money and with the rules of Division 1 of the CPRs.

Division 2 does not apply to:

1. *procurement* (including leasing) of land, existing buildings or other immovable property or any associated rights (note: the *procurement* of *construction services* is not exempt);
2. *procurement* of *goods* and services from another *Commonwealth entity*, or a state, territory or local government entity;
3. *procurements* funded by international grants, loans or other assistance, when the provision of such assistance is subject to conditions inconsistent with this document;
4. *procurements* funded by grants and sponsorship payments from non-Commonwealth entities;
5. *procurement* for the direct purpose of providing foreign assistance;
6. *procurement* of *research and development* services, but not the *procurement* of inputs to *research and development*;
7. the engagement of an expert or neutral person, including engaging counsel or barristers, for any current or anticipated litigation or dispute;
8. *procurement* of *goods* and services (including construction) outside Australian territory, for consumption outside Australian territory;
9. acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt;
10. *procurement* by the Future Fund Management Agency of investment management, investment advisory, or master custody and safekeeping services for the purposes of managing and investing the assets of the Future Fund;
11. *procurement* of blood plasma products or plasma fractionation services;
12. *procurement* of government advertising services;
13. *procurement* of *goods* and services by, or on behalf of, the Defence Intelligence Organisation, the Australian Signals Directorate, or the Australian Geospatial Intelligence Organisation;
14. *contracts for labour hire*;
15. *procurement* of *goods* and services from a business that primarily exists to provide the services of persons with a disability; and
16. *procurement* of *goods* and services from an SME with at least 50 per cent Indigenous ownership.

Appendix B: Definitions

The following definitions apply for the purposes of the CPRs:

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

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

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

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

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

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

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

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

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

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

Contract – an arrangement, as defined by s23(2) of the PGPA Act, for the *procurement* of *goods* and/or services under which *relevant money* is payable or may become payable. Note: this includes *standing offers* and panels.

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

Corporate Commonwealth entities – as defined in section 8 of the PGPA Act.

Days – means calendar *days*.

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

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

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

GST – The *Goods and Services Tax*, as defined by the *A New Tax Systems (Goods and Services Tax) Act 1999*.

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

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

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

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

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

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

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

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

Procurement – refer to paragraphs 2.7 to 2.9 of the CPRs

Procurement thresholds – refer to paragraph 9.7 of the CPRs

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

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

Relevant entity – *non-corporate Commonwealth entities* and prescribed *corporate Commonwealth entities* (listed at Appendix B) that must comply with the CPRs when performing duties related to *procurement*.

Reporting thresholds – refer to paragraph 7.19 of the CPRs.

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

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

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

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

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

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

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

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

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Defence Procurement Policy Directive

D53. Terms that are defined in Appendix B of the CPRs and which are used in the DPPM, have the same meaning in the DPPM as they do in the CPRs, unless the contrary intention appears.

Note: Terms that are defined in Appendix B and which are used in the DPPM are generally identified through the use of italics text.



Australian Government
Department of Defence
Capability Acquisition and
Sustainment Group

Defence Procurement Policy Manual

DPPM

Version 1.5
1 July 2019



Monitor and Review

This Manual will be reviewed whenever relevant sections of any of the identified references are updated or amended. All feedback and suggestions for improvement should be sent to:

Procurement.Policy@Defence.gov.au

Note to External Agencies

External agencies intending to use this template will need to tailor it in order to meet their specific procurement requirements (including relevant internal guidance) and should seek appropriate professional guidance as required.

Disclaimer

The information in this publication is provided by Defence for the purpose of disseminating procurement guidance to its staff. While every effort has been made to ensure the guidance in this publication is accurate and up-to-date, independent skill and judgment should be exercised before relying upon it.

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Please note that while the Procurement Policy Help Desk can respond to DPPM policy questions, this service is not available to those outside of Defence. Contractors should, in the first instance, seek guidance from the relevant Contact Officer for their specific procurement.

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This publication should be attributed as the *Defence Procurement Policy Manual 1 July 2019*.

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DPPM Amendment List

Version Number	Change	Date
Version 1.0	Original	1 April 2017
Version 1.1	Version 1.1 Matrix of Changes	19 December 2017
Version 1.2	Version 1.2 Matrix of Changes	8 November 2018
Version 1.3	Table of Changes to CPRs	1 January 2019
Version 1.4	Version 1.4 Matrix of Changes	20 April 2019
Version 1.5	Version 1.5 Matrix of Changes	1 July 2019

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Chapter 1

Introduction to the Defence Procurement Policy Manual

Overview

1. Welcome to the new version of the Defence Procurement Policy Manual (DPPM). The DPPM has been completely re-written to more clearly set out for Defence *officials* the mandatory policy that **must** be complied with when undertaking *procurement*.
2. The DPPM has also adopted a completely new structure and format. In particular, the DPPM now incorporates the Commonwealth Procurement Rules (CPRs) so that *officials* can find in one place the Commonwealth and Defence *procurement* related policy that applies to them.
3. There are many terms in *italics*. This normally means that the term is a defined term. Appendix B to the CPRs (and the DPPM) sets out the definitions of these terms.

Policy Statement

4. The DPPM incorporates both the CPRs and additional Defence Procurement Policy Directives that **must** be complied with by Defence *officials* in relation to *procurement*. Defence Procurement Policy Directives supplement specific CPRs in the context of the particular circumstances and needs of the Department of Defence ('Defence').

Defence Procurement Policy Directive

- D1. In addition to complying with the CPRs, Defence *officials* must comply with the Defence Procurement Policy Directives in the DPPM when undertaking *procurement*. Defence Procurement Policy Directives are generally denoted by the term 'must' (or 'must not').¹

5. Together with the guidance, templates, tools and other resources referred to in the DPPM, the DPPM is an internal control system that forms part of the framework that applies the principles and requirements of the resource management and *procurement* frameworks (focusing on Defence's operations). The DPPM provides primary operational instructions to Defence *officials* in carrying out their duties related to *procurement*, in a way that is tailored to Defence's particular circumstances and needs.

Scope and applicability of this manual

6. The DPPM applies to all Defence *officials*. In addition, a *contract* may extend the application of this manual to a *contractor*,² or a *contractor* may be prescribed to be a Defence *official* in accordance with Defence's Accountable Authority Instructions.

What is the purpose of this manual?

7. The purpose of the DPPM is to:
 - a. assist Defence *officials* to implement the requirements of the CPRs and Defence policy when undertaking *procurement*;
 - b. provide Defence *officials* with a plain English document that is simple to understand and use when undertaking *procurement*;
 - c. update Defence's approach to *procurement* to reduce red tape and costs to industry;
 - d. encourage *officials* to use more strategic approaches, commercial expertise and good practice, when procuring for Defence; and

¹ Where the term 'should' or 'may' is used in the DPPM, this generally indicates good practice. See also the section 'How do I read the DPPM' in this Chapter for more information.

² See further paragraph 4.15 of the CPRs and the related Note.

- e. encourage *officials* to engage early with Defence industry to stimulate competition and innovation, and work with industry to develop better solutions and outcomes for Defence.

How do I read the DPPM?

8. The DPPM is divided into five chapters and has two appendices, as follows:

Chapter 1 – Introduction to the Defence Procurement Policy Manual – this chapter provides an overview of the role of the DPPM and how it is designed to be used;

Chapter 2 – An overview of the CPRs and the *procurement* lifecycle – this chapter provides an overview of the CPRs, including the key policy requirements as they apply to the *procurement* lifecycle, and provides a summary of the *procurement* life cycle to get into *contract*,

Chapter 3 – The procurement framework - this chapter incorporates all of the preliminary rules and guidance contained in the CPRs;

Chapter 4 – Achieving Value for Money in *procurement* – this chapter incorporates all the rules from Division 1 of the CPRs, as well as additional Defence Procurement Policy Directives;

Chapter 5 - *Procurements* above the *procurement thresholds* – this chapter incorporates all of the rules from Division 2 of the CPRs, as well as additional Defence Procurement Policy Directives;

Appendix A – Exemptions from Division 2 of the CPRs – this is Appendix A from the CPRs which sets out the list of *procurements* that are exempt from Division 2 of the CPRs;

Appendix B – Definitions – this is Appendix B from the CPRs which sets out the definitions of the terms used in the CPRs. These terms also have the same meaning when used in the DPPM.

9. Chapters 3 – 5 of the DPPM set out the individual CPR rules that **must** be complied with by all *officials* (including Defence *officials*) undertaking *procurement* for the Commonwealth. The CPR rules have been numbered as they appear in the CPRs, and are easily identifiable as having been drafted in the following format:

EXAMPLE ONLY

‘2. Procurement Framework

- 2.1 The Commonwealth Procurement Rules (CPRs) are issued by the Minister for Finance (Finance Minister) under section 105B(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).
- 2.2 *Officials* from *non-corporate Commonwealth entities* and prescribed *Corporate Commonwealth entities* listed in section 30 of the Public Governance, Performance and Accountability Rule 2014 must comply with the CPRs when performing duties related to *procurement*. These entities will collectively be referred to as *relevant entities* throughout the CPRs.’

10. Many of the CPR rules stand by themselves and need no further explanation or context. Also, in many cases, there are no additional Defence Procurement Policy Directives over and above the individual CPR rule.

11. In other cases, however, there may be one or more additional Defence Procurement Policy Directives that **must** also be complied with by Defence *officials*. These are also easily identifiable as they appear below the particular CPR rules to which they most closely relate, have been numbered with ‘D’ as an identifier, and have been drafted in the following format:

EXAMPLE ONLY

‘Defence Procurement Policy Directive

D3. If a Defence *official* determines that an exemption given under paragraph 2.6 of the CPRs applies to a *procurement*, the *official* must ensure that the reasons supporting that determination are appropriately documented.’

12. Also accompanying a CPR rule or Defence Procurement Policy Directive in many cases are ‘Notes’. These Notes assist with the interpretation of, or provide more context for readers about, a particular CPR or Defence Procurement Policy Directives, and how they apply in the Defence *procurement* environment. An example of a Note is as follows:

EXAMPLE ONLY

‘Note: The DPPM also sets out the Defence Procurement Policy Directives that Defence *officials* must comply with when they procure *goods* and services for or on behalf of Defence. The DPPM also indicates *good practice*.’

13. These Notes do not form part of the mandatory policy that **must** be complied with under the DPPM. However, they can be used, along with the material in Chapters 1 and 2 of the DPPM, to assist with interpretation and to give greater context for the DPPM user.

14. The headings in the DPPM are usually the headings from the CPRs. However, other headings have also been included where appropriate to help guide the reader.

Commonwealth legislative and policy framework

15. As paragraph 2.10 of the CPRs notes, Defence and its *officials* operate in an environment of legislation and Commonwealth policy. Defence has numerous business policy owners that are responsible for ensuring Defence complies with applicable Commonwealth legislation and policy requirements, as well as with particular State and Territory legislation that may also apply to Defence activities. This legislation and policy often interacts with Defence *procurement* and in many cases is given effect to through *contracts*.

16. The DPPM refers to and incorporates by reference relevant Commonwealth legislation and policy, and other Defence policy, relating to *procurement*. Also, the endorsed Defence contracting templates have been drafted and are regularly updated to give effect to applicable Commonwealth legislation and policy (including the CPRs), and applicable Defence policy. These templates have been developed to assist Defence *officials* to comply with applicable legislation and policy requirements if used for the purposes for which they are intended. Where the *procurement* involves a unique or unusual requirement not within the contemplation of the endorsed templates, specialist advice should be sought to ensure any specific legislation and policy is addressed. The endorsed Defence contracting templates may be found on the Commercial Division Tools and Templates intranet page.

17. There are also many policy or support areas in Defence that can assist in relation to specific aspects of *procurement* or on legislation and policy that intersect with *procurement* (eg contracting, legal, finance, environment, work health and safety, security, technical regulatory frameworks etc). These resources can be found by the *procurement* support areas link on the Commercial Division Help Desk Kiosk intranet page.

18. The Department of Finance’s *Buying for the Australian Government* website provides further assistance on policies that interact with *procurement* (called ‘Procurement-Connected Policies’). The Department of Finance also releases Resource Management Guides and Finance Circulars that provide additional guidance and interim policy updates. These resources may be found on the [Department of Finance webpage](#).

Resource management framework

19. The resource management framework is part of the broader Commonwealth legislative and policy environment, and consists of the legislation and policy (including the CPRs) governing the management of the Commonwealth’s resources. The main elements of this framework are set out in Figure 3 of the CPRs.

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20. The resource management framework is primarily comprised of the PGPA Act and associated *Public Governance Performance and Accountability Rule 2014* (PGPA Rule 2014). The PGPA Act authorises the Secretary, as Defence's *Accountable Authority*, to issue Accountable Authority Instructions (AAIs) (PGPA Act, section 20A; see also paragraph 2.5 of the CPRs). The Secretary has issued the Defence AAIs under this authorisation. The PGPA Act also contains provisions dealing with the commitment of *relevant money* and *officials* entering into arrangements such as *contracts* and *deeds* (PGPA Act, section 23). Section 60 of the PGPA Act governs the granting by the Commonwealth of indemnities, warranties and guarantees ('contingent liabilities'). Sections 23 and 60 of the PGPA Act are key provisions relating to *procurement*.

21. The PGPA Framework requires Defence officials to:

- a not be inconsistent with the policies of the Australian Government (PGPA Act, section 21);
- b use and manage *public resources* in an efficient, effective, economical and ethical manner (PGPA Act section 8 and 15);
- c exercise 'care and diligence' in performing their duties (PGPA Act, section 25);
- d exercise powers, perform functions and discharge duties "honestly, in good faith and for a proper purpose" (PGPA Act, section 26);
- e not improperly use their position in performing their duties (PGPA Act, section 27);
- f not improperly use information (PGPA Act, section 28); and
- g disclose interests in relation to the performance of their duties (PGPA Act, section 29).

22. Section 21 of the PGPA Act requires the Secretary to govern Defence in a way that is 'not inconsistent with the policies of the Australian Government'. The 'policies of the Australian Government' is not a defined term and should be interpreted broadly, applying its ordinary dictionary meaning. Among other things, the term will likely include things like Cabinet decisions, or other Government approvals relating to a commitment of *relevant money*, to the extent that the decision or approval establishes a course or line of action.

23. Accordingly, Defence *officials* exercising delegations (especially those for the purposes of section 23 of the PGPA Act) should ensure that they do so consistent with the terms of any Australian Government decisions or approvals relevant to the *procurement*.

24. For a Defence *official* (including a contractor who is prescribed as a Defence *official*) to exercise a power conferred on or delegated to the Secretary under the PGPA Act in relation to *procurement*, they are required to have the delegated authority. These delegations are described in the Defence AAIs and issued in Financial Delegations Manual (FINMAN 2).

25. For the purposes of section 23(3) of the PGPA Act, delegated Defence *officials* may approve the commitment of *relevant money* (Commitment Approval delegation). This delegation is required to be exercised before the Commonwealth enters into the arrangement that commits *relevant money*. For the purposes of section 23(1) of the PGPA Act, Defence *officials* may enter into an arrangement on behalf of the Commonwealth (Enter into an Arrangement delegation). The Defence *official* exercises this delegation by the physical act of entering into an arrangement, after the proposed commitment has been approved by a Commitment Approval delegate. These delegations are mentioned in Defence Procurement Policy Directive D5.³ Defence *officials* should be aware that the section 23 PGPA Act delegations apply to all kinds of *procurements*. For example, both delegations will be required for each order placed under a *standing offer* arrangement.⁴

26. Also, a change to a *contract* (whether called a *contract* change, amendment or variation or some other terminology) may itself technically constitute a *procurement*. In any event, both delegations will be required to be exercised for each *contract* change, if the change involves the

³ If a *procurement* includes a contingent liability, Defence Procurement Policy Directive D6 requires the relevant delegate to authorise the granting of the contingent liability for the purposes of section 60 PGPA Act. In Defence, the Commitment Approval delegate may do this as part of exercising this delegation

⁴ The Establishing and Using Standing Offers Fact Sheet provides further information regarding delegations required for the establishment and use of *standing offer* arrangements.

commitment of *relevant money*.⁵ If the *contract* change does not involve the commitment of *relevant money* (that is, it is a 'nil-cost' *contract* change), only the Enter into an Arrangement delegation is required.⁶ However, even in this situation, the delegate should be satisfied that the proposed change represents proper use and management of *public resources* and is not inconsistent with the policies of the Australian Government (see further paragraph 6.1 of the CPRs).

27. In addition to these delegations under the PGPA Act, and in accordance with AAI 3, Defence *officials* are also required to obtain an 'Endorsement to Proceed' before undertaking certain *procurements* (see Defence Procurement Policy Directive D9). An Endorsement to Proceed process is part of Defence's internal controls (which are required by section 16 of the PGPA Act) to better ensure the proper use and management of *public resources*. Having a Defence *official* provide an Endorsement to Proceed for *procurements* above a certain value provides additional internal scrutiny through which Defence can satisfy itself that proceeding with the *procurement* would be an efficient, effective, economical and ethical use of *public resources*, and that it will not be inconsistent with the policies of the Australian Government. An Endorsement to Proceed Fact Sheet and template have been developed to assist Defence *officials* to deal with all the matters they need to consider when exercising this function.⁷

28. Defence has also developed templates to assist and guide Commitment Approval and Enter into Arrangement delegates (as well as any separate delegate authorising the granting of a contingent liability under section 60 of the PGPA Act) through all the considerations they need to be aware of when exercising their delegations.

Compliance with the DPPM

29. The DPPM sits within the procurement policy framework as set out in Figure 1.

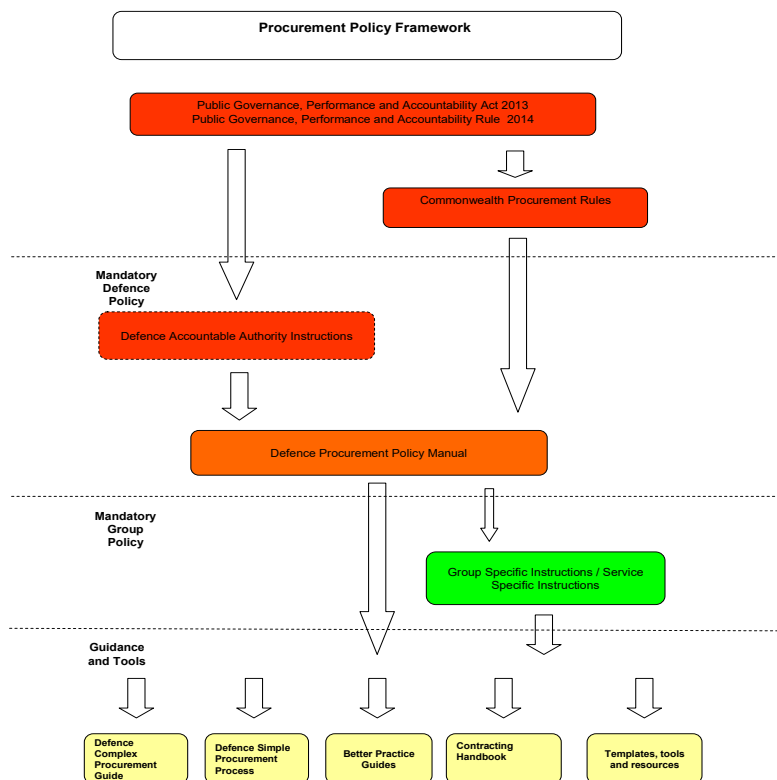


Figure 1

⁵ When calculating the value of a contract change for the purposes of exercising a delegation, Secretary's Direction 18 in FINMAN 2 Schedule 1 states that the limit of delegation is determined by adding the proposed additional commitment to the existing value of the commitment of *relevant money* (that is, the original value plus any amendments already approved).

⁶ While only the Enter into an Arrangement delegation is required, AAI 2.4.1.9(b) and FINMAN 2 Schedule 2 Note 5 have the effect that not all Defence *officials* have the delegated authority to agree to enter into arrangements that are nil-cost contract changes. Defence *officials* should refer to AAI 2.4.1.9 and FINMAN 2 Schedule 2 Note 5 to make sure that these contract changes are authorised at the right level.

⁷ For further guidance, see Chapter 4 of the Complex Procurement Guide.

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30. If a Defence *official* departs from the DPPM in a way that results in a departure from the CPRs, (or the PGPA Act or PGPA Rule 2014), then the *official* will have contravened the law.

31. When considering a possible departure from a Defence Procurement Policy Directive contained in the DPPM, Defence *officials* should:

- a. consider whether a proposed departure from the policy requirement is reasonable and justified in the circumstances and would produce the same or better outcome for Defence;
- b. consult their supervisor, wherever practicable, about a proposed departure – a properly informed decision may involve consulting the policy owner; and
- c. be responsible and accountable for the consequences of departing from, or not adhering to, the content of a manual, including where such departure or non-adherence results in a breach of applicable laws or leads to adverse outcomes for Defence.

32. Officials are not permitted to depart from the mandatory requirements of the PGPA Act, PGPA rule, CPRs, AAls and FINMAN 2

33. Defence *officials* should consider whether contractors should be required to comply with the DPPM when undertaking *procurement* on behalf of Defence and communicate this requirement to the contractors, including the incorporation of appropriate provisions in *contracts*.⁸

Why do we have *procurement* rules?

34. The CPRs and Defence Procurement Policy Directives in the DPPM exist to assist Defence *officials* make proper use of *public resources* when undertaking *procurement* related activities for the Commonwealth. Defence *officials*, like *officials* from other Commonwealth agencies, are accountable for how they spend *relevant money* (also known as ‘public money’).

35. The DPPM provides a framework that promotes responsible and accountable spending by Defence *officials* when procuring *goods* and services for Defence. This framework supports the proactive management of the risks relating to *procurement*, as required by the CPRs.

Why are the CPRs and the DPPM drafted the way they are?

36. As noted at paragraph 2.15 of the CPRs, the CPRs give effect to Australia’s international treaty obligations. Access to overseas markets is secured through Free Trade Agreements (FTAs). Under FTAs, countries offer reciprocal access to their government *procurements*. The CPRs reflect Australia’s FTA commitments, and in particular are substantially based on the text of Chapter 15 of the Australia-USA FTA. The CPRs also align with the World Trade Organisation’s Agreement on Government Procurement (GPA). Accordingly, the CPRs include *procurement* related rules that give effect to Australia’s international obligations.

37. The CPRs also seek to ensure that Commonwealth agencies achieve value for money in their *procurement* activities, however they have not been specifically drafted to follow the logical order or timeline of the *procurement* life cycle, and it is very difficult to simply translate or allocate the CPR rules to the various parts of the life cycle. The Defence Procurement Policy Directives have been drafted to align with the structure of the CPRs, and therefore also do not follow the *procurement* life cycle. Chapter 2 of the DPPM provides an overview of the CPRs, including a discussion of the core principles underpinning Commonwealth *procurement*. Chapter 2 also provides an overview of how to plan and undertake a *procurement*.

38. By contrast, the Simple Procurement Process Tool and Complex Procurement Guide, which accompany the DPPM, have been based on the *procurement* life cycle so that Defence *officials* have a more intuitive sequenced guidance document to follow when planning for and undertaking *procurements*. The documents do not contain mandatory policy requirements, rather, along with the practitioner level Better Practice Guides and Handbooks on specific *procurement* topics, they provide more detailed ‘how to’ guidance to undertake good *procurement*, whether for a low risk, low value (‘simple’) *procurement* or for the more highly complex *procurements* that are often undertaken in Defence, whether in the materiel or non-materiel environment.

⁸ For more information about when it might be appropriate to require contractors to comply with the DPPM, see paragraph 4.17 of the CPRs and the related Note.

What is the *procurement* life cycle?

39. The *procurement* life cycle is simply the breakdown of the end-to-end *procurement* process into logical phases and stages. If each stage of the life cycle is planned for and executed well, Defence *officials* are more likely to achieve good outcomes from their *procurement* activities. The *procurement* lifecycle separates *procurement* into three phases: planning, sourcing and managing. These phases are further divided into seven distinct, but interrelated stages, which are:

Planning

1. Plan the *procurement*
2. Request documentation

Sourcing

3. Approach the market
4. Evaluation
5. Negotiation and contract signature

Managing

6. Contract management⁹
7. Disposal.

40. The *procurement* life cycle is represented by the following ‘procurement wheel’ (see figure 2).



Figure 2

41. While the *procurement* life cycle includes a Disposal stage, the actual disposal of *goods* (for example, Defence materiel at the end of its life of type) is not a *procurement* within the meaning of the CPRs. This is so even though paragraph 2.10 of the CPRs mentions a ‘consideration of disposal of *goods*’ as being part of *procurement*. Hence, disposal of *goods* is neither subject to the CPRs nor the Defence Procurement Policy Directives in the DPPM. For example, if the disposal strategy for a ship involves selling the ship by tender (see paragraph 2.9c of the CPRs) or through an auction, that process would not be a *procurement* and hence not subject to the CPRs.

⁹ Defence Officials should refer to the Defence Contract Management Framework and the Defence Contract Management Handbook for guidance about the contract management stage of the procurement life cycle.

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42. However, there may be occasions where Defence *officials* wish to engage services to assist with the planning or conduct of a disposal activity. The engagement of these services may constitute a *procurement* under the CPRs. For instance, in the example of a ship disposal, if the strategy involves engaging services to decommission and scrap the ship, then the *procurement* of these services would constitute a *procurement* for the purposes of the CPRs.

43. What paragraph 2.10 of the CPRs requires is that Defence *officials* undertaking a *procurement* of *goods* consider how the *goods* will be disposed of at the end of life (including any potential costs) as part of the decision about whether and how to proceed with the *procurement*¹⁰.

44. In Defence, the policy governing disposal of *goods* is set out in AAI 10.12, the Defence Logistics Manual (see DEFLOGMAN, Part 2, Volume 5, Chapter 10) and the Electronic Supply Chain Manual ('ESCM'). For guidance and templates on contracting processes for disposals, including sale by tender and gifting or transfer by deed, Defence *officials* should refer to Materiel Logistics, Disposals and Sales Branch.

Guidance, tools, templates and resources

45. The Complex Procurement Guide has been developed to align with the *procurement* life cycle. Each section of the *procurement* life cycle is represented by a Chapter of the Complex Procurement Guide.

46. The Simple Procurement Process Tool also follows the *procurement* lifecycle and guides users undertaking a simple *procurement* activity through a step by step process. By following the process, Defence *officials* can rely on this as satisfying their obligations under the CPRs and DPPM.

47. The DPPM also refers to and contains links to further guidance, templates and tools to assist Defence *officials* to meet the requirements of the DPPM and to facilitate better *procurement* outcomes. These materials can be found on the Commercial Division Commercial Policy Framework intranet page.

48. Collectively, the DPPM and the related guidance, templates, tools and other resources, provide a framework that supports accountability for spending, sound commercial practice and better outcomes for Defence, the Australian Government and the taxpayer.

¹⁰ The intention of paragraph 2.10 of the CPRs is to ensure disposal costs and related matters are adequately considered and understood (where predictable) to inform the acquiring of goods through the procurement process. For example, Defence may need to factor into the original procurement decision the need for additional funding to cover the costs of making the goods safe for disposal.

Chapter 2

An overview of the CPRs and the procurement life cycle

1. As noted in Chapter 1, the CPRs have not been specifically drafted to follow the logical order or timeline of the *procurement* life cycle. Paragraphs 2.7 and 2.10 of the CPRs describes the *procurement* life cycle as covering all aspects of acquiring and delivering *goods* and services - it starts with identifying the need for a *procurement* and finishes with either the end of the related services *contract* or the end of the useful life and disposal of the *goods* that were procured. While the CPRs do not follow the *procurement* life cycle, the CPRs include a number of core principles that underpin Commonwealth *procurement* across the life cycle.

2. This Chapter provides a brief overview of the CPRs and the *procurement* life cycle, and discusses these core principles in the context of Defence *procurement*. This Chapter is not intended to replicate the CPRs and does not attempt to discuss all the CPR rules. Also, even though this Chapter discusses the CPRs, the terms '**must**' and '**must not**' are not used in this Chapter to avoid any confusion about whether this Chapter gives rise to additional mandatory policy requirements. The CPR rules and Defence Procurement Policy Directives in Chapters 3-5 of the DPPM (and Defence Procurement Policy Directive D1 in Chapter 1) stand on their own and apply according to their terms.¹¹

CPRs – an overview

3. The CPRs provide all entities governed by the PGPA Act – which includes the Department of Defence - with the policy framework and associated rules for conducting *procurement* activities. The CPRs are a 'legislative instrument', which means that they are part of the law of the Commonwealth.

4. The CPRs are divided into an introductory section and two Divisions - which are set out in Chapters 3, 4 and 5 respectively of the DPPM - and two Appendices (which are included as the Appendices to the DPPM). Division 1 of the CPRs applies to all Commonwealth *procurements* and Division 2 sets out 'additional rules' which apply to *procurements* that are valued at or above the relevant *procurement threshold* - unless a *procurement* is exempted from having to comply with these additional rules. Many Defence *procurements* are exempt from Division 2. The main obligation of the additional rules is to require *officials* to undertake *procurements* by way of an *open tender* in most circumstances, as well as setting out particular requirements for how the tender is undertaken.

5. The introductory section of the CPRs (in Chapter 3 of the DPPM) covers the purpose, scope and legislative and policy framework of the CPRs.

6. Division 1 of the CPRs (in Chapter 4 of the DPPM) sets out rules that apply to all *procurements*. This means that all Defence *procurements* are required to comply with Division 1 (and the additional Defence Procurement Policy Directives in Chapter 4 of the DPPM). This Division establishes 'value for money' as the core requirement of Commonwealth *procurement*. Defence *officials* responsible for a *procurement* need to be satisfied, after reasonable inquiries, that the *procurement* achieves value for money.

Value for money framework

7. Division 1 provides a framework for determining 'value for money'.¹² Under this framework, *procurements* should:

- encourage competition and be non-discriminatory;
- use *public resources* in an efficient, effective, economical and ethical manner that is not inconsistent with the policies of the Commonwealth;
- facilitate accountable and transparent decision making;
- encourage appropriate engagement with risk; and
- be commensurate with the scale and scope of the business requirement.

¹¹ See also the section 'How do I read the DPPM' in Chapter 1 for more information.

¹² See section 4 of the CPRs (in Chapter 4 of the DPPM).

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8. In addition to these considerations, for *procurements* valued above \$4 million, *officials* are also required to consider the economic benefit of the *procurement* to the Australian economy as part of the framework for determining value for money.¹³ For Defence materiel *procurements*¹⁴ over \$20 million (including GST), the consideration of economic benefit occurs through the evaluation of the Australian Industry Capability (AIC) requirements of the *procurement*.¹⁵ In particular, *tenderers* are required to submit an AIC plan which sets out the *tenderers*' Local Industry Activities (LIAs) to meet the specified Industry Requirements of the *procurement*. *Tenderers* are required to describe the benefits of their LIAs, including the significance of the work, the skills and knowledge that will be transferred, the training that will be provided, the new technologies or innovations that will be introduced, and the contribution to Australian company competitiveness, including access to global supply chains, technical data and intellectual property.

9. Price is not the sole factor when assessing value for money, value for money does not automatically mean the lowest price *goods* or services. When conducting a *procurement*, *officials* are required to consider the relevant financial and non-financial costs and benefits of each *submission*, including matters such as:¹⁶

- the quality of the *goods* and services;
- fitness for purpose of the proposal;
- the *potential supplier's* relevant experience and performance history;
- flexibility of the proposal (including innovation and adaptability over the lifecycle of the *procurement*);
- environmental sustainability of the proposed *goods* and services (such as energy efficiency, environmental impact and use of recycled products); and
- whole-of life costs.

Valuing a procurement – relevant procurement thresholds

10. The additional rules in Division 2 (and the Defence Procurement Policy Directives in Chapter 5 of the DPPM) apply only to *procurements* that are valued at or above a certain threshold (see paragraph 14 below). This means that Defence *officials* need to estimate the value of their *procurement* to know whether it has to comply with the additional rules.

11. The *procurement* value is the maximum anticipated value of the proposed *contract*, including options, extensions, renewals or other mechanisms that may be executed over the life of a *contract*. The estimated value includes:¹⁷

- all forms of remuneration, including any premiums, fees, commissions, interest, allowances and other revenue streams that may be provided for in the proposed *contract*;
- the total maximum value of the property or services being procured, including the value of any options in the proposed *contract*; and
- any taxes or charges (including GST).

12. If a *procurement* is being conducted in multiple parts with *contracts* awarded either at the same time or over a period of time, with one or more *suppliers* (for example, a *standing offer* panel arrangement), the expected value of the *goods* and services being procured has to include the maximum value of all of the *contracts*. Further, Defence *officials* cannot split a *procurement* into separate parts just to try and avoid the relevant *procurement threshold*.

¹³ See paragraphs 4.7 and 4.8 of the CPRs, and the guidance on the [Department of Finance webpage](#).

¹⁴ Materiel procurements include goods and services for 'military purposes'. 'Goods' include everything from major platforms, such as ships, vehicles and aircraft to consumables, such as oil, and nuts and bolts used on materiel systems. Services related to materiel include those services applied directly ('physically') to the materiel, such as maintenance and supply activities, and services that are otherwise 'related' to the materiel, such as reliability analysis, maintenance requirements determination or inventory requirements determination.

¹⁵ See Defence Procurement Policy Directive D16 and the related Note.

¹⁶ See paragraphs 4.5 and 4.6 of the CPRs.

¹⁷ Defence *officials* should be aware that the way in which they value a *procurement* for the purposes of the CPRs is different to the way they need to value it for the purposes of completing the AE643 form to record a contract in ROMAN. See Complex Procurement Guide, Chapter 6 Appendix A for further details.

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13. In any case, where the maximum value of a *procurement* over its entire duration cannot be estimated (for example, a *standing offer* panel arrangement), Defence *officials* are required to treat the *procurement* as being valued above the relevant *procurement threshold*.

14. The value thresholds are:

- for *procurements* other than for *construction services* - \$80,000 (including GST);
- for *procurements of construction services* by *relevant entities* the *procurement threshold* is \$7.5 million (including GST).

15. The term 'covered procurement' is an additional term used to refer to a class of procurements which are subject to the *Government Procurement (Judicial Review) Act 2018*, see paragraphs 48 - 51 of the DPPM below.

Exemptions from the additional rules in Division 2

16. As noted above, some *procurements* may be exempt from having to comply with the additional rules in Division 2 of the CPRs. There are two ways in which a Defence *procurement* may be exempt:

- first, the *procurement* may be covered by one of the general exemptions listed in Appendix A of the CPRs (discussed further below); or
- second, a Defence specific exemption may apply as a result of a measure made by the Secretary under paragraph 2.6 of the CPRs. This is discussed further in Chapter 4 of the DPPM. These Defence specific exemptions relate mainly to the acquisition and sustainment of Defence materiel.

17. However, even if exempt from Division 2 of the CPRs, Defence *officials* still have to make sure that they undertake their *procurements* in accordance with Division 1 of the CPRs. Also, Defence *officials* still have to comply with all applicable Defence Procurement Policy Directives contained in this manual.

18. While the full list of general exemptions is set out in Appendix A to the CPRs (see Appendix A to the DPPM), some of the main exemptions relevant to Defence business include:

- leasing or purchase of real property or accommodation (noting that the *procurement of construction services* is not exempt);
- *procurement of goods* or services from another Commonwealth entity, or a state, territory or local government entities where no commercial market exists or where legislation or Commonwealth policy requires the use of a government provider (for example, legal services which are tied to the Australian Government Solicitor);
- *procurement* for the direct purpose of providing foreign assistance;
- *procurement of research and development services*, but not the *procurement* of inputs to *research and development* undertaken by Defence;¹⁸
- the engagement of an expert or neutral person, including engaging counsel or barristers, for any current or anticipated litigation or dispute;
- *procurement of goods* or services (including construction) outside Australian territory, for consumption outside Australian territory;¹⁹
- *procurement of goods* or services by, or on behalf of, the Defence Intelligence Organisation, the Australian Signals Directorate, or the Australian Geospatial-Intelligence Organisation;
- *contracts for labour hire* (noting that this does not include the engagement of consultants);²⁰

¹⁸ This exemption would be relevant mainly for Defence Science and Technology Group.

¹⁹ This exemption would cover *procurements of goods* or services by the Offices of the Counsellor Defence Materiel in Washington and London that are needed for the ongoing operation of those Offices.

²⁰ A 'contract for labour hire' is a contract under which Defence engages an individual to provide labour, when the individual is engaged either directly or through a firm which primarily exists to provide the services of only that individual (that is, the individual's own company). This includes the appointment of an eminent individual to a special role by the Secretary, or the Secretary's appointment of individuals to a governance committee (for example, an audit committee, ethics committee or steering committee), but does not include the engagement of consultants.

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- *procurement of goods* or services from a business that primarily exists to provide the services of persons with a disability; and
- *procurement of goods* or services from a Small to Medium Enterprise with at least 50 per cent Indigenous ownership.

Indigenous business exemption and the Indigenous Procurement Policy

19. The purpose of the Indigenous Procurement Policy (IPP) is to stimulate indigenous entrepreneurship and business development, providing indigenous Australians with more opportunities to participate in the economy through the awarding of Australian Government *contracts*.

20. Appendix A of the CPRs (item 16) permits Defence to procure *goods* or services directly from a small to medium enterprise with at least 50 per cent indigenous ownership ('indigenous enterprise'), without running an *open tender* process, if the proposed *procurement* represents value for money.

21. The IPP builds on the Appendix A exemption and has two components that apply to *procurement*:

- a mandatory 'set-aside' that applies to certain *procurements* conducted on or after 1 July 2015 and which may result in *contracts* being directly sourced to indigenous enterprises; and
- mandatory minimum requirements that apply to certain high value *procurements* aimed at enhancing indigenous participation for certain Commonwealth *contracts*.

22. [Supply Nation](#) maintains a non-exhaustive list of indigenous enterprises that meet this definition. If an enterprise states that it is an indigenous enterprise and is not listed with Supply Nation, Defence *officials* will need to make sufficient inquiries to satisfy themselves that the enterprise satisfies the IPP definition of an indigenous enterprise.

23. In general terms, the mandatory set-aside part of the IPP applies to *procurements* where the majority (by value) of the *goods* or services will be delivered in a Remote Area (except for transactions paid for by credit cards), and other domestic *procurements* where the estimated value is between \$80,000 and \$200,000 (GST inclusive). The set-aside requirement does not apply to Defence exempt *procurements* (under paragraph 2.6 of the CPRs) and some other specific *procurements*.²¹

24. If the set-aside requirement applies, Defence *officials* are required to first determine whether an indigenous enterprise could deliver the required *goods* or services on a value for money basis before making any approach to the market. If satisfied that value for money can be achieved, then the Defence *official* should procure the *goods* or services from the indigenous enterprise (as permitted by Appendix A of the CPRs, item 16). If not, then the Defence *official* may procure through non-indigenous enterprises.

25. In general terms, the mandatory minimum requirements apply to *procurements* (except Defence exempt *procurements*) where the *contract* will be performed in Australia and has an estimated value of \$7.5 million (GST inclusive) or more, and where more than half of the value of the *contract* is anticipated to be spent in one or more of the following industry sectors:

- Building, construction and maintenance services;
- Transportation, storage and mail services;
- Education and training services;
- Industrial cleaning services;
- Farming and fishing and forestry and wildlife contracting services;
- Editorial and design and graphic and fine art services;
- Travel and food and lodging and entertainment services;
- Politics and civic affairs services.

26. The policy requires that the *request documentation* for *procurements* that are subject to the 'mandatory minimum requirements' include clauses (in both the conditions of tender and *contract*) that

²¹ For more information about the kinds of *procurements* to which the IPP does not apply, refer to the IPP resources at the Commercial Division Mandatory Set-Aside intranet page.

meet the IPP requirements. Model clauses that meet these requirements are available on the Commercial Division IPP Minimum Requirements intranet page.

27. Defence *officials* can find further information and resources, including links to IPP fact sheets and Remote Area maps, on the Commercial Division Indigenous Procurement intranet page.

Disability business exemption

28. The Australian Government's National Disability Strategy 2010 - 2020 sets out a ten year national policy framework for improving the lives of Australians with disability, their families and carers, including by providing people with a disability with more opportunities to participate in the economy through the awarding of Australian Government *contracts*.

29. Appendix A of the CPRs (item 15) permits Defence to procure *goods* or services directly from a business that primarily exists to provide the services of persons with a disability ('disability business'), without running an *open tender* process, if the proposed *procurement* represents value for money.

30. Similar to the IPP, Defence *officials* should determine whether a disability business could deliver the required *goods* or services on a value for money basis before making any approach to the market. If satisfied that value for money can be achieved, then the Defence *official* should procure the *goods* or services from the disability business. If not, then the Defence *official* may procure through a non-disability enterprise. A list of Australian disability businesses can be found at the Australian Disability Enterprises website www.ade.org.au.

Procurement methods

31. Under the CPRs, there are two *procurement* methods:

- an *open tender* – where Defence approaches the open market and invites *submissions*; and
- a *limited tender* - where Defence approaches only **one or more potential suppliers** to make *submissions*.

32. Identifying the *procurement* method does no more than categorise the *procurement* for the purposes of the CPRs, with some different rules applying depending on whether the *procurement* is categorised as an *open tender* or *limited tender*. Under the CPRs, the default position is that *procurement* should be undertaken by way of *open tender*. If it is not an *open tender*, then by definition it will be categorised as a *limited tender*, even if the *procurement* is undertaken with only one *supplier* (often called a 'sole source'²² *procurement*). Similarly, a *procurement* process undertaken between two or more (but not all) *potential suppliers* will be a *limited tender* process, even if Defence does not release a formal request for tender to approach the market and instead seeks a different form of response from industry. If Defence establishes a *standing offer* panel arrangement through an *open tender*, then each *procurement* from the panel is categorised as an *open tender*, irrespective of whether the Defence *official* seeks quotes from one, some or all members of the panel.²³

33. The categorisation of a *procurement* as an *open tender* or *limited tender* does not determine what *approach to market* Defence *officials* may wish to use (which could be done through a request for tender, request for proposal, request for quote under a *standing offer* panel, competitive evaluation, some other form of iterative engagement process, or other form of documentation), nor the project delivery model (for example, prime *contract*, managing contractor, design and construct *contract*, alliance *contract* and so on). Defence *officials* should determine the appropriate *approach to market* strategy and project delivery model during the planning stage of the *procurement*.

34. Also, and as discussed below, a *limited tender* will still be a competitive process as long as it involves more than one *supplier*.

35. While the CPRs generally require an *open tender* process for *procurements* valued at or above the relevant *procurement threshold*, many Defence *procurements* are exempt from this requirement.²⁴ Accordingly, in circumstances where an *open tender* is not mandatory, the following factors are generally relevant to the selection of a *procurement* method:

- the nature and structure of the market;

²² When the term 'sole source' is used in the DPPM, it is not being used to indicate a *procurement* method, rather to indicate a situation where Defence is proposing to approach only one supplier for a *procurement*.

²³ See CPRs, paragraph 9.13.

²⁴ See DPPM, Defence Procurement Policy Directive D2. Appendix A to the CPRs also provides for other exemptions.

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- the extent of competition (that is, the number of genuinely competitive *suppliers*);
- schedule, cost or other constraints (for example, intellectual property, security etc).

36. Based on an assessment of these factors, Defence *officials* may still determine that an *open tender* process should be conducted as the best mechanism to deliver a value for money outcome.

Limited tenders

37. *Limited tenders* may only be undertaken in circumstances where the value of the *procurement*:

- is below the relevant *procurement threshold* – see Chapter 2 paragraph 4 above; ;
- is at or above the relevant *procurement threshold* but exempt from the additional rules in Division 2 of the CPRs (see Chapter 2 paragraphs 16 – 18); or
- is above the relevant *procurement threshold* and subject to the additional rules in Division 2 of the CPRs, but satisfies the Conditions for *limited tender* in paragraph 10.3 of the CPRs.

38. If a *procurement* is subject to the additional rules in Division 2 of the CPRs, Defence *officials* will normally be required to use an *open tender* for the *procurement*. There are only very limited circumstances in which a Defence *official* may decide to use a *limited tender*. These are set out in paragraph 10.3 of the CPRs. Of these, there are probably four main circumstances on which a Defence *official* may rely to conduct a *limited tender*.

39. First, there is the circumstance of ‘reasons of extreme urgency’ (paragraph 10.3b of the CPRs). A *limited tender* can be undertaken if there are reasons of extreme urgency that have been brought about by events unforeseen by Defence, such that the *goods* and services could not be obtained in time under *open tender*. A good example of where this provision might be used is where a natural disaster or other unexpected event has occurred and Government has directed Defence to procure *goods* or services in support of its emergency response.

40. However, paragraph 10.3b of the CPRs cannot validly be used in circumstances where Defence *officials* have not planned well enough in advance and now find themselves in a situation where they may not be able to undertake an *open tender* process in time to obtain the *goods* or services when they are needed. Defence *officials* cannot use poor *procurement* planning as a valid justification for running a *limited tender* process. The underlying principle is that the event giving rise to the need to undertake a *procurement* should have arisen at short notice and could not have reasonably been foreseen by Defence.

41. The second main circumstance is for ‘unsolicited innovative proposals’ where the *procurement* can be categorised as having been made under ‘exceptionally advantageous conditions that arise only in the very short term’ and which is not ‘routine *procurement* from regular *suppliers*’. (paragraph 10.3c of the CPRs). Sometimes industry will have an innovative idea that offers real value to Defence, even though it is not something that Defence has identified as a current need or priority. Paragraph 10.3c of the CPRs offers a mechanism for encouraging industry to put forward these ideas and, if Defence considers the idea of benefit, to procure directly from the relevant company without having to openly test the market.

42. However, Defence companies may sometimes seek to use this mechanism as a way of pitching their *goods* or services to Government without having to compete for a *contract*. If Defence *officials* act on these proposals without testing the market, then it may be unfair to other suppliers of similar *goods* or services, as well as being difficult to demonstrate value for money. Accordingly, Defence *officials* need to be cautious when using this circumstance to justify undertaking a *limited tender*. It is difficult to give definitive guidance about the kind of proposals that will meet this circumstance, however, as a general rule, it would cover most proposals that are unique or otherwise not readily obtainable in the market place. By contrast, the circumstance should not be used where the proposal is effectively an advance proposal for a requirement that Defence has already identified for *procurement* in the market. Defence *officials* should seek specialist contracting or legal advice before accepting an unsolicited proposal.

43. While Defence business units should be open to receiving and considering unsolicited innovative proposals from industry, Defence has also put in place a formal mechanism to manage these kinds of proposals from industry. This is the Centre for Defence Industry Capability (CDIC) which hosts the Defence Innovation Portal, the primary gateway for companies seeking to submit innovation proposals or ideas to the Defence Innovation Hub and Next Generation Technology Fund.

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For further information about the CDIC and the Defence Innovation Hub, Defence *officials* should refer to www.business.gov.au/cdic.

44. The third main circumstance is where there is no real alternative because of an 'absence of competition for technical reasons' (Paragraph 10.3d of the CPRs). Normally, this circumstance is used where only one *supplier* can provide the relevant *goods* or services because of intellectual property or other restrictions. This circumstance cannot validly be used by a Defence *official* based simply on the *official's* perceived overall knowledge of the market. An 'absence of competition for technical reasons' has to be something more than an *official's* mere assertion that there is only one *supplier* in the market who is capable of providing the *goods* or services. It requires objective, demonstrable evidence. An example could be a situation where Defence is seeking to procure specialised medical equipment, and there are only two manufacturers of the equipment in the world because of its specialised nature. Defence could defensibly undertake a *limited tender* between the two manufacturers because there would be an absence of competition for technical reasons.

45. The fourth main circumstance is for additional deliveries of *goods* and services by the original *supplier* or authorised representative that are for replacement parts or continuing services for existing equipment, software, services or installations, when a change of *supplier* would mean the *goods* or services would be incompatible with the existing equipment or services' (Paragraph 10.3e of the CPRs). This circumstance is often used in the context of ICT *procurements* where Defence needs spare parts for the installed ICT system, or wants to upgrade the system. The parts or upgrades may be available only from the original *supplier* of the system. The underlying matters giving rise to this circumstance will often also support the circumstance discussed above dealing with an absence of competition for technical reasons.

46. Defence *officials* may sometimes seek to use this circumstance to justify the extension or continuation of consultancy or other professional services, whether or not related to ICT systems, equipment, software or support services. As a general rule, this would normally not be a valid use of this circumstance to justify (as a *limited tender*) the extension or continuation of these kinds of services, and would be an example of where the relevant Defence *officials* have not planned their *procurement* well enough in advance. For instance, *officials* should have built into the original *approach to market* the necessary options to extend the service period, or for the contractor to provide additional services. As noted above, Defence *officials* cannot use poor *procurement* planning as a valid justification for running a *limited tender* process.

47. Justifications for using a *limited tender procurement* method will be reported on *AusTender*, and made publically available in accordance with Defence's *AusTender* reporting requirements. Consequently, Defence *officials* should ensure that the decision to use a *limited tender procurement* method complies with the CPRs, is approved by an appropriate delegate, is defensible and the justification is recorded²⁵.

Government Procurement (Judicial Review) Act 2018

48. The *Government Procurement (Judicial Review) Act 2018* (JR Act) was introduced to address obligations under relevant free trade agreements and establishes a statutory framework for suppliers (being, under the JR Act, one or more persons who supplies or could supply, *goods* or services and would include *potential suppliers* or *tenderers*)²⁶ to make complaints to Defence about non-compliance with specific provisions of the CPRs. These complaints are managed through the Defence Procurement Complaints Scheme (DPCS). In broad terms, a valid complaint under the JR Act requires Defence to suspend the relevant *procurement* (except where a public interest certificate (PIC) has been issued) and to investigate and report on the complaint. If the complaint is not considered resolved or otherwise withdrawn by the *supplier*, the *supplier* may seek an injunction in the Federal Circuit Court or the Federal Court of Australia.

49. *Procurements* are subject to the JR Act if they are 'covered procurements'. A 'covered procurement', for the purposes of the JR Act, is a *procurement*:

- to which both Divisions 1 and 2 of the CPRs apply (ie, they are above the relevant *procurement thresholds*);
- to which no exemption has been applied; and

²⁵ The choice to use a limited tender method may be subject to a complaint under the JR Act.

²⁶ The JR Act defines the term 'supplier' with a broader meaning than the definition provided in the CPRs.

- not included in a class of *procurements* specified in a determination under s5(2) of the JR Act²⁷.
50. A complaint is a valid complaint under the JR Act if:
- it is made by a supplier as defined under the JR Act;
 - it is in writing;
 - it relates to a covered procurement;
 - it relates to a contravention of the CPRs (Division 2 or nominated Division 1 requirement); and
 - the supplier's interests have been affected by the contravention of the CPRs.
51. A list of CPRs which are subject to the JR Act is set out at Appendix A to this Chapter. Chapters 3 and 4 of the DPPM provide further information relating to the specific CPRs that are subject to the JR Act. The *Defence Procurement Complaints Scheme – Complaints Management Guide* and the Department of Finance's *Resource Management Guide 422 – Handling complaints under the Government Procurement (Judicial Review) Act 2018* contain additional information relating to the JR Act.

Defence Procurement Complaints Scheme

52. The DPCS has been established in Defence to manage the administration and investigation of all *procurement* complaints, including those submitted under the JR Act. The DPCS meets the requirement under the CPRs to apply timely, equitable and non-discriminatory complaint handling procedures²⁸. In accordance with Defence Procurement Policy Directive D21, all *procurement* complaints must be submitted to the [procurement complaints mailbox](#) which is managed by the Central Procurement Complaints Function. Further information on the DPCS can be obtained on the DPCS intranet page.

The procurement life cycle - core principles

53. The CPRs have some core principles that Defence *officials* need to consider when planning and undertaking their *procurement* activities. These are discussed below.

Value for money

54. As noted above, value for money does not necessarily mean the lowest price. In most Defence *procurements* of any complexity, determining value for money will mean assessing tenders against all the *evaluation criteria* stated in the *request documentation* and determining on the balance of all the assessments which one delivers best value for the Commonwealth. In undertaking this assessment, *officials* need to look at the total cost of ownership of the solutions. Value for money is about getting the best possible outcome over the whole-of-life of the *goods* or *services*.²⁹

55. The standard conditions of tender in the endorsed Defence contracting templates include *evaluation criteria* that meet the requirements of the CPRs for determining value for money, and in particular enable Defence *officials* to properly consider the relevant financial and non-financial costs and benefits of tenders. In major Defence *procurements*, particularly materiel *procurements*, one of the criteria to be considered in determining value for money is Australian Industry Capability (AIC). This is an explicit criterion in ASDEFCON tendering and contracting templates. The ability for the Australian Government to maintain an AIC program is provided for under our free trade agreements as an express exception to the non-discrimination principle (which is discussed below). Indeed, even before Defence releases *request documentation*, Defence *officials* will consider during the planning stage of the *procurement* the requirement or potential for Australian industry involvement in the *procurement*, consistent with the Government's defence and industry policy.

56. During the evaluation stage of a *procurement*, Defence *officials* will evaluate tenders against the stated *evaluation criteria* in accordance with the process and methodology set out in the tender evaluation plan. If the assessment of tenders against the non-price *evaluation criteria* leaves little or

²⁷ At this stage (20 April 2019), no determination has been made under s5(2) of the JR Act. This document will be updated if a determination is made.

²⁸ See paragraph 6.8 of the CPRs.

²⁹ See paragraphs 4.5 and 4.6 of the CPRs.

no discrimination between the tenders, then it is likely that the lowest priced tender will be the best value for money. However, the assessment of value for money can become more difficult where, for example, one *tenderer* offers a high level of capability or performance at a higher price, than other tenders which meet the minimum requirements but offer a lower level of capability or performance at a lower price. Effectively, the question for Defence *officials* becomes whether the higher level of capability or performance at the higher price is 'worth' more or less to Defence than the lower level of capability or performance at the lower price. This is a subjective assessment and *officials* need to make sure that they can properly articulate the reasons for why they make their decision. As long as the reasons are sensible and logical and in accordance with the PGPA Act framework requirements and duties, then the decision itself will be defensible.

57. Defence *officials* also need to make sure that when making these decisions, they are comparing 'apples with apples'. *Officials* need to ensure that all omissions and risks relating to a tender have been properly understood, considered, and if necessary quantified and 'priced in' to that tender, so as to ensure that when comparing with another tender that does not have those omissions or risks, the comparison is being done on an equivalent basis. For more guidance about how to undertake tender evaluation, Defence *officials* should refer to the Complex Procurement Guide³⁰.

58. Selecting the most appropriate *procurement* process that is commensurate with the scope, scale and risk of the *procurement* will also help Defence *officials* achieve value for money. This will normally involve some form of competition.

Competition

59. As paragraph 5.1 of the CPRs notes, competition is a key element of the Australian Government's *procurement* framework. A competitive *procurement* process is normally the mechanism by which Defence ensures that it is receiving value for money. Competition is important because time and again it has been shown to be the most effective motivator for industry to reduce costs and improve performance. Whilst early contractor selection and sole source *procurement* can also be an effective and efficient execution strategy in appropriate cases, it should not be used solely to avoid the need for competitive tendering, especially when a viable competition can be held. Sound commercial judgment, not convenience, should determine the right approach.

60. However, competition does not necessarily mean an *open tender*. Any process involving more than one *supplier* will be competitive. Accordingly, if an open competition is not feasible, Defence *officials* should explore opportunities for a limited competition (known under the CPRs as a *limited tender*). However, as discussed earlier in this Chapter, for a *procurement* that is subject to Division 2 of the CPRs, unless it is exempt, there are only very limited grounds on which Defence *officials* are permitted to conduct a *limited tender* (whether sole source or competitive).³¹

61. Competition is important as under competitive processes (whether *open tender* or *limited tender*), *suppliers* put forward their best solution and price. *Suppliers* know that if they don't do so then it is likely that one of their competitors will win the work instead. Effective competition creates the incentive for *suppliers* to deliver quality *goods* or services at more competitive prices. In other words, value for money is driven by the market.

62. This is so even when Defence *officials* are procuring from *standing offer* panel arrangements. If the *standing offer* is established through an *open tender* process, then Defence *officials* may procure from the panel by approaching one, some or all of the *suppliers* on the panel for a quote or proposal. It is often tempting for Defence *officials* to seek a quote from just one panellist, particularly if the panellist is known to them. However, it is also important to provide opportunities for all capable *suppliers*, particularly small to medium enterprises, as this helps maintain a strong Defence industrial base, as well as incentivising best value performance. Accordingly, the right approach to procuring from a panel will depend on the circumstances of each case. For more information about establishing and using *standing offer* panel arrangements, Defence *officials* should refer to the factsheet on the Commercial Division Fact Sheets and Guidance intranet page.

63. Also, the Defence panel manager will usually have established the business rules for the panel to ensure that it is accessed and used appropriately, *suppliers* on the panel have a fair and equitable chance of being engaged through the arrangement, and Defence is able to demonstrate the panel is

³⁰ See Chapter 5 of the Guide.

³¹ See paragraph 10.3 of the CPRs.

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delivering value for money. Defence *officials* should make themselves aware of and comply with these business rules to ensure that Defence panels are used appropriately.

64. While awarding *contracts* through full and open competition is key to ensuring that the Government efficiently acquires *goods* and services to best meet its needs, there are certain circumstances when competition may not be practical. This can especially be the case given the nature of major Defence *procurement*, and particularly (but not exclusively) in complex materiel related *procurements*. For instance, a competitive process will be unable to be undertaken if Defence requires a unique product or service such that there is only one *supplier* that offers the required capability or solution. This will be the case where, for example, a *supplier* has the patent for a particular product, or because of other intellectual property rights a *supplier* is the only one that is able to install or maintain a particular system or network.

65. A sole source *procurement* may also arise because it is a follow-on *contract* and only the incumbent contractor can continue the work due to intellectual property restrictions or because the contractor is the only one with the necessary skills and expertise. This kind of 'supplier lock in' may be able to be avoided if Defence has acquired sufficient technical data and associated intellectual property rights to enable a competition to be undertaken. Avoiding 'supplier lock in' promotes value for money by establishing competitive tension across the lifecycle of the procured *goods* or services.

66. Accordingly, Defence *officials* should consider during the planning stage of the *procurement* how to maintain the competitive environment not only at the outset of the *procurement*, but over the life of the program or activity. Conducting market research to understand the market and the scope for competition is critical. In addition, early and ongoing engagement with industry around Defence's requirements is also important, particularly as this may allow new entrants to enter the market in time to meet those requirements. The importance of market research and ongoing industry engagement is discussed in the Complex Procurement Guide.³²

67. For major Defence *procurements*, a key to being able to avoid *supplier* lock in of the kind mentioned above and to remove barriers to future competition, is for Defence *officials* to have an effective intellectual property and technical data strategy that covers the whole of the lifecycle of the *goods* being procured. For example, for a major ICT project or major materiel acquisition, securing the necessary technical data and associated intellectual property rights (in particular, the ability to licence to third parties) in the initial *procurement* process will maximise competitive alternatives across the whole of life of the capability, including future *procurement* of additional systems or spares, operation and training, maintenance and repair, integration with other systems, and future updates, upgrades or modifications.

68. If proposing to undertake a sole source *procurement*, Defence *officials* will need to justify this in their *procurement* plan or Endorsement to Proceed, noting that the Commitment Approval delegate (see section 23(3) of the PGPA Act) will also need to be satisfied as to the *procurement* method (which would be a *limited tender*). Defence *officials* should consider what mechanisms are available to drive value for money outcomes from their engagement with industry, especially if this is done in a non-competitive environment. In particular, in this context Defence *officials* will need to be able to demonstrate how the price has been determined to be fair and reasonable for the required *goods* or services, and should consider seeking specialist financial advice to determine this.

69. Achieving value for money in a non-competitive environment can be particularly challenging, and specialist procurement advice should be sought to develop appropriate sourcing strategies to achieve a value for money outcome across the life of the *goods* or services being procured.

Non-discrimination

70. Effective competition also requires non-discrimination.³³ This principle means that Defence is normally unable to require in its *request documentation* that particular work be done in Australia, or done by Australian based *suppliers*, or that *suppliers* use Australian materials, and this is consistent with Australia's FTA obligations³⁴. The intent behind the principle is that the market will work out how best to meet the requirement being sought by Defence. In many cases, the work will need to be performed in Australia, and indeed at particular locations in Australia, however, this should not prevent

³² See Chapter 2 of the Guide. See also the Early Industry Engagement Better Practice Guide.

³³ See paragraph 5.1 of the CPRs.

³⁴ Paragraph 5.4 of the CPRs is subject to the JR Act, For further information regarding the JR Act, Defence officials should refer to Chapter 2 paragraphs 48 – 51 of the DPPM.

foreign companies from being able to bid to undertake the work as long as they are able to meet Defence's service delivery requirements in those locations.

71. Specific exemptions can be sought from the non-discrimination principle in appropriate cases (for example, through a measure under paragraph 2.6 of the CPRs), or through other mechanisms such as the AIC policy (mentioned above), or other specific Government policy decisions. These exemptions are most likely to be found in major capital equipment acquisition decisions (for example, naval shipbuilding).³⁵ Defence Procurement Policy Directive D16 requires Defence *officials* to comply with the Defence AIC policy (see also the Note following paragraph 5.7 of the CPRs as extracted in Chapter 4 of the DPPM). Importantly, these exemptions have to be consistent with Australia's obligations under its FTAs.³⁶

Ethical behaviour – the balance between probity and industry engagement

72. Section 6 of the CPRs (see Chapter 4 of the DPPM) sets out the requirement for Defence *officials* to properly use and manage *public resources*. 'Proper' means efficient, effective, economical and ethical.³⁷

73. Attention to probity is integral to ensuring the defensibility, transparency and success of Defence *procurements*. Defence *procurements*, particularly those relating to major capital acquisitions, ICT projects and major facilities, are under increasing scrutiny by *tenderers*, the Australian National Audit Office, Senate Estimates and other Parliamentary Committees, and the media.

74. Probity is the evidence of ethical behaviour, and can be defined as complete and confirmed integrity, uprightness and honesty in a particular process. The [Department of Finance website](#) lists a number of principles which underpin ethics and probity in Australian Government *procurement*.

75. Defence *officials* need to put in place appropriate and sensible mechanisms to assure the probity of Defence *procurement* processes in line with the scope, scale, risk and sensitivity of the particular *procurement*. External legal process or probity advisers can be engaged when necessary. Occasionally, Defence may also wish to appoint an external probity auditor, either at the conclusion of the *procurement* process or at a key point during the process, to audit whether Defence *officials* followed the process and probity requirements set out in the documentation governing the *procurement*.

76. However, it is very important that Defence *officials* do not use probity as a reason or excuse not to engage appropriately with the market or *tenderers* throughout a *procurement* process. As long as it is done fairly and consistently, there is no reason why a *procurement* process cannot build in mechanisms (in the *request documentation*) for ongoing engagement with industry and *tenderers* throughout a *procurement* process. This might include engagement before tender release around Defence's requirements or to understand the market's capacity or capability, or engagement during the tender process, such as through *tenderer* clarification activities or mechanisms to allow *tenderers* to update and improve their offers (sometimes called 'offer definition and improvement activities').

77. A key factor in delivering good *procurement* outcomes is early market engagement and continued open dialogue with *suppliers* throughout the *procurement* process. Understanding *suppliers* and the market is part of the planning necessary to develop the right *approach to market*. Defence *procurement* should be supported by robust *procurement* plans that have a level of detail commensurate with the scope, scale and risk of the *procurement*. This is the first stage of the *procurement* life cycle.³⁸ Good *procurement* also results from proactively managing *supplier* and other key stakeholder relationships throughout the *procurement* process and for the duration of the *contract*.

78. Defence *officials* may sometimes be approached by *tenderers* or contractors to sign a confidentiality agreement or deed (sometimes called a Non-Disclosure Agreement) either on behalf of the Commonwealth or in their personal capacity prior to receiving information from the *tenderer* or contractor. Defence *officials* are already subject to legal obligations to protect and not misuse information obtained as a result of their employment with Defence (for example, under the *Public*

³⁵ As noted in Chapter 1 of the DPPM, specific Government policy decisions may be found in Cabinet decisions, or other Government approvals relevant to a commitment of *relevant money*, to the extent that the decision or approval establishes a course or line of action.

³⁶ This is why paragraph 4.8 of the CPRs provides that the economic benefit requirement set out in paragraph 4.7 of the CPRs has to operate 'within the context of' (that is, subject to) Australia's FTAs.

³⁷ See paragraph 6.1 of the CPRs.

³⁸ More guidance on industry engagement and *procurement* planning is set out in Chapter 2 of the Complex Procurement Guide and the Early Industry Engagement Better Practice Guide.

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Service Act 1999; see also PGPA Act, section 28). Therefore, Defence *officials* are under no obligation to sign such agreements and should not do so without first seeking legal advice from Defence Legal. In particular, *officials* should be aware that confidentiality agreements will often contain an indemnity from the *official* (or Commonwealth) in favour of the person disclosing the information.

79. As part of Defence's probity framework for major *procurement* processes, Defence *officials* may be requested (for example, by the legal process or probity adviser) to sign a statement confirming that they are aware of their legislative and policy obligations to properly protect confidential information (and to declare any actual or perceived conflicts of interests). It is appropriate for Defence *officials* to sign such a confirmation in these circumstances, noting that the statement does not constitute a formal agreement.

80. There are some senior Defence officials who will have regular access to sensitive information related to Defence *procurements*, in particular the members of the Defence Committee, Investment Committee and Enterprise Business Committee. In addition, Defence's Contestability organisation may also be required to have access to this information to perform its function. As part of Defence's probity framework, members of these Committees and the Contestability organisation acknowledge under their respective business rules the legislative and policy obligations that apply in relation to confidential information and conflicts of interests. Accordingly, these Defence *officials* are not required to receive *procurement* specific probity briefings or sign individual probity statements.

81. The legislative and policy obligations related to probity include:

- the general duties of *officials* set out in sections 25 to 29 of the PGPA Act (dealing with due care, diligence, good faith, declaring interests etc);
- the APS Values and APS Code of Conduct (see *Public Service Act 1999*, sections 10 and 13);
- Defence Instruction (General) - PERS 25-4 - *Notification of Post Separation Employment*;
- Defence Instruction (General) - PERS 25-6 - *Conflicts of Interest and declarations of interests*; and
- Defence Instruction (General) - PERS 25-7 - *Gifts, Hospitality and Sponsorship* (see also AAI 10 - Managing Relevant Property).

82. Legal process and probity advisers can be engaged to help ensure that the processes, procedures and documentation used in implementing a major Defence *procurement* are robust, transparent and capable of external audit. However, there is no requirement for Defence *officials* to engage an external probity or process adviser, or that they be independent of another adviser (for example, the legal adviser). Depending on the nature of the *procurement*, internal personnel (for example, contracting officers or Defence Legal officers) can potentially perform the role of a probity adviser for a Defence *procurement*.

83. In relation to 'high risk' *procurements*, the Australian National Audit Office takes the view that a probity adviser should not have any actual or perceived conflicts of interest that could compromise their duty to give candid advice about the probity aspects of the project. A perceived conflict could include simultaneously serving as both probity and legal adviser. The decision about whether to have an independent probity or legal process adviser should be made based on the individual circumstances of the case, and in particular, whether the *procurement* is likely to be high profile, high value, controversial or sensitive.

84. The main reason to have a 'legal process adviser' as opposed to a 'probity adviser' is to maintain legal professional privilege in relation to the 'probity' advice. Non-lawyers cannot provide legal advice, so no legal professional privilege would apply to their advice if there is a challenge to the *procurement* process. Advice from a lawyer in relation to probity/process would be covered by the same rules as other legal advice.³⁹

85. A template probity/legal process plan can be found on the Commercial Division Tools and Templates intranet page.

³⁹ For more information about legal professional privilege (LPP), Defence *officials* should refer to the Defence Legal LPP Fact Sheet .

Risk management

86. A key principle of the CPRs is risk management, and in particular that risks should be borne by the party best placed to manage them.⁴⁰ Depending on the nature of the *procurement*, the risks that may need to be considered could include technical, operational, industrial, managerial, work health and safety, financial, legal, commercial, or probity risks. These risks need to be considered across the *procurement* lifecycle. For instance, the Complex Procurement Guide discusses the importance of risk identification and management in the planning stage of the *procurement* life cycle, as well as risk assessment during the tender evaluation stage.⁴¹

87. In the planning stage, Defence *officials* will consider the risks relating to the conduct of the *procurement* process itself and what is being procured, and how these can be addressed through the *procurement* strategy. During evaluation and *contract* negotiation, Defence *officials* will be more focussed on assessing and addressing the risks in relation to the requirements of the *contract*, and the allocation of commercial and other risk under the *contract*, and considering how these risks can best be managed through setting up the contract management arrangements for the *contract*.⁴²

88. In relation to *procurements* that are required to be considered by the Defence Investment Committee (for example, Major Capital Equipment, and major ICT and infrastructure *procurements*), the 'Smart Buyer' framework sets out various risk categories that should be considered when developing the Project Execution Strategy and the *procurement* and contracting strategies for the *procurement*.

89. Defence also has formalised policy and processes for the assessment and management of risk in the Defence environment. For instance, in relation to materiel *procurement*, Defence *officials* should follow the Defence Materiel Manual (PROJ) (DMM(PROJ)) – 11-0-002- CASG Project Risk Management Manual and DMM(LOG)-04-0- 001- DMO Materiel Logistics Manual.

90. The endorsed Defence contracting templates set out the standard Defence approach to risk allocation between the Commonwealth and its contractors. The templates have been drafted in accordance with the above principle that risks should be borne by the party best placed to manage them. In many cases, this will be the contractor, noting that companies are able to take out insurance (or self-insure) for most *contract* related risks.

91. However, given the scope, scale, value and risk of many Defence *contracts*, it is not unusual for contractors to seek to limit their liability, particularly under ICT *contracts*, and *contracts* for the acquisition or sustainment of major capital equipment. In these circumstances, Defence *officials* need to undertake a risk assessment in relation to the proposed limitation of liability to understand the implications for the Commonwealth and to quantify any potential exposure. For instance, the limitation may mean that the Commonwealth will be unable to sue the contractor for its normal entitlement to damages for breach of *contract*. The Defence contracting templates make clear which categories of liability the Commonwealth may consider limiting and by contrast those categories in relation to which it will not consider limiting the contractor's liability (for example, personal injury or death).

92. Defence has developed tools and guidance to assist Defence *officials* with the conduct of liability risk assessments.

93. The endorsed Defence contracting templates also contain provisions requiring contractors to take out necessary insurances to cover their work for Defence. Again, depending on the nature of the Defence *contract*, the contractor's insurance arrangements can be both complex and costly (noting that the costs will be passed on to Defence through the *contract* price). Defence has developed tools and guidance to assist Defence *officials* with determining and managing *contract* insurance requirements which can be found on the Commercial Division Approved Contractor Insurance Program Initiative intranet page.

94. In relation to materiel *procurement*, Defence has established the Approved Contractor Insurance Program (ACIP) as a joint Defence and Industry *procurement* reform initiative that involves a periodic centralised review of participating Defence companies' global/group and local insurance programs. The purpose of the review is to pre-qualify a participating company's insurance program, if

⁴⁰ See section 8 of the CPRs (in Chapter 3 of the DPPM).

⁴¹ See Chapters 2 and 5 of the Complex Procurement Guide.

⁴² See the Defence Contract Management Framework. For further guidance on the contract management stage of the procurement lifecycle, Defence *officials* should refer to Chapter 7 of the Complex Procurement Guide and the Defence Contract Management Handbook.

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Defence is satisfied with the company's insurances. This helps to reduce the costs of tendering for both industry and Defence as well as improve risk management within Defence in respect of insurable risks that arise in connection with the performance of major Defence *contracts*. Companies granted ACIP status are taken to comply with insurance requirements in individual *contracts* and do not have to provide evidence about their insurances during tendering and *contract* management phases of a *procurement*. The ACIP initiative is open to the 'top' 6-7 major Defence companies and participation by the companies is voluntary. The ACIP Register lists those companies currently holding ACIP status. For more information see the Commercial Division Risk Assessments and Liabilities intranet page.

Accountability and transparency

95. The Australian Government is committed to ensuring accountability and transparency in its *procurement* activities. Accountability involves Defence *officials* being responsible for their *procurement* actions and decisions and related outcomes, while transparency involves Defence enabling appropriate scrutiny of its *procurement* activities.⁴³ Accordingly, the CPRs require Defence *officials* to meet certain record-keeping, reporting and other requirements before and after entering into a *contract* with a *supplier*, including documenting relevant approvals and other *procurement* related decisions and actions, and *AusTender* and other reporting requirements. *AusTender* is the Australian Government's *procurement* information system.

96. Complaints may be made by *suppliers* under the JR Act for breach of the CPR requirement regarding the level of documentation maintained for a covered procurement.⁴⁴ The Complex Procurement Guide provides guidance for Defence *officials* about how they can meet their accountability and transparency requirements as they progress through the *procurement* life cycle.

The procurement life cycle – overview of how to plan and undertake a procurement

Introduction

97. Good *procurement* practice is not about just mechanically applying the CPRs or the additional Defence Procurement Policy Directives in the DPPM. It is about developing a strong understanding of all aspects of the *procurement* lifecycle and using judgement to apply this understanding in each case to deliver the best outcomes. While Defence *officials* need to comply with the CPRs and the DPPM, *officials* should design each *procurement* process in a way that is commensurate with the scope, scale and risk of the relevant *procurement*. Application of sound judgement when applying the CPRs and designing a *procurement* process that complies with the CPRs is important for all *procurements*, and failure to do so for *procurements* subject to the JR Act has the potential for consequences such as suspension of a *procurement* process or the grant of an injunction or the award of compensation by the Federal Court.

98. So, for instance, *procurements* that are valued below the relevant *procurement threshold* will normally be low risk, routine *procurements* of *goods* or services. They are often called 'simple *procurements*' in Defence. However, many *procurements* valued at or above the relevant *procurement threshold* may also be simple in nature. For example, a *procurement* of more spare parts from an existing *supplier* may be valued at a lot higher than the *procurement threshold*, but would normally be a simple purchasing exercise. Accordingly, using a *procurement* process that involves significant cost, time and resources for both Defence and *suppliers* would not be sensible or represent value for money for these kinds of *procurements*. The concept of value for money is not limited to the *procurement* outcome, but is also a consideration when designing a *procurement* process.

99. By contrast, many Defence *procurements* are highly complex undertakings because of the nature of the *goods*, works or services being sought. The process for these *procurements* needs to be designed and undertaken in light of the scope, scale and risk of what is being procured.

100. The Complex Procurement Guide provides more in-depth guidance about how these kinds of *procurements* should be planned and executed across the life cycle. The following discussion provides an overview of the guidance for undertaking a *procurement* process.

⁴³ See section 7 of the CPRs (in Chapter 3 of the DPPM).

⁴⁴ Paragraph 7.2 of the CPRs is subject to the JR Act. For further information regarding the JR Act, Defence officials should refer to Chapter 2 paragraphs 48 – 51 of the DPPM.

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Guidance overview

101. For more complex *procurements*, Defence *officials* will normally be required to prepare three main documents:

- a *procurement* plan;
- *request documentation*; and
- an evaluation plan.

102. The *procurement* plan details the process that will be undertaken. It differs from a business case in that the business case explains why a *procurement* is being undertaken, including its value proposition, while the *procurement* plan explains how the *procurement* is to be undertaken. However, for convenience, and depending on the scope, scale and risk of the particular *procurement*, Defence *officials* may sometimes include the *procurement* plan as part of, or as an attachment to, the business case.

103. The *procurement* plan will normally cover the following:

- a description of the *procurement*;
- consideration of how the procurement will comply with the CPRs including the selection and justification of the *procurement* method to be used (for example, *open tender*, *limited tender*);
- proposed probity arrangements;
- proposed governance arrangements, such as the need for a steering committee;
- the *procurement* risk assessment; and
- indicative time-lines and resources (including budgeting of funds to support the procurement).

104. The level of detail in the procurement plan should reflect the scope, scale and risk of the *procurement*. For less complex *procurements*, the Endorsement to Proceed document may be sufficient to serve as the procurement plan. For *procurements* that are required to be considered by the Defence Investment Committee (for example, Major Capital Equipment, and major ICT and infrastructure *procurements*), the *procurement* plan will be informed by the Smart Buyer Project Execution Strategy.

105. The *request documentation* sets out the rules for the *procurement*. It describes to *potential suppliers*, the specifics of the *procurement*, the manner in which *submissions* are to be forwarded to Defence (for instance, through *AusTender*) and how *submissions* will be evaluated. If there is a possibility that other agencies will access the resulting *contract* (for example, a *standing offer* arrangement), Defence *officials* need to ensure the *request documentation* includes a statement to that effect.

106. The *request documentation* will usually be the primary information source used by *potential suppliers* when developing a *submission*. After reviewing the *request documentation*, the *potential suppliers* should be able to understand Defence's requirements and how the *procurement* is to provide value for money. This is why the CPRs, in effect, require that *request documentation* include all information necessary to permit *suppliers* to prepare and lodge responsive *submissions*.⁴⁵

107. *Request documentation* will normally include:

- a description of the requirement (for example, the statement of work), including any essential requirements;
- any *conditions for participation* or *minimum content and format requirements*;
- *evaluation criteria* and methodology;
- the other rules of the process; and
- the draft *contract*.

⁴⁵ While this discussion about *request documentation* applies to *procurements* to which the additional rules in Division 2 of the CPRs apply, it is also good practice for all *procurements*.

108. The statement of work should describe:

- the nature, scope and, where known, quantity of the *goods*, works or services required;
- specific requirements to be fulfilled or provided, including certification, test and evaluation, plans, drawings and training materials;
- any applicable technical *specifications* (in which case, these should be described in terms of function and performance requirements, rather than specific designs, trademarks, or product descriptions) and the related standards on which the *specifications are based*;⁴⁶
- whether any of the requirements are 'essential requirements' (in which case, if *suppliers* are not able to meet the requirements, they will be excluded from consideration);
- the timeframes expected for the delivery of the required *goods*, works or services.

109. *Conditions for participation*⁴⁷ are mandatory requirements which describe minimum standards or essential characteristics that *potential suppliers* have to meet for their *submissions* to be considered. Defence *officials* should take great care when deciding whether to include *conditions for participation* and what these might be, as the CPRs require that where the *procurement* is subject to the additional rules in Division 2 of the CPRs, any *submission* that does not meet the *conditions for participation* be excluded from consideration by Defence. *Conditions for participation* are limited to those assuring the legal, financial, technical or commercial capabilities of the *supplier* to meet the particular requirements of the *procurement*.

110. Defence officials may also decide to set out minimum content and format requirements⁴⁸ in their request documentation, for example:

- in relation to minimum content – Defence may require the *tenderer* to provide a certificate of insurance or a particular licence to support the *submission*; or
- in relation to formatting – Defence may require *submissions* to be submitted electronically through *AusTender*.

111. If the *tenderer's submission* for a *procurement* which is subject to the additional rules in Division 2 of the CPRs does not meet the *minimum content and format requirements*, Defence *officials* will normally be required to exclude the *submission* from further consideration, unless the *officials* consider that the failure to meet the requirement has been due to an unintentional error of form in the *submission*. If so, Defence *officials* have the discretion to allow the *submission* to be corrected, subject to ensuring that all *tenderers* are treated fairly and equitably.

112. The *request documentation* will also set out the *evaluation criteria*. These set the foundation for a fair and equitable assessment of *submissions*. What the appropriate criteria are depends on the nature of the particular *procurement* and should flow from the planning stage.

113. Evaluation of *tenderers* should be based on a balance of all the criteria, or if a weighting methodology is used, on the relative importance of each criterion. If a weighting methodology is used, Defence *officials* should consider setting this out in the *request documentation* so that *potential suppliers* can appropriately focus their responses. This will make the process more transparent, which should limit misunderstandings that may result in complaints.

114. The *request documentation* should also set out the rules around lodgement of *submissions*, whether this is through *AusTender* or other means, including the closing time for *submissions*. Adherence to deadlines is important in maintaining the integrity and probity of the tender process. Therefore, Defence *officials* are not normally able to accept late *submissions*, unless there has clearly been a mishandling of the *submission* by Defence.

115. During the time that the tender process is open, Defence *officials* will need to be in a position to answer queries on the *procurement*. This needs to be done fairly and impartially in a manner that does not create an unfair advantage for any *potential supplier*. Therefore, the *request documentation* should explain the rules for answering questions and distributing responses.

⁴⁶ In relation to specifications and standards, see paragraphs 7.26, 10.9, 10.10, 10.11, and 10.12 of the CPRs

⁴⁷ While this discussion about *conditions for participation* applies to *procurements* to which the additional rules in Division 2 of the CPRs apply, it is also good practice for all *procurements*.

⁴⁸ While this discussion about *minimum content and format requirements* applies to *procurements* to which the additional rules in Division 2 of the CPRs apply, it is also good practice for all *procurements*.

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116. At least in request for tender processes, Defence normally requires *tenderers* to indicate their compliance (or non-compliance) with a draft *contract* which contains the terms and conditions on which Defence is willing to enter into a *contract* for the requirement. Defence *officials* should assess the risk with the *tenderers*' non-compliances with the draft *contract* to enable *tenderers* to be evaluated against a common baseline.

117. The evaluation plan is an internal Defence document that sets out the methodology and processes to be followed by Defence when evaluating *submissions*. To reduce the risks of a perceived or actual bias in the *procurement* process, Defence *officials* should preferably develop and finalise the plan before an approach is made to the market, but in any event before *submissions* are opened.⁴⁹ The Complex Procurement Guide provides guidance about the contents of an evaluation plan.⁵⁰

118. The evaluation plan will normally identify the organisation that is responsible for the evaluation, and recommend a preferred *supplier* (or a shortlist of *potential suppliers*). Depending on the nature and complexity of the evaluation, the evaluation organisation may comprise a steering committee, an evaluation board or team and subordinate evaluation working groups. The evaluation organisation may also include internal or external advisers or experts to assist with elements of the evaluation, for example, the technical requirements, financial viability or price.

119. When receiving *submissions*, Defence *officials* need to use a mechanism that assures fairness and impartiality of the *procurement* process. *Submissions* should only be received into a secure environment. This can be through *AusTender* or other secure electronic system, or a physical tender box or tender room. Any *submissions* received after the closing time should be considered late and should generally not be accepted (see paragraph 114 above).

120. The evaluation committee should first check the *submissions* to make sure they satisfy any mandatory requirements, such as *minimum content and format requirements* and *conditions for participation*, and should then proceed to undertake the detailed evaluation of *submissions* against the *evaluation criteria*.

121. The evaluation of *submissions* is the most important aspect of determining value for money in a *procurement*. When evaluating *submissions*, the evaluation committee needs to make sure that it faithfully applies the *evaluation criteria*, methodology and procedures that have been set out in the *request documentation* and the evaluation plan. If the committee does not then this could compromise the evaluation outcome and give rise to a complaint or legal action by an affected *tenderer*, and require Defence to set aside the evaluation and possibly the whole *procurement* process, as well as incurring additional costs in dealing with the complaint.

122. The CPRs⁵¹ require Defence *officials* to maintain appropriate documentation of the decision-making process for each *procurement*. Therefore, the evaluation committee should be accurate and scrupulous in recording the evaluation and the reasons underlying its decisions. As a general rule, officials should ensure that there is sufficient documentation to provide an understanding of why the *procurement* was necessary, the process that was followed and all relevant decisions made, including approvals, and the basis of those decisions.

123. The evaluation committee should therefore prepare an evaluation report to document the evaluation process and the recommendation of a preferred *tenderer* (or shortlist of *tenderers*). The report can also assist in the future when providing feedback to *tenderers* through the debriefing process.

124. The evaluation report will normally contain:

- a summary of the evaluation process;
- a summary of the assessment of each *submission*;
- reasons for the exclusion of a *submission* from further consideration;
- recommendations concerning the preferred *tenderer(s)* based on value for money;⁵² and

⁴⁹ See Defence Procurement Policy Directive D47.

⁵⁰ See Chapters 3 and 5 of the Guide.

⁵¹ Paragraph 7.2 of the CPRs. This paragraph is subject to the JR Act, For further information regarding the JR Act, Defence officials should refer to Chapter 2 paragraphs 48 – 51 of the DPPM.

⁵² For *procurements* to which the additional rules in Division 2 of the CPRs apply, Defence *officials* are required to award the *contract* to the *tenderer* that is assessed to provide the best value for money in accordance with the *request documentation*, including compliance with any *conditions for participation* and essential requirements. (See CPRs, paragraph 10.32 to 10.36).

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- details of any issues which need resolution during subsequent *contract* negotiations.

125. The evaluation committee members will normally sign the report and submit this for endorsement by the relevant delegate.

126. The CPRs require Defence *officials* to notify affected *tenderers* promptly of the rejection of their *submission* or the award of a *contract*, and if requested, provide a debrief to the *tenderers* (both successful and unsuccessful *tenderers*).⁵³ A debrief (whether verbal or written) should include, as appropriate:

- an explanation of why the *submission* was unsuccessful (or successful);
- areas of weakness or non-compliance in the offer;
- suggestions as to how future *submissions* can be improved; and
- in the case of unsuccessful *tenderers*, if the *contract* has already been successfully negotiated, the name of the successful *supplier* and total *contract* price (noting that this needs to be reported on *AusTender* in any event, if valued at or above \$10,000).

127. Defence *officials* should keep a written record of the debriefing.

128. The final stage in the *procurement* process itself relates to the negotiation and award of the *contract* with the preferred *tenderer*. During *contract* negotiations, Defence *officials* should seek to resolve any issues that were identified during the evaluation.

129. At any time during the *procurement* process, Defence can determine that awarding a *contract* is not in the public interest.⁵⁴ Public interest grounds generally arise in response to new information or unforeseen events which materially affect the objectives or reasons underlying the original *procurement* requirement as specified in the *request documentation*. Examples of situations in which it may not be in the public interest to award the *contract* could include:

- a Government decision to cancel or vary the program to which the *procurement* relates;
- unforeseen technological or environmental changes affecting the business case for the *procurement*;
- discovery of new information materially affecting the policy behind or operational effectiveness of the project or *procurement*.

130. However, termination of a *procurement* process is a serious step with potential legal and management risks that should be considered and addressed before any decision is made. At the least, it can harm Defence's credibility with *suppliers* that, in turn, may discourage *suppliers'* participation in future *procurements*. On the other hand, termination may be compelled in order to protect the integrity of the *procurement* process and avoid the awarding of a *contract* in a manner inconsistent with the stated evaluation process.

131. Defence *officials* cannot terminate a *procurement* process simply because they may be dissatisfied with the outcome of the evaluation conducted in accordance with the stated rules, conditions and criteria set out in the *request documentation* and evaluation plan.

132. If Defence cancels a *procurement* on the basis that it is not in the public interest to award a *contract*, it should normally provide *potential suppliers* with reasons. In any case, prior to cancelling a *procurement*, Defence *officials* should seek specialist legal or contracting advice.

133. Once Defence has entered into a *contract*, Defence *officials* need to ensure that they manage the *contract* effectively so that all parties to the *contract* (including Defence) fully meet their respective obligations as efficiently and effectively as possible, and to deliver the business and operation objectives required by the parties. Effective contract management is a key enabler to delivering value for money, as well as supporting proper governance and risk management across the life of the *contract*. Defence *officials* should refer to the Defence Contract Management Framework and the Defence Contract Management Handbook to support them achieving best practice contract management. The Framework brings together the underpinning principles, policies, tools, templates, guidance and competencies required to support more collaborative business relationships with

⁵³ CPRs, paragraph 7.17.

⁵⁴ For *procurements* to which the additional rules in Division 2 of the CPRs apply, this is the only ground on which a Defence *official* can decide not to award a *contract* in relation to the *procurement*. (See CPRs, paragraphs 10.35 and 10.36).

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industry and deliver more effective *contract* outcomes. Defence *officials* should apply the Framework and use the Handbook when undertaking contract management.

The procurement life cycle – procurement complaints

134. *Procurement* complaints can be made at any stage of the *procurement* life cycle, and will be categorised as either a general *procurement* complaint or a JR Act complaint. In Defence, all *procurement* complaints must be managed under the DPCS. Compliance with the processes set out in the CPRs and the DPPM will minimise the risks associated with *procurement* complaints. See paragraphs 48 to 52 above for further information.

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Appendix A to Chapter 2

CPR Paragraphs subject to the Government Procurement (Judicial Review) Act 2018

Section	CPRs Paragraphs
Division 1	
4. Value for money	
Third-party procurement	4.18
5. Encouraging competition	
Non-discrimination	5.4
7. Accountability and transparency in procurement	
Records	7.2
Notifications to the market	7.10, 7.13 – 7.15
Providing information	7.16 – 7.17
Reporting arrangements	7.18, 7.20
9. Procurement method	
Requirement to estimate value of procurement	9.3 – 9.6
Division 2	
10. Additional Rules	
Additional Rules	10.1 – 10.2
Conditions of limited tender	10.3 – 10.5
Request documentation	10.6 – 10.8
Specifications	10.9 – 10.13
Modification of evaluation criteria or specifications	10.14
Conditions for participation	10.15 – 10.19
Minimum time limits	10.20 – 10.27
Late submissions	10.28 – 10.31
Receipt and opening of submissions	10.32 – 10.34
Awarding contracts	10.35 – 10.36

Chapter 3

The procurement framework

2. Procurement framework

CPR 2.1 – 2.6

Procurement framework

- 2.1 The Commonwealth *Procurement Rules* (CPRs) are issued by the Minister for Finance (Finance Minister) under section 105B(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).
- 2.2 Officials from *non-corporate Commonwealth entities* and prescribed *corporate Commonwealth entities* listed in section 30 of the *Public Governance, Performance and Accountability Rule 2014* **must** comply with the CPRs when performing duties related to *procurement*. These entities will collectively be referred to as *relevant entities* throughout the CPRs.
- 2.3 Rules that **must** be complied with in undertaking *procurement* are denoted by the term '**must**'. *Non-corporate Commonwealth entities* **must** report non-compliance with the rules of the CPRs through the Commonwealth's compliance reporting process. The term 'should' indicates good practice.
- 2.4 The CPRs are the core of the *procurement* framework, which also includes:
 - a. web-based guidance, developed by the Department of Finance (Finance) to assist entities to implement the *procurement* framework;
 - b. Resource Management Guides, which advise of key changes and developments in the *procurement* framework; and
 - c. templates, such as the Commonwealth Contracting Suite, which simplify and streamline processes, creating uniformity across Commonwealth *contracts* to reduce the burden on businesses when contracting with the Commonwealth.
- 2.5 An *Accountable Authority* may use Accountable Authority Instructions to set out entity-specific operational rules to ensure compliance with the rules of the *procurement* framework.

Note: As the Defence *Accountable Authority*, the Secretary has issued Defence's AAs. The AAs set out specific operational rules dealing with *procurement*.

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

Note: The CPRs state in a footnote to paragraph 2.6 that "Where such measures are applied, because Divisions 1 and 2 do not apply in full to the *procurement*, this has the effect that the *procurement* is not a 'covered procurement' under the *Government Procurement (Judicial Review) Act 2018*; see section 5".

Defence Procurement Policy Directives

- D2. For paragraph 2.6 of the CPRs, the Secretary has determined that the *procurement* of the *goods* and services listed in Table 1 below are exempt from the operation of Division 2 of the CPRs.
- D3. If a Defence *official* determines that an exemption given under paragraph 2.6 of the CPRs applies to a *procurement*, the *official* **must** ensure that the reasons supporting that determination are appropriately documented.
- D4. If a Defence *official* seeks to exempt a particular *procurement* (not otherwise covered by an

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existing exemption) from all or part of the CPRs, the *official must* seek the Secretary's written approval.

Table 1

<p>Goods</p> <p>The <i>procurement of goods</i> that fall within the following US Federal Supply Codes (FSC):</p>	<ul style="list-style-type: none"> - FSC 10 Weapons; - FSC 12 Fire Control Equipment; - FSC 13 Ammunition and Explosives; - FSC 14 Guided Missiles; - FSC 15 Aircraft and Airframe Structural Components; - FSC 16 Aircraft Components and Accessories; - FSC 17 Aircraft Launching, Landing, and Ground Handling Equipment; - FSC 18 Space Vehicles; - FSC 19 Ships, Small Craft, Pontoons and Floating Docks; - FSC 20 Ships and Marine Equipment; - FSC 23 Ground Effect Vehicles, Motor Vehicles, Trailers and Cycles; - FSC 28 Engines, Turbines, and Components; - FSC 29 Engine Accessories; - FSC 31 Bearings; - FSC 46 Water Purification and Sewage Treatment Equipment; - FSC 48 Valves; - FSC 49 Maintenance and Repair Shop Equipment; - FSC 54 Prefabricated Structures and Scaffolding; - FSC 58 Communication, Detection, and Coherent Radiation Equipment; - FSC 59 Electrical and Electronic Equipment Components; - FSC 60 Fibre Optics Materials, Components, Assemblies, and Accessories; - FSC 61 Electric Wire, and Power and Distribution Equipment; - FSC 63 Alarm, Signal and Security Detection Systems; - FSC 66 Instruments and Laboratory Equipment; and - No code - Specialty Metals.
<p>Services</p> <p>The <i>procurement of the following kinds of services</i>:</p>	<ul style="list-style-type: none"> - design, development, integration, test, evaluation, maintenance, repair, modification, rebuilding and installation of military systems and equipment; - operation of Government-owned facilities; - space services; and - services in support of military forces overseas.

Notes: Paragraph 2.6 of the CPRs allows the Secretary to determine that specific *procurements* should not be subject to all or part of the CPRs. Usually, a measure made under this paragraph will exempt a *procurement* from the rules in Division 2 of the CPRs (in particular, the obligation to undertake an *open tender* process). This exemption mechanism is provided for in the Australia-US Free Trade Agreement (AUSFTA), and is consistent with the market access arrangements agreed by Australia in its other FTAs.

In the case of Defence, the AUSFTA (Chapter 15, Annex A) specifically provides for various Defence *procurements* to be exempt from the operation of the *procurement* rules in Chapter 15 of the AUSFTA (which rules are now mainly in Division 2 of the CPRs, and which are consistent with the *procurement* rules agreed by Australia in its other FTAs). This exemption is permitted on the grounds of 'essential security' (Article 22.2 of the AUSFTA). To give effect to this exemption, the Secretary has made a measure under paragraph 2.6 of the CPRs to determine that the *procurement* of the various *goods* or *services* listed in Table 1 above are exempt from the operation of Division 2 of the CPRs. The list in Table 1 replicates the list in Chapter 15, Annex A of the AUSFTA. Further details of the FSC codes mentioned in Table 1 can be found in the Exemptions Fact Sheet on the Commercial Division intranet site.

Even if a *procurement* is exempt from Division 2 of the CPRs, Defence *officials* are still required to undertake their *procurements* in accordance with Division 1 of the CPRs. In addition, Defence *officials* are still required to comply with all applicable Defence Procurement Policy Directives contained in this manual (see Defence Procurement Policy Directive D43).

CPR 2.7 – 2.10

Procurement

- 2.7 *Procurement* is the process of acquiring *goods* and *services*. It begins when a need has been identified and a decision has been made on the *procurement* requirement. *Procurement* continues through the processes of risk assessment, seeking and evaluating alternative solutions, and the awarding and reporting of a *contract*.
- 2.8 In addition to the acquisition of *goods* and *services* by a *relevant entity* for its own use, *procurement* includes the acquisition of *goods* and *services* on behalf of another *relevant entity* or a third party.
- 2.9 *Procurement* does not include:
- grants (whether in the form of a *contract*, conditional gift or deed);
 - investments (or divestments);
 - sales by tender;
 - loans;
 - procurement of goods* and *services* for resale or *procurement of goods* and *services* used in the production of *goods* for resale;
 - any property right not acquired through the expenditure of *relevant money* (for example, a right to pursue a legal claim for negligence);
 - statutory appointments;
 - appointments made by a Minister using the executive power (for example, the appointment of a person to an advisory board); or
 - the engagement of employees, such as under the *Public Service Act 1999*, the *Parliamentary Services Act 1999*, a *relevant entity's* enabling legislation or the common law concept of employment.
- 2.10 Following the awarding of the *contract*, the delivery of and payment for the *goods* and *services* and, where relevant, the ongoing management of the *contract* and consideration of disposal of *goods*, are important elements in achieving the objectives of the *procurement*.

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Notes: Paragraph 2.9a of the CPRs makes clear that grants are not *procurements*. Defence manages a number of grant programs and therefore these programs, and the individual grants made under them, are not *procurements* for the CPRs. For example, to give effect to the Australian Government's defence and industry policy, Defence undertakes various grants programs under which Defence companies and other entities receive payments. In undertaking these programs, Defence *officials* are required to comply with the [Commonwealth Grant Rules and Guidelines](#), rather than the CPRs and the Defence Procurement Policy Directives in the DPPM. Defence grant programs also have their own rules that govern their operation.

For guidance on contracting processes for disposals, including sale by tender (see paragraph 2.9c of the CPRs) and gifting or transfer by deed, Defence *officials* should refer to the Materiel Logistics, Disposals and Sales Branch intranet page.

CPR 2.11 – 2.14

Resource management framework

- 2.11 *Relevant entities* and *officials* operate in an environment of legislation and Commonwealth policy. Within that broad context, the resource management framework consists of the legislation and policy governing the management of the Commonwealth's resources.
- 2.12 The *procurement* framework is a subset of the resource management framework related to the *procurement* of goods and services.
- 2.13 Section 16 of the PGPA Act outlines an *Accountable Authority's* duty to establish appropriate internal control systems for their *relevant entity*. The CPRs provide the necessary framework for Accountable Authorities when issuing Accountable Authority Instructions and operational requirements in relation to *procurement*. In the area of *procurement*, an *Accountable Authority* should provide a mechanism to:
- apply the principles and requirements of the resource management and *procurement* frameworks, focusing on the *relevant entity's* operations; and
 - provide primary operational instructions to *relevant entity officials* in carrying out their duties related to *procurement*, in a way that is tailored to a *relevant entity's* particular circumstances and needs.
- 2.14 Non-compliance with the requirements of the resource management framework, including in relation to *procurement*, may attract a range of criminal, civil or administrative remedies including under the *Public Service Act 1999* and the *Crimes Act 1914*.

Defence Procurement Policy Directives

- D5. When conducting a *procurement*, Defence *officials* **must** ensure that the following two delegations are exercised in the following order, unless the *procurement* does not involve the commitment of *relevant money* (for example, a 'nil-cost' contract change) in which case only the FINMAN 2 Schedule 2 -Enter into an Arrangement delegation is required:
- FINMAN 2 Schedule 1 (Section 23(3) of the PGPA Act) – To Approve the Commitment of Relevant Money (Commitment Approval): a Defence *official* must exercise this delegation before the Commonwealth enters into the arrangement that commits *relevant money*; and
 - FINMAN 2 Schedule 2 (Section 23(1) of the PGPA Act) – To Enter into an Arrangement: a Defence *official* **must not** exercise this delegation (Enter into an Arrangement) unless a Commitment Approval delegation has been exercised for the *procurement* to which the arrangement relates.
- D6. Prior to agreeing to a contingent liability in favour of a third party (for example, granting an indemnity, guarantee or warranty), Defence *officials* **must**:
- undertake a liability risk assessment in relation to the contingent liability, including considering the full potential cost of the liability to the Commonwealth; and
 - ensure that the relevant delegate (Under FINMAN 2 Schedule 1) (or the Finance Minister, if necessary) authorises the contingent liability under section 60 of the PGPA Act.

Notes: Chapter 1 of the DPPM discusses the resource management framework in more detail.

If a *procurement* includes a contingent liability, the effect of Defence Procurement Policy Directive D6 is that the relevant delegate must authorise the granting of the contingent liability for the purposes of section 60 PGPA Act. In Defence, the Commitment Approval delegate may do this as part of exercising this delegation.

If a *procurement* is being undertaken through the Foreign Military Sales (FMS) system, the standard FMS conditions require the Commonwealth to grant an indemnity to the US Government. Accordingly, Defence Procurement Policy Directive D6 dealing with contingent liabilities applies to each FMS case. For guidance on conducting liability risk assessments for FMS cases see the Commercial Division Risk Assessments and Liabilities intranet page.

Agreeing to a contingent liability in favour of a third party is one kind of limitation of liability. The Commonwealth may also limit a third party's liability in other ways, for instance, by agreeing to one or more financial caps on different heads of loss or damage that a contractor may be exposed to under a *contract* (for example, for personal injury, property damage, delay or other contractual non-performance). Accordingly, in addition to the requirement under Defence Procurement Policy Directive D6 to undertake a liability risk assessment in relation to contingent liabilities, Defence Procurement Policy Directive D28 requires Defence *officials* to undertake a liability risk assessment prior to agreeing to any limitation on a third party's liability under a *contract*. Defence has developed guidance and tools to assist Defence *officials* with the conduct of liability risk assessments.

The Department of Finance's [Resource Management Guide \(RMG\) No 414](#), together with Defence AAI 2.6 and FINMAN 2, set out Commonwealth and Defence policy in relation to indemnities, guarantees and warranties that give rise to 'contingent liabilities'. Consistently with RMG 414 and AAI 2.6, Defence has developed streamlined processes for undertaking liability risk assessments for certain kinds of contingent liabilities, namely indemnities contained in FMS cases and venue hire agreements. Defence *officials* should refer to the liability risk assessment guidance and tools for these streamlined processes.

CPR 2.15

International obligations

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

Note: Paragraph 2.15 of the CPRs means that Defence *officials* can refer to the CPRs as the single source of Australia's international commitments on government *procurement* and do not need to refer directly to the various treaties and other agreements. See also the Notes following paragraph 2.6 of the CPRs.

3. How to use the Commonwealth Procurement Rules

CPR 3.1 – 3.4

How to use the Commonwealth Procurement Rules

- 3.1 The CPRs set out the rules that *officials* **must** comply with when they procure *goods* and services. The CPRs also indicate good practice. The CPRs have been designed to provide *officials* with flexibility in developing and implementing *procurement* processes that reflect their *relevant entity's* needs.
- 3.2 Achieving value for money is the core rule of the CPRs. This requires the consideration of the financial and non-financial costs and benefits associated with *procurement*.
- 3.3 Further information and guidance on applying the CPRs are available on Finance's *procurement* policy website at www.finance.gov.au/procurement.
- 3.4 *Relevant entities* may have additional rules, guidance, templates or tools that apply when conducting *procurements*.

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Note: For paragraph 3.4 of the CPRs, the DPPM sets out 'additional rules' in relation to the conduct of Defence *procurement* that Defence *officials must* comply with when they procure *goods* and services for Defence. These additional rules are set out under the heading 'Defence Procurement Policy Directives' in the DPPM. The DPPM also refers to guidance, templates, tools and other resources to further assist Defence *officials* undertaking *procurement*. Defence *officials* should have regard to these resources when undertaking *procurement*.

CPR 3.5 – 3.8

Compliance with the two divisions of the CPRs

- 3.5 *Officials of non-corporate Commonwealth entities must* comply with the 'rules for all *procurements*' listed in Division 1, regardless of the *procurement* value. *Officials must* also comply with the 'additional rules' listed in Division 2 when the estimated value of the *procurement* is at or above the relevant *procurement threshold* and when an Appendix A exemption does not apply.
- 3.6 *Officials of corporate Commonwealth entities* prescribed in section 30 of the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) as having to comply with the CPRs *must* comply with the 'rules for all *procurements*' listed in Division 1 and the 'additional rules' listed in Division 2 when the expected value of the *procurement* is at or above the relevant *procurement threshold* and when an Appendix A exemption has not been utilised.
- 3.7 Despite being prescribed *corporate Commonwealth entities*, Australian Digital Health Agency, Australian Human Rights Commission, National Portrait Gallery of Australia, Old Parliament House and Regional Investment Corporation *must* apply a *procurement threshold* and *reporting threshold* of \$80,000 for *procurements* other than the *procurement of construction services*. They may opt-in to coordinated *procurements* and must only comply with those policies of the Commonwealth that specify compliance by *corporate Commonwealth entities*.
- 3.8 Despite being a corporate *Commonwealth entity*, paragraph 3.7 also applies to the Commonwealth Superannuation Corporation in regards to its administrative functions only.

Note: The Department of Defence ('Defence') is a *non-corporate Commonwealth entity*. Hence, paragraph 3.5 of the CPRs applies to Defence *officials* (including a contractor who is prescribed as a Defence *official*). In addition to an Appendix A exemption referred to in paragraph 3.5 of the CPRs, a Defence specific exemption may also be utilised (See Defence Procurement Policy Directives D2 and D4).

CPR 3.9

Using an Appendix A exemption

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

Defence Procurement Policy Directive

- D7. If a Defence *official* determines that an exemption under Appendix A of the CPRs applies to a *procurement*, the *official must* ensure that the reasons supporting that determination are appropriately documented.

Notes: Items 16 and 17 of Appendix A permit Defence *officials* to procure directly from disability businesses and indigenous businesses, respectively. See further Chapter 2 of the DPPM, and Defence Procurement Policy Directive D14 (and the related Notes).

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In addition to the exemptions provided for in Appendix A, various other kinds of Defence related *procurements* may be exempt from Division 2 of the CPRs. In particular, see Defence Procurement Policy Directives D2 and D4 (and the related Table 1 for a list of Defence *goods* and services that are exempt).

Chapter 4

Achieving value for money in procurement

Note: Chapter 4 of the DPPM incorporates all the rules from Division 1 of the CPRs.

4. Value for Money

CPR 4.1 – 4.3

Considering value for money

- 4.1 A thorough consideration of value for money begins by *officials* clearly understanding and expressing the goals and purpose of the *procurement*.
- 4.2 When a business requirement arises, *officials* should consider whether a *procurement* will deliver the best value for money. It is important to take into consideration:
 - a. stakeholder input;
 - b. the scale and scope of the business requirement;
 - c. the *relevant entity's* resourcing and budget;
 - d. obligations and opportunities under other existing arrangements;
 - e. relevant Commonwealth policies; and
 - f. the market's capacity to competitively respond to a *procurement*.

Notes: Defence officials should refer to Chapter 2 of the DPPM, and the Complex Procurement Guide, for more guidance about value for money.

Defence *officials* should be aware that 'Commonwealth policies' (paragraph 4.2e.) may include Cabinet decisions and other formal directions issued by the Government (whether through the Minister for Defence or otherwise).

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

Defence Procurement Policy Directives

- D8. Defence *officials* undertaking *procurement* valued at or above \$200,000 (including GST) **must** develop a written *procurement* plan for the *procurement* commensurate with its scale, scope and risk, and which takes account of the *procurement* life cycle, including cost of ownership and disposal considerations.
- D9. Defence *officials* **must** obtain an 'Endorsement to Proceed' prior to:
 - approaching the market for *procurements* to establish a *standing offer* arrangement, and
 - all other *procurements* that are valued at or above \$200,000 (including GST)
- D10. When undertaking a process to procure a Contractor, Consultant or Outsourced Service Provider, Defence officials **must**:
 - obtain and document approval from a Defence official at the Senior Executive Service (SES) Band 1 / 1 Star level or above prior to or as part of the approval of the commitment of *relevant money* for the proposal; and
 - advise the Secretary when the daily rate of the Contractor, Consultant or Outsourced Service Provider is at or above \$4,500 (including GST).
- D11. Prior to approaching the market to establish a strategic *standing offer* panel, Defence officials **must**:
 - obtain written endorsement of the business need from First Assistant Secretary Procurement and Contracting; then
 - obtain written approval to establish the strategic *standing offer* panel from the Enterprise

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Business Committee.

Notes: See paragraphs 102 to 104 in Chapter 2 of the DPPM for guidance about *procurement* plans, including that the Endorsement to Proceed document may be sufficient to serve as the *procurement* plan for less complex *procurements*. More detailed guidance is set out in Chapter 2 of the Complex Procurement Guide.

Defence *officials* should refer to paragraphs 9.2 – 9.6 of the CPRs in relation to estimating the value of a *procurement*.

It is best practice to seek approval to undertake a process to procure a Contractor, Consultant, or Outsourced Service Provider prior to approaching the market. Should approval be sought as part of the commitment of *relevant money*, and the approval is not given, this may be a breach of CPR 10.35, which limits the ability of Defence *officials* to cancel a *procurement* once the process has been undertaken.

Defence *officials* should refer to the Financial Delegations Manual (FINMAN 2) glossary for the definition of Contractors, Consultants and Outsourced Service Providers. Defence *officials* should refer to the Engaging Contractors, Consultants and Outsourced Service Providers – Decision Making Governance Fact Sheet for further guidance on the evidence required to justify the *procurement* of Contractors, Consultants or Outsourced Service Providers.

An Endorsement to Proceed may also be required to place an order under a *standing offer*. Defence *officials* should refer to the Endorsement to Proceed Fact Sheet.

The Establishing and Using Standing Offers Fact Sheet contains further guidance on the establishment of strategic *standing offer* panels.

CPR 4.4 – 4.6

Achieving value for money

- 4.4 Achieving value for money is the core rule of the CPRs. *Officials* responsible for a *procurement* **must** be satisfied, after reasonable enquires, that the *procurement* achieves a value for money outcome. *Procurements* should:
- a. encourage competition and be non-discriminatory;
 - b. use *public resources* in an efficient, effective, economical and ethical manner that is not inconsistent with the policies of the Commonwealth;
 - c. facilitate accountable and transparent decision making;
 - d. encourage appropriate engagement with risk; and
 - e. be commensurate with the scale and scope of the business requirement.
- 4.5 Price is not the sole factor when assessing value for money. When conducting a *procurement*, an *official* **must** consider the relevant financial and non-financial costs and benefits of each *submission* including, but not limited to:
- a. the quality of the *goods* and services;
 - b. fitness for purpose of the proposal;
 - c. the *potential supplier's* relevant experience and performance history;
 - d. flexibility of the proposal (including innovation and adaptability over the lifecycle of the *procurement*);
 - e. environmental sustainability of the proposed *goods* and services (such as energy efficiency, environmental impact and use of recycled products); and
 - f. whole-of-life costs.
- 4.6 Whole-of-life costs could include:

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- a. the initial purchase price of the *goods* and services;
- b. maintenance and operating costs;
- c. transition out costs;
- d. licensing costs (when applicable);
- e. the cost of additional features procured after the initial *procurement*;
- f. consumable costs; and
- g. disposal costs.

CPR 4.7 – 4.8

Broader benefits to the Australian economy

- 4.7 In addition to the value for money considerations at paragraphs 4.4 – 4.6, for *procurements* above \$4 million (or \$7.5 million for *construction services*) (except *procurements* covered by Appendix A and *procurements* from *standing offers*), *officials* are required to consider the economic benefit of the *procurement* to the Australian economy.
- 4.8 The policy operates within the context of relevant national and international agreements and *procurement* policies to which Australia is a signatory, including free trade agreements and the Australia and New Zealand Government Procurement Agreement.

Note: Defence *officials* should refer to paragraph 8 in Chapter 2 of the DPPM for guidance about the application of the ‘economic benefit’ requirement in relation to Defence *procurement*. The Department of Finance has also released guidance on the consideration of economic benefit on the [Department of Finance webpage](#).

CPR 4.9 – 4.10

Procurement-connected policies

- 4.9 *Procurement*-connected policies are policies of the Commonwealth for which *procurement* has been identified as a means of delivery. To assist *relevant entities* in complying with policies of the Commonwealth, Finance maintains a list of procurement-connected policies, which can be found at www.finance.gov.au/procurement.
- 4.10 Generally, procurement-connected policies are the responsibility of entities other than Finance. The relevant policy-owning entity is responsible for administering, reviewing and providing information on the policy as required.

Notes: Defence contracting templates are drafted and regularly updated to give effect to applicable Commonwealth legislation and policy (including the CPRs), and applicable Defence policy. If using an endorsed Defence contracting template (for example, ASDEFCON, the Defence Facilities and Infrastructure Suite of Contracts or the Commonwealth Contracting Suite) for a *procurement* for which the template is intended, Defence *officials* may rely on the template as meeting applicable legislation and policy requirements. The endorsed Defence contracting templates may be found on the Commercial Division Tools and Templates intranet page.

Defence has numerous business policy owners that are responsible for ensuring Defence complies with applicable Commonwealth legislation and policy requirements, as well as with particular State and Territory legislation that may also apply to Defence activities. This legislation and policy often interacts with Defence *procurement* and in many cases is given effect to through *contracts*. There are many policy or support areas in Defence that that can assist in relation to this legislation and policy that intersects with *procurement* (eg contracting, legal, finance, environment, work health and safety, security, technical regulatory frameworks etc). These resources can be found on the *procurement* support areas link on the Commercial Division Help Desk Kiosk intranet page.

Defence Procurement Policy Directives

Black Economy

D12. Defence *officials* undertaking an *open tender procurement* which is subject to the CPRs and with an estimated value of over \$4 million (including GST) **must** exclude, from consideration, *submissions* from *tenderers* that do not comply with the Black Economy Policy.

Note: Black Economy is a procurement connected policy.

The ASDEFCON contracting templates incorporate provisions that give effect to the Black Economy. Further information on the Black Economy Procurement Connected Policy can be found at the [Department of Finance website](#).

Trade sanctions

D13. Defence *officials* undertaking a *procurement* **must** ensure that the *procurement* does not breach any current [Australian Government trade sanctions](#).

Indigenous Procurement Policy

D14. Prior to approaching the market, Defence *officials* must determine whether the Indigenous Procurement Policy (IPP) applies to the *procurement* and if so comply with the IPP (see also Appendix A, item 16 of the CPRs).

Notes: The IPP is a procurement connected policy.

In addition, while not a Defence Procurement Policy Directive, Defence *officials* should also determine whether a disability business could deliver the required *goods* or services on a value for money basis before making any *approach to market*. If satisfied that value for money can be achieved, then the Defence *official* should procure the *goods* or services from the disability business (as permitted by Appendix A of the CPRs, item 15). If not, then the Defence *official* may procure through normal means. A list of Australian disability businesses can be found at the Australian Disability Enterprises website www.ade.org.au.

See Chapter 2 of the DPPM for more information about the IPP and the disability business exemption.

Workplace gender equality

D15. Defence *officials* undertaking a *procurement* at or above the relevant *procurement threshold* **must not** purchase *goods* or services from [contractors that do not comply](#) with the *Workplace Gender Equality Act 2012*.

Note: Workplace gender equality is a procurement connected policy.

Australian Industry Capability (AIC)

D16. Defence *officials* **must** comply with the Defence Australian Industry Capability (AIC) policy for materiel *procurements* valued at or above \$20 million (including GST), and in particular ensure that the successful *supplier* in the *procurement* implements an AIC plan.

Note: Currently, only the ASDEFCON contracting templates incorporate provisions that give effect to the AIC program, including requiring *tenderers* to submit AIC plans as part of the tender process. The successful *tenderer* is required to give effect to the agreed AIC plan under the *contract*. The AIC program is currently being updated following the [Defence Industry Policy Statement 2016](#). For further information about the AIC program, Defence *officials* should refer to the Defence Industry Policy Division intranet page. Australian Industry Participation Plans (AIP) for Government Procurement is a procurement connected policy, which was developed in accordance with the AIP National Framework. The AIP National Framework is available at www.industry.gov.au/aip. The Department of Industry, Innovation and Science's User Guide for AIP Plans states that the AIP policy 'may also be applied to Department of Defence non-materiel procurement'.

Code for the Tendering and Performance of Building Work 2016

D17. Defence *officials* **must** comply with the Code for the Tendering and Performance of Building Work 2016 (Building Work Code) when undertaking *procurements* for building work to which the

Building Work Code applies.

Note: The Building Work Code is a procurement connected policy. In summary, the Building Work Code prevents Commonwealth agencies such as Defence from permitting companies to tender or enter into *contracts* for Commonwealth funded building work, unless the companies meet the requirements of the Building Work Code. In Defence, *procurements* for building work are normally managed by the Defence Estate and Infrastructure Group. The Defence Facilities and Infrastructure Suite of Contracts include provisions to ensure that Defence complies with the Building Work Code.

Public-private partnerships (PPP) policy

D18. Defence *officials must*:

- consider using a public-private partnership (PPP) for all project proposals having an estimated capital cost over \$50 million where there is an opportunity to enter into a long term *contract* (for example, 15-30 years) with a focus on the delivery of services to government (for example, making materiel or facilities available for use by Defence); and
- comply with the [National PPP Policy and Guidelines](#) (December 2008), and complete a [PPP Suitability Checklist](#).

Note: More guidance on PPPs is set out in the Procurement Delivery Models Better Practice Guide. PPPs (or Private Finance Initiatives or 'PFIs') involve the creation of an asset through financing and ownership control by a private party and private sector delivery of related services that may normally have been provided by the Commonwealth. The Commonwealth may contribute to establishing the infrastructure, for example through land, capital works or risk sharing. The service delivered may be paid for by the Commonwealth or directly by the end user. Defence *officials* should consult with the Public Private Partnership Centre of Expertise, and engage the Resource Assurance and Analysis Branch, in Chief Finance Officer Group (CFOG) for an independent review of financial and budgetary impact. Building work that involves a PPP or PFI for the delivery of functions or services of the Commonwealth is also subject to the Building Work Code (see Defence Procurement Policy Directive D17).

CPR 4.11 – 4.12

Coordinated procurement

- 4.11 Coordinated *procurement* refers to whole-of-government arrangements for procuring *goods* and services. A list of coordinated *procurements* can be found at www.finance.gov.au/procurement.
- 4.12 *Non-corporate Commonwealth entities must* use coordinated *procurements*. Exemptions from coordinated *procurements* can only be granted jointly by the requesting *non-corporate Commonwealth entity's* Portfolio Minister and the Finance Minister when a *non-corporate Commonwealth entity* can demonstrate a special need for an alternative arrangement. Prescribed *Corporate Commonwealth entities* may opt-in to coordinated *procurements*.

Defence Procurement Policy Directives

- D19. Prior to selecting a *procurement* method, Defence *officials must* determine whether a coordinated *procurement* arrangement has been established for the *goods* or services to be procured.
- D20. If a coordinated *procurement* arrangement has been established for *goods* or services, Defence *officials must* use the arrangement when procuring relevant *goods* or services unless an exemption is in place.

Notes: The Department of Finance has established several whole of government coordinated *procurement* arrangements for various *goods* and services, for example, ICT, telecommunications, stationery and office supplies, and airline travel. Defence *officials* can find more details at www.finance.gov.au/procurement.

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Specialised military and classified telecommunications products and services (for military or intelligence agencies) fall outside the operation of the telecommunications coordinated *procurement* arrangements. For information about these exemptions Defence *officials* should refer to Non Materiel Procurement - ICT.

CPR 4.13 – 4.15Cooperative procurement

- 4.13 Cooperative *procurements* involve more than one *relevant entity* as the buyer. *Relevant entities* can procure cooperatively by approaching the market together or by joining an existing *contract* of another *relevant entity*.
- 4.14 If a *relevant entity* intends to join an existing *contract* of another *relevant entity*, the initial *request documentation* and the *contract* **must** have already specified potential use by other *relevant entities*.
- 4.15 *Relevant entities* joining an existing *contract* **must** ensure that:
- value for money is achieved;
 - the *goods* and services being procured are the same as provided for within the *contract*; and
 - the terms and conditions of the *contract* are not being materially altered.

Notes: The Defence Support Services panel (DSS Panel) is an example of a cooperative *procurement*. The panel was established so as to be able to be accessed by other Commonwealth agencies, and as a result many agencies have used and continue to use this panel for a range of support services.

Defence *officials* who are planning to establish a new *standing offer* arrangement with multiple *suppliers* should consider whether it would be appropriate for other Commonwealth agencies to be able to use the proposed panel for their needs. If so, the *approach to market* for the panel (and the panel deed) will need to expressly advise the *potential suppliers* that the panel may be used not only by Defence, but also by other agencies. However, in such circumstances, Defence *officials* will also need to consider the administrative arrangements for how the panel may be used, the extent to which this will impose an additional resource burden on Defence, and whether there will be any administrative fee charged to other agencies to cover Defence's costs of managing the panel.

CPR 4.16 – 4.18Contract end dates

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

Third-party procurement

- 4.17 *Procurement* by third parties on behalf of a *relevant entity* can be a valid way to procure *goods* and services, provided it achieves value for money.
- 4.18 *Relevant entities* **must** not use third-party arrangements to avoid the rules in the CPRs when procuring *goods* and services.

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Note: Under Defence *contracts*, it is not unusual for contractors to be required to undertake *procurements* on behalf of Defence. In many cases, this is simply part of the contractor's overall contracted responsibility to deliver a particular capability or outcome to Defence. In these cases, Defence does not usually intervene to specify that the contractors comply with CPR requirements, although Defence may wish to approve or specify under the *contract* the key subcontractors that the contractor will use, and further impose obligations on the contractor to ensure value for money is obtained, for example, by requiring the contractor to undertake competitive *procurements*. In other cases, the Commonwealth may task a contractor to undertake *procurement* activity that Defence *officials* might normally undertake themselves; that is, Defence is outsourcing the *procurement* function itself. In these cases, it may be appropriate to require the contractor to comply with the CPRs as if they were bound by them. If not, it could be argued that Defence was outsourcing the *procurement* function simply to avoid the operation of the CPRs. Defence is always under an obligation to ensure that its *procurement* activities (whether outsourced or not) deliver value for money to the Commonwealth.

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5. Encouraging Competition

CPR 5.1 – 5.2

Encouraging competition

- 5.1 Competition is a key element of the Australian Government's *procurement* framework. Effective competition requires non-discrimination and the use of competitive *procurement* processes.
- 5.2 Participation in *procurement* imposes costs on *relevant entities* and *potential suppliers*. Those costs should be considered when designing a process that is commensurate with the scale, scope and risk of the proposed *procurement*.

Note: Chapter 2 of the DPPM discusses the importance of competition and selecting an appropriate *procurement* process to achieve value for money outcomes.

CPR 5.3 – 5.4

Non-discrimination

- 5.3 The Australian Government's *procurement* framework is non-discriminatory.
- 5.4 All *potential suppliers* to government **must**, subject to these CPRs, be treated equitably based on their commercial, legal, technical and financial abilities and not be discriminated against due to their size, degree of foreign affiliation or ownership, location, or the origin of their *goods* and services.

Note: See Chapter 2 of the DPPM for more information about the non-discrimination principle.

CPR 5.5 – 5.7

Small and Medium Enterprises

- 5.5 To ensure that *Small and Medium Enterprises* (SMEs) can engage in fair competition for Australian Government business, *officials* should apply *procurement* practices that do not unfairly discriminate against SMEs and provide appropriate opportunities for SMEs to compete. *Officials* should consider, in the context of value for money:
 - a. the benefits of doing business with competitive SMEs when specifying requirements and evaluating value for money;
 - b. barriers to entry, such as costly preparation of *submissions*, that may prevent SMEs from competing;
 - c. SMEs' capabilities and their commitment to local or regional markets; and
 - d. the potential benefits of having a larger, more competitive *supplier* base.
- 5.6 The Australian Government is committed to *non-corporate Commonwealth entities* sourcing at least 10 per cent of *procurement* by value from SMEs.
- 5.7 In addition, the Government has a target of *non-corporate Commonwealth entities* procuring 35 per cent of *contracts* by volume, with a value of up to \$20 million, from *SMEs*.

Notes: In the Defence context, the Australian Government's policy relating to *small to medium enterprises* (SMEs) is given effect to through the Defence Industry Policy 2016, and in particular, the Australian Industry Capability (AIC) program. As noted in Chapter 2 of the DPPM, the AIC program is identified as a specific exemption from the 'non-discrimination' principle (reflected in paragraph 5.3 of the CPRs) in the Australia-US Free Trade Agreement (AUSFTA), and other FTAs to which Australia is a party. The AUSFTA (Chapter 15, Annex A) provides that 'the Australian Government reserves the right to maintain the Australian Industry Involvement program and its successor programs and policies.' The AIC program is a successor to the previous Australian Industry Involvement (All) program.

The ASDEFCON templates incorporate provisions that give effect to the AIC program, including requiring *tenderers* to submit AIC plans as part of the tender process. The successful *tenderer* is required to give effect to the agreed AIC plan under the *contract*. See also Defence Procurement Policy Directive D16 and the related note following.

6. Efficient, effective, economical and ethical procurement

CPR 6.1 – 6.9

Efficient, effective, economical and ethical procurement

- 6.1 The Australian Government promotes the proper use and management of *public resources*. Proper means efficient, effective, economical and ethical. For *non-corporate Commonwealth entities*, this would also include being not inconsistent with the policies of the Commonwealth.
- 6.2 Efficient relates to the achievement of the maximum value for the resources used. In *procurement*, it includes the selection of a *procurement* method that is the most appropriate for the *procurement* activity, given the scale, scope and risk of the *procurement*.
- 6.3 Effective relates to the extent to which intended outcomes or results are achieved. It concerns the immediate characteristics, especially price, quality and quantity, and the degree to which these contribute to specified outcomes.
- 6.4 Economical relates to minimising cost. It emphasises the requirement to avoid waste and sharpens the focus on the level of resources that the Commonwealth applies to achieve outcomes.
- 6.5 Ethical relates to honesty, integrity, probity, diligence, fairness and consistency. Ethical behaviour identifies and manages conflicts of interests, and does not make improper use of an individual's position.

Note: Chapter 2 of the DPPM, the Complex Procurement Guide, and the Early Industry Engagement Better Practice Guide provide more guidance about probity and effective industry engagement.

Ethical behaviour

- 6.6 In particular, *officials* undertaking *procurement* **must** act ethically throughout the *procurement*. Ethical behaviour includes:
 - a. recognising and dealing with actual, potential and perceived conflicts of interest;
 - b. dealing with *potential suppliers*, *tenderers* and *suppliers* equitably, including by:
 - i. seeking appropriate internal or external advice when probity issues arise, and
 - ii. not accepting inappropriate gifts or hospitality;
 - c. carefully considering the use of *public resources*; and
 - d. complying with all directions, including *relevant entity* requirements, in relation to gifts or hospitality, the Australian Privacy Principles of the *Privacy Act 1988* and the security provisions of the *Crimes Act 1914*.
- 6.7 *Relevant entities* **must** not seek to benefit from *supplier* practices that may be dishonest, unethical or unsafe. This includes not entering into *contracts* with *tenderers* who have had a judicial decision against them (not including decisions under appeal) relating to employee entitlements and who have not satisfied any resulting order. *Officials* should seek declarations from all *tenderers* confirming that they have no such unsettled orders against them.

Note: The endorsed Defence contracting templates contain the necessary provisions and form of statutory declaration to give effect to paragraph 6.7 of the CPRs.

- 6.8 If a complaint about *procurement* is received, *relevant entities* **must** apply timely, equitable and non-discriminatory complaint-handling procedures, including providing acknowledgment soon after the complaint has been received. *Relevant entities* should aim to manage the complaint process internally, when possible, through communication and conciliation.

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Judicial Review

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

Defence Procurement Policy Directive

- D21. If a Defence *official* receives a *procurement* complaint from a *supplier* in relation to a Defence *procurement*, the *official* **must** direct the complaint to the [procurement complaints mailbox](mailto:procurement.complaints@defence.gov.au) (procurement.complaints@defence.gov.au).
- D22. Defence *officials* must comply with a notice from a *Government Procurement (Judicial Review) Act 2018* Section 19 Delegate to investigate a *procurement* complaint, and prepare a report on the investigation.
- D23. Defence *officials* must comply with a notice to suspend a relevant *procurement* from a *Government Procurement (Judicial Review) Act 2018* Section 20 Delegate.
- D24. PIC delegates must obtain legal advice from Defence Legal and commercial advice from the Commercial Division within CASG prior to issuing a Public Interest Certificate (PIC) under Section 22 of the *Government Procurement (Judicial Review) Act 2018*.⁵⁵ PIC delegates must ensure that the PIC and the supporting *submission* are registered on the PIC Register.

Note: In Defence all *procurement* complaints including those made under the *Government Procurement (Judicial Review) Act 2018* (JR Act) are managed through the Defence Procurement Complaints Scheme. JR Act delegations have been issued by the Secretary to certain Defence officials to receive and investigate complaints, suspend *procurements* and issue Public Interest Certificates (PICs). The JR Act delegations can be found on the Commercial Division Defence Procurement Complaints Scheme intranet page.

The [procurement complaints mailbox](mailto:procurement.complaints@defence.gov.au) (procurement.complaints@defence.gov.au) is managed by the Central Procurement Complaints Function which is part of the Defence Procurement Complaints Scheme.

A PIC is a document issued by a PIC delegate that states that it is not in the public interest for a 'covered procurement' process to be suspended while complaints made under the JR Act are investigated or applications for injunctions are being considered. The PIC Register and a template *submission* for a PIC (including the applicable considerations) can be found on the Commercial Function Defence Procurement Complaints Scheme intranet page.

A 'covered procurement' under the JR Act is a *procurement* to which the rules in Divisions 1 and 2 of the CPRs apply, and which is not included in a class of *procurements* specified by the Minister for Finance in a determination under section 5(2) of the JR Act. As at the date of this version of the DPPM, the Minister for Finance has not issued any determinations under section 5(2) of the JR Act.

Information regarding the Defence Procurement Complaints Scheme can be found on the Commercial Function Defence Procurement Complaints Scheme intranet page.

7. Accountability and transparency

CPR 7.1 – 7.5

Accountability and transparency

- 7.1 The Australian Government is committed to ensuring accountability and transparency in its *procurement* activities. Accountability means that *officials* are responsible for the actions and decisions that they take in relation to *procurement* and for the resulting outcomes. Transparency involves *relevant entities* taking steps to enable appropriate

⁵⁵ This is set out in the Instrument of Delegation as a mandatory precondition to exercising the delegation in respect of section 22 of the JR Act

scrutiny of their *procurement* activity. The fundamental elements of accountability and transparency in *procurement* are outlined in this section.

Records

- 7.2 *Officials must* maintain a level of documentation commensurate with the scope, scale and risk for each *procurement*.
- 7.3 Documentation should provide accurate and concise information on:
- the requirement for the *procurement*;
 - the process that was followed;
 - how value for money was considered and achieved;
 - relevant approvals; and
 - relevant decisions and the basis of those decisions.
- 7.4 *Relevant entities must* have access to evidence of agreements with *suppliers*, in the form of one or a combination of the following documents: a written *contract*, a purchase order, an invoice or a receipt.
- 7.5 Documentation **must** be retained in accordance with the *Archives Act 1983*.

Note: For Defence policy in relation to record keeping, Defence *officials* should refer to the Defence Records Management Manual (RECMAN). RECMAN takes a principles based approach to records management and does not include information about practices and procedures – which are proposed to be set out in a Records Management Operations Guide (under development). For further information, Defence *officials* should contact Directorate of Records Management Policy at DRMP.Policy@defence.gov.au.

CPR 7.6 – 7.9

AusTender

- 7.6 *AusTender*, the Australian Government's *procurement* information system, is a centralised web-based facility that publishes a range of information, including *relevant entities'* planned *procurements*, *open tenders* and *contracts* awarded. It also supports secure electronic tendering to deliver integrity and efficiency for *relevant entities* and *potential suppliers*.
- 7.7 *AusTender* is the system used to enable *relevant entities* to meet their publishing obligations under the CPRs. It also enables *relevant entities* to monitor and review their *AusTender*-based *procurements*, including *approaches to market*, publication of *contracts*, and amendments to *contracts*.

Annual procurement plans

- 7.8 In order to draw the market's early attention to potential *procurement* opportunities, each *relevant entity must* maintain on *AusTender* a current *procurement* plan containing a short strategic *procurement* outlook.
- 7.9 The *annual procurement plan* should include the subject matter of any significant planned *procurement* and the estimated publication date of the *approach to market*. *Relevant entities* should update their plans regularly throughout the year.

Notes: The *Annual Procurement Plan* (APP) is a tool that facilitates early *procurement* planning and notifies *potential suppliers* to the planned Defence *procurements*. The APP includes a short strategic *procurement* outlook for Defence supported by details of any planned *procurements*. The APP includes only those opportunities that are planned as *open tender* as there are linkages between the APP and subsequent *approaches to market*.

For practical reasons (given the volume of Defence *procurement*), Defence includes in its APP only those *procurements* valued at or above \$1,000,000 (GST inclusive). *Procurements* of a lesser value can be included if advance notice to industry is desired, but this is not mandatory.

Details regarding the coordination and publication of Defence's APP can be found on the AusTender Publishing intranet page. Defence *officials* should refer to the intranet page for more information about the APP process.

CPR 7.10 – 7.15

Notifications to the market

- 7.10 *Relevant entities must* use *AusTender* to publish *open tenders* and, to the extent practicable, to make relevant *request documentation* available.
- 7.11 *Relevant entities* may use *AusTender* to publish *limited tender approaches to market* and make relevant *request documentation* available.

Note: All *open approaches to market* (*open tenders*) from Capability Acquisition and Sustainment Group (CASG) to be published on *AusTender* are managed centrally through the CASG e-tendering service. Defence *officials* from other Groups and Services can submit requests for *AusTender* publication for *open approaches to market* to defence.procurement@defence.gov.au. For further information about *AusTender* publication, Defence *officials* should refer to the Commercial Division *AusTender* intranet page.

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

Defence Procurement Policy Directive

D25. Defence *officials* undertaking a *procurement must* ensure that the *evaluation criteria* advertised in the *request documentation* are the criteria used for the evaluation of *submissions*.

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

Note: The [Department of Finance's Resource Management Guide No 407](#) sets out Commonwealth policy in relation to advertising *open approaches to market* in the media. As a general rule, such advertising is not permitted, although exemptions from the policy may be granted on a case by case basis.

- 7.14 When a *relevant entity* provides *request documentation* or any other document, already published on *AusTender* in any other form (for example, a printed version) that documentation **must** be the same as that published on *AusTender*.
- 7.15 The initial *approach to market* for a *multi-stage procurement* must include, for every stage, the criteria that will be used to select *potential suppliers*, and if applicable, any limitation on the number of *potential suppliers* that will be invited to make *submissions*.

CPR 7.16 – 7.17

Providing information

- 7.16 *Officials must*, on request, promptly provide, to eligible *potential suppliers*, *request documentation* that includes all information necessary to permit the *potential supplier* to prepare and lodge *submissions*.
- 7.17 Following the rejection of a *submission* or the award of a *contract*, *officials must* promptly inform affected *tenderers* of the decision. Debriefings **must** be made available, on request, to unsuccessful *tenderers* outlining the reasons the *submission* was unsuccessful. Debriefings **must** also be made available, on request, to the successful *supplier(s)*.

Note: Defence *officials* should refer to Chapter 5 of the Complex Procurement Guide for guidance about when to inform an affected *tenderer* of a decision in relation to a *procurement* process.

CPR 7.18 – 7.20

Reporting arrangements

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- 7.18 *Relevant entities must* report *contracts* and amendments on *AusTender* within 42 days of entering into (or amending) a *contract* if they are valued at or above the *reporting threshold*.
- 7.19 The *reporting thresholds* (including GST) are:
- a. \$10,000 for *non-corporate Commonwealth entities*; and
 - b. for prescribed *corporate Commonwealth entities* ,
 - i. \$400,000 for *procurements* other than *procurement* of construction services, or
 - ii. \$7.5 million for *procurement* of construction services.
- 7.20 Regardless of value, *standing offers* must be reported on *AusTender* within 42 days of the *relevant entity* entering into or amending such arrangements. Relevant details in the *standing offer* notice, such as *supplier* details and the names of other *relevant entities* participating in the arrangement, must be reported and kept current.

Defence Procurement Policy Directive

D26. To enable Defence to meet its accountability and transparency requirements (including *AusTender* reporting), for all new *contracts* and *contract* amendments that meet the *AusTender reporting thresholds*, Defence *officials must* complete the AE643 Defence Purchasing form.

Notes: The *reporting threshold* in paragraph 7.19a of the CPRs applies to the Department of Defence as a *non-corporate Commonwealth entity*.

The CPR reporting requirements apply equally to *contract* changes (whether called a *contract* change, amendment or variation or some other terminology) that are valued at or above the relevant *reporting threshold* as they do to the original *contracts*. However, the reporting requirements do not apply to *contracts* or *contract* changes for *goods* or services procured outside Australia to be used completely outside of Australia.

To assist Defence to meet its *AusTender* reporting requirements, Defence has developed the AE643 form and related *AusTender* reporting procedure. The form and procedure covers the proper recording of *contracts* and amendments that may be undertaken or processed through ROMAN, MILIS and the CMS financial management system. Defence *officials* should refer to the Commercial Division *AusTender* intranet page for more information about *AusTender* reporting requirements, including in relation to *standing offer* notices.

For *procurement* of Contractors, Consultants or Outsourced Service Providers, the AE643 records that a Senior Executive Service (SES) Band 1 or a 1 Star Officer or above has endorsed the requirement in accordance with Defence Procurement Policy Directive D10.

CPR 7.21

Subcontractors

- 7.21 *Relevant entities must* make available on request, the names of any subcontractor(s) engaged by a contractor in respect of a *contract*.
- a. *Relevant entities must* require contractors to agree to the public disclosure of the names of any subcontractors engaged to perform services in relation to a *contract*.
 - b. Contractors **must** be required to inform relevant subcontractors that the subcontractor's participation in fulfilling a *contract* may be publicly disclosed.

Note: The endorsed Defence contracting templates contain the necessary provisions to give effect to paragraph 7.21 of the CPRs.

CPR 7.22 – 7.25

Treatment of confidential information

- 7.22 When conducting a *procurement* and awarding a *contract*, *relevant entities* should take appropriate steps to protect the Commonwealth's confidential information. This includes

observing legal obligations, such as those under the *Privacy Act 1988*, and statutory secrecy provisions.

- 7.23 **Submissions must** be treated as confidential before and after the award of a *contract*. Once a *contract* has been awarded the terms of the *contract*, including parts of the *contract* drawn from the *supplier's submission*, are not confidential unless the *relevant entity* has determined and identified in the *contract* that specific information is to be kept confidential in accordance with the 'confidentiality test' set out in the guidance on *Confidentiality Throughout the Procurement Cycle* at www.finance.gov.au/procurement.
- 7.24 The need to maintain the confidentiality of information should always be balanced against the public accountability and transparency requirements of the Australian Government. It is therefore important for *officials* to plan for, and facilitate, appropriate disclosure of *procurement* information. In particular, *officials* should:
- a. include provisions in *request documentation* and *contracts* that alert *potential suppliers* to the public accountability requirements of the Australian Government, including disclosure to the Parliament and its committees;
 - b. when relevant, include a provision in *contracts* to enable the Australian National Audit Office to access contractors' records and premises to carry out appropriate audits; and
 - c. consider, on a case-by-case basis, any request by a *supplier* for material to be treated confidentially after the award of a *contract*, and enter into commitments to maintain confidentiality only when such commitments are appropriate.
- 7.25 When confidential information is required to be disclosed, for example following a request from a parliamentary committee, reasonable notice in writing **must** be given to the party from whom the information originated.

Note: The endorsed Defence contracting templates contain the necessary provisions to give effect to the CPR requirements on treatment of confidential information. Defence *officials* should refer to the Commercial Division Fact Sheets and Guidance intranet page for more guidance on how to determine what information is actually 'confidential' and the use of confidentiality provisions in Defence *contracts*.

CPR 7.26

Contract management/Standard verification

- 7.26 For *procurements* valued at or above the relevant *procurement threshold*, where applying a *standard* for *goods* or *services*, *relevant entities must* make reasonable enquiries to determine compliance with that *standard*:
- a. this includes gathering evidence of relevant certifications; and
 - b. periodic auditing of compliance by an independent assessor.

CPR 7.27

Other obligations

- 7.27 Other reporting and disclosure obligations apply to *officials* undertaking *procurement*, including:
- a. disclosure of *procurement* information for *relevant entity* annual reporting purposes;
 - b. disclosure of non-compliance with the CPRs through the Commonwealth's compliance reporting process;
 - c. disclosure to the Parliament and its committees, as appropriate, in line with the Government Guidelines for *Officials Witnesses before Parliamentary Committees and Related Matters*;
 - d. disclosure of information consistent with the *Freedom of Information Act 1982*; and
 - e. disclosure of discoverable information that is relevant to a case before a court.

8. Procurement risk

CPR 8.1 – 8.4

Procurement risk

- 8.1 Risk management comprises the activities and actions taken by a *relevant entity* to ensure that it is mindful of the risks it faces, that it makes informed decisions in managing these risks, and identifies and harnesses potential opportunities.
- 8.2 *Relevant entities must* establish processes for the identification, analysis, allocation and treatment of risk when conducting a *procurement*. The effort directed to risk assessment and management should be commensurate with the scale, scope and risk of the *procurement*. *Relevant entities* should consider risks and their potential impact when making decisions relating to value for money assessments, approvals of proposals to spend *relevant money* and the terms of the *contract*.
- 8.3 *Relevant entities* should consider and manage their *procurement* security risk in accordance with the *Australian Government's Protective Security Policy Framework*.
- 8.4 As a general principle, risks should be borne by the party best placed to manage them; that is, *relevant entities* should generally not accept risk which another party is better placed to manage. Similarly, when a *relevant entity* is best placed to manage a particular risk, it should not seek to inappropriately transfer that risk to the *supplier*.

Defence Procurement Policy Directives

D27. For all *procurements* at or above the relevant *procurement threshold*, Defence officials **must**:

- undertake a risk assessment so that they are properly informed about the risks associated with the *procurement*; and
- subject to the risk assessment, develop and implement a risk management plan to manage the risks.

D28. Defence officials **must** undertake a liability risk assessment prior to agreeing to limit a third party's liability under a *contract*.

Notes: Chapter 2 of the DPPM provides guidance on risk management. The endorsed Defence contracting templates enable Defence *officials* to allocate risks to the parties best placed to manage them.

The Commonwealth may limit a third party's (including a contractor's) liability in various ways, for instance, by agreeing to one or more financial caps on different heads of loss or damage that a contractor may be exposed to under a *contract* (for example, for personal injury, property damage, delay or other contractual non-performance). Defence has developed tools and guidance to assist Defence *officials* with undertaking liability risk assessments. See also Defence Procurement Policy Directive D6 which requires Defence *officials* to undertake a liability risk assessment in relation to contingent liabilities.

9. Procurement method

CPR 9.1

Procurement method

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

Defence Procurement Policy Directives

- D29. In deciding on the *procurement* method for a *procurement*, Defence officials **must** ensure that the method is commensurate with the scope, scale, and risk of the *procurement* and is consistent with value for money.
- D30. Defence officials **must** ensure that all *procurement* method decisions are appropriately documented.

Note: For *procurements* valued at or above \$200,000 (GST inclusive), the Endorsement to Proceed template is normally the mechanism by which *procurement* method decisions are documented. The Commitment Approval delegate (see section 23(3) of the PGPA Act) would also confirm the *procurement* method decision as part of the exercise of their delegation.

CPR 9.2 – 9.7**Requirement to estimate value of procurement**

- 9.2 The expected value of a *procurement* **must** be estimated before a decision on the *procurement* method is made. The expected value is the maximum value (including GST) of the proposed *contract*, including options, extensions, renewals or other mechanisms that may be executed over the life of the *contract*.
- 9.3 The maximum value of the *goods* and services being procured **must** include:
- all forms of remuneration, including any premiums, fees, commissions, interest, allowances and other revenue streams that may be provided for in the proposed *contract*;
 - the value of the *goods* and services being procured, including the value of any options in the proposed *contract*; and
 - any taxes or charges.
- 9.4 When a *procurement* is to be conducted in multiple parts with *contracts* awarded either at the same time or over a period of time, with one or more *suppliers*, the expected value of the *goods* and services being procured **must** include the maximum value of all of the *contracts*.
- 9.5 A *procurement* **must** not be divided into separate parts solely for the purpose of avoiding a relevant *procurement threshold*.
- 9.6 When the maximum value of a *procurement* over its entire duration cannot be estimated the *procurement* **must** be treated as being valued above the relevant *procurement threshold*.

Procurement thresholds

- 9.7 When the expected value of a *procurement* is at or above the relevant *procurement threshold* and an exemption in Appendix A is not utilised, the rules in Division 2 **must** also be followed. The *procurement thresholds* (including GST) are:
- for *non-corporate Commonwealth entities*, other than for *procurements of construction services*, the *procurement threshold* is \$80,000;
 - for prescribed *corporate Commonwealth entities*, other than for *procurements of construction services*, the *procurement threshold* is \$400,000; or
 - for *procurements of construction services by relevant entities*, the *procurement threshold* is \$7.5 million.

Defence Procurement Policy Directives

Procurements under \$10,000 (GST inclusive) - Defence Purchasing Card

- D31. For *procurements* valued under \$10,000 (GST inclusive), Defence *officials* **must** use the Defence Purchasing Card (DPC), unless there are valid reasons for not doing so.
- D32. Defence *officials* **must** not use the DPC for *procurements* made through MILIS (the core logistics management system in Defence).

Procurements under \$200,000 (GST inclusive) - Commonwealth Contracting Suite

- D33. For *procurements* valued under \$200,000 (GST inclusive), Defence *officials* **must** use the Department of Finance's Commonwealth Contracting Suite (CCS), unless the *procurement* has been assessed as exempt from this requirement by applying the Defence specific CCS Decision Tree.
- D34. If the *procurement* is exempt from using the CCS, the *official* **must** use an endorsed Defence contracting template.

Procurements valued at or above \$200,000 (GST inclusive)

- D35. For *procurements* valued between \$200,000 and \$1 million (GST inclusive), officials must consider using the CCS as the basis for the *procurement*. If the CCS is unsuitable or the *procurement* is valued at or above \$1 million (GST inclusive), if an endorsed Defence contracting template exists for the type of *procurement* being undertaken, Defence *officials* **must** use that template as the basis for the *procurement*.
- D36. If a Defence *official* intends to use a form of *contract* other than an endorsed Defence contracting template, the *official* **must** ensure the *contract* is appropriate for the requirement, and capable of achieving an appropriate risk allocation consistent with the Commonwealth resource management framework.

Procurements through the US Foreign Military Sales (FMS) system

- D37. If a Defence *official* is undertaking a *procurement* through the FMS system, the *official* **must** consult with the Office of the Counsellor Defence Materiel (Washington) (DEFMAT (W)) prior to establishing or amending the FMS case.

Notes: Defence *officials* should follow the Simple Procurement Process Tool when undertaking low risk, low value (or 'simple') *procurements*.

For Defence Procurement Policy Directive D35, the Department of Finance's Commonwealth Contracting Suite (CCS) and the Defence specific CCS Decision Tree can be found at the Department of Finance's [Commonwealth Contracting Suite webpage](#).

The endorsed Defence contracting templates and guidance on appropriate template selection can be found on the Commercial Policy Tools and Templates intranet page

The US Foreign Military Sales (FMS) program is a form of security assistance authorised by the US Arms Export Control Act (AECA) and is part of US foreign policy. Under Section 3, of the AECA, the US may sell defence articles and services to foreign countries like Australia when to do so will strengthen the security of the US and promote world peace. For more information about the FMS system see the Support Office Foreign Military Sales intranet page.

The Capability Acquisition and Sustainment Group has a Washington office (CASG-W) which is the focal point for Defence materiel related activity in North America, providing acquisition and sustainment support to Defence and other Australian government agencies. DEFMAT (W) provides acquisition advice to the Head of Australian Defence Staff (Washington) (HADS(W)) and is the representative of Deputy Secretary CASG in North America. The office supports a range of activities, including FMS and direct commercial *procurements*. For more information and contact details see the Support Office Foreign Military Sales intranet page.

CPR 9.8**Procurement methods**Method 1 – Open tender

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

Defence Procurement Policy Directive

D38. Defence officials **must** use an *open tender* process for all *procurements* at or above the relevant *procurement threshold*, unless the conditions for a *limited tender* can be satisfied, or the *procurement* is otherwise exempt from this requirement.

Note: See Defence Procurement Policy Directive D2 (and the related Table 1) for Defence *procurements* that are exempt from the *open tender* requirement. Appendix A of the CPRs also sets out various kinds of *procurements* that do not require *open tender* processes.

See paragraphs 30 to 36 in Chapter 2 of the DPPM for guidance about *procurement* methods.

CPR 9.9 – 9.11Method 2 – Limited tender

- 9.9 *Limited tender* involves a *relevant entity* approaching one or more *potential suppliers* to make *submissions*, when the process does not meet the rules for *open tender*.
- 9.10 For *procurements* at or above the relevant *procurement threshold*, *limited tender* can only be conducted in accordance with paragraph 10.3, or when a *procurement* is exempt as detailed in Appendix A.
- 9.11 When conducting a *limited tender* in accordance with paragraph 9.10, the relevant exemption or *limited tender* condition **must** be reported on *AusTender*.

Defence Procurement Policy Directive

- D39. For *procurements* at or above the relevant *procurement threshold*, a Defence official **must not** use a *limited tender* process unless a circumstance in paragraph 10.3 of the CPRs applies, or the *procurement* is otherwise exempt from this requirement.
- D40. In undertaking a *limited tender*, Defence officials **must** ensure that, where practicable, the number of *potential suppliers* invited to participate in the process is sufficient to ensure a value for money outcome.

Notes: Many *procurements* related to the acquisition or sustainment of Defence major capital equipment are undertaken through *limited tender* processes, despite not meeting the requirements of paragraph 10.3 of the CPRs. Usually, this is because they are exempt *procurements* of goods or services (see Defence Procurement Policy Directives D2-D4).

A particular *procurement* may be categorised as a *limited tender*, irrespective whether or not a request for tender or similar *request documentation* is used to undertake the *procurement*. Further, a 'sole source' arrangement with a contractor constitutes a *limited tender* for the purposes of the CPRs. Similarly, each FMS case with the US Government constitutes a *limited tender*.

See paragraphs 37 to 47 in Chapter 2 of the DPPM for guidance about how the circumstances set out in paragraph 10.3 of the CPRs may apply so as to justify using a *limited tender* process.

Where a *limited tender procurement* method has been utilised for a *procurement* valued at or above the relevant *procurement threshold*, the Contract Notice published on *AusTender* will include either:

- the exemption from Division 2 of the CPRs; or
- the condition from paragraph 10.3 of the CPRs.

CPR 9.12 – 9.13**Procurement from existing arrangements**Procurements from standing offers

- 9.12 *Procurements* from an existing *standing offer* are not subject to the rules in Division 2 of these CPRs. However, these *procurements* **must** comply with the rules in Division 1.
- 9.13 *Officials* should report the original *procurement* method used to establish the *standing offer* when they report *procurements* from *standing offers*.

Defence Procurement Policy Directive

- D41. If a *standing offer* panel is established in Defence for *goods* or services, Defence *officials* **must** use the *standing offer* when procuring relevant *goods* or services, unless a Group Head has approved not doing so.
- D42. Defence *officials* **must not** use a *standing offer* panel to order *goods* or services that were not specified in the *request documentation* used to establish the arrangement, even if the relevant *supplier* may be able to provide the *goods* or services.

Notes: *Standing offer* panels provide an efficient and effective mechanism to enable Defence *officials* to procure relevant *goods* and services from industry. The benefit of these arrangements is eroded if *officials* seek to procure outside the panel, noting that panel members also have the reasonable expectation that Defence will use the panel rather than procure outside it. Nevertheless, there may be occasions when Defence *officials* may need to procure *goods* or services outside the panel, for example, where particular knowledge or expertise is required that is only available outside the panel. A valid reason could also include where a *standing offer* panel arrangement has been established by another Commonwealth agency which is able to be used by Defence and which offers better value for money than the corresponding Defence panel. For further information on *standing offers* and current Defence *standing offer* panel arrangements, Defence *officials* should refer to the factsheet on the Commercial Division Fact Sheets and Guidance intranet page and the Commercial Division Defence Goods and Services Procurement Directory intranet page.

The Department of Finance has established several whole of government coordinated *procurement* arrangements for various *goods* and services, for example, ICT, telecommunications, stationery and office supplies, and airline travel. Defence *officials* are required to use these arrangements unless specific exemptions apply (see paragraphs 4.9 and 4.10 of the CPRs and Defence Procurement Policy Directives D19 and D20 and related Notes). Defence *officials* can find more details at www.finance.gov.au/procurement

Chapter 5

Procurements valued at or above the procurement thresholds

Note: Chapter 5 of the DPPM incorporates all the rules from Division 2 of the CPRs.

Defence Procurement Policy Directive

D43. Defence *officials* **must** comply with the Defence Procurement Policy Directives in Chapter 5 of the DPPM (in addition to those in Chapters 1, 3 and 4) when undertaking *procurements* in Defence, if the *procurement* is valued at or above the relevant *procurement threshold* (unless otherwise specified in the relevant Defence Procurement Policy Directive).

Note: Defence Procurement Policy Directive D43 means that, even though Defence *officials* may be exempt from having to comply with the additional rules in Division 2 of the CPRs in relation to their *procurement*, Defence *officials* are still required to comply with the Defence Procurement Policy Directives that are set out in Chapter 5 of the DPPM, unless stated otherwise. This is because these Defence Procurement Policy Directives are of general application and compliance with them will help to ensure that Defence undertakes its *procurements* in an efficient, effective, economical and ethical manner as required by the PGPA Act.

10. Additional rules

CPR 10.1 – 10.8

Additional rules

- 10.1 The rules set out in Division 2 are additional to those in Division 1 and **must** not be interpreted or applied in a manner that diminishes or negates Division 1.
- 10.2 A *procurement*, except a *procurement* that is specifically exempt in accordance with Appendix A, is subject to the rules contained in Division 2 if the expected value of the *procurement* is at, or above, the relevant *procurement threshold*.

Conditions for limited tender

- 10.3 A *relevant entity* **must** only conduct a *procurement* at or above the relevant *procurement threshold* through *limited tender* in the following circumstances:
 - a. when, in response to an *open approach to market*:
 - i. no *submissions*, or no *submissions* that represented value for money, were received,
 - ii. no *submissions* that met the *minimum content and format requirements* for *submission* as stated in the *request documentation* were received, or
 - iii. no *tenderers* satisfied the conditions for participation,and the *relevant entity* does not substantially modify the essential requirements of the *procurement*; or
 - b. when, for reasons of extreme urgency brought about by events unforeseen by the *relevant entity*, the *goods* and services could not be obtained in time under *open tender*; or
 - c. for *procurements* made under exceptionally advantageous conditions that arise only in the very short term, such as from unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy, or receivership, and which are not routine *procurement* from regular *suppliers*; or
 - d. when the *goods* and services can be supplied only by a particular business and there is no reasonable alternative or substitute for one of the following reasons
 - i. the requirement is for works of art,

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- ii. to protect patents, copyrights, or other exclusive rights, or proprietary information, or
- iii. due to an absence of competition for technical reasons; or
- e. for additional deliveries of *goods* and services by the original *supplier* or authorised representative that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services, or installations, when a change of *supplier* would compel the *relevant entity* to procure *goods* and services that do not meet requirements for compatibility with existing equipment or services; or
- f. for *procurements* in a *commodity market*; or
- g. when a *relevant entity* procures a prototype or a first *good* or service that is intended for limited trial or that is developed at the *relevant entity's* request in the course of, and for, a particular *contract* for research, experiment, study, or original development; or
- h. in the case of a *contract* awarded to the winner of a design contest, provided that
 - i. the contest has been organised in a manner that is consistent with these CPRs, and
 - ii. the contest is judged by an independent jury with a view to a design *contract* being awarded to the winner.

Note: See paragraphs 37 to 45 in Chapter 2 of the DPPM for guidance about how the circumstances set out in paragraph 10.3 of the CPRs may apply so as to justify using a *limited tender* process.

- 10.4 A *procurement* at or above the relevant *procurement threshold* conducted by *limited tender* is not required to meet the rules in paragraphs 10.6 -10.8 (*Request documentation*), 10.20-10.31 (Minimum time limits), or 10.35 (*Awarding contracts*).
- 10.5 In accordance with the general rules for accountability set out in these CPRs, for each *contract* awarded through *limited tender*, an **official must** prepare and appropriately file within the *relevant entity's* records management system a written report that includes:
 - a. the value and type of *goods* and services procured;
 - b. a statement indicating the circumstances and conditions that justified the use of *limited tender*, and
 - c. a record demonstrating how the *procurement* represented value for money in the circumstances.

Request documentation

- 10.6 **Request documentation must** include a complete description of:
 - a. the *procurement*, including the nature, scope and the quantity of the *goods* and services to be procured or, where the quantity is not known, the estimated quantity, and any requirements to be fulfilled, including any technical *specifications*, conformity certification, plans, drawings, or instructional materials;
 - b. any *conditions for participation*, including any financial guarantees, information and documents that *potential suppliers* are required to submit;
 - c. any *minimum content and format requirements*;
 - d. *evaluation criteria* to be considered in assessing *submissions* and, if applicable to the evaluation, the relative importance of those criteria;
 - e. any dates for the delivery of *goods* or supply of services, taking into account the complexity of the *procurement*; and
 - f. any other terms or conditions relevant to the evaluation of *submissions*.
- 10.7 However, *relevant entities* are not obligated to release confidential information, information sensitive to essential security or information that may impede competition.
- 10.8 **Relevant entities must** ensure that *potential suppliers* and *tenderers* are dealt with fairly and in a non-discriminatory manner when providing information leading to, or following,

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an *approach to market*. *Relevant entities must* promptly reply to any reasonable request from a *potential supplier* for relevant information about a *procurement*, and when responding to such enquiries *must* avoid a *potential supplier*, or group of *potential suppliers*, gaining an unfair advantage in a competitive *procurement* process.

Defence Procurement Policy Directives

- D44. Defence *officials must* ensure that the *request documentation* for a *procurement* is consistent with the approved *procurement* plan and includes all of the information necessary to enable *potential suppliers* to properly prepare and lodge *submissions*.
- D45. Defence *officials must* ensure that all *potential suppliers* are provided with the same information in the *request documentation*, including any amendments to the *request documentation*.
- D46. For all competitive *procurement* processes, Defence *officials must* prepare a tender evaluation plan that is commensurate with the scale, scope and risk of the *procurement*.
- D47. Defence *officials must* ensure that the tender evaluation plan for a *procurement* is approved by the relevant *official* no later than the opening of *submissions*.

Note: Defence officials should refer to Chapter 5 of the Complex Procurement Guide for more information about how to undertake a tender evaluation for a complex *procurement*.

CPR 10.9 – 10.13

Specifications

- 10.9 A *relevant entity must* not use *specifications* or prescribe any conformity assessment procedure in order to create an unnecessary obstacle to trade.
- 10.10 In prescribing *specifications* for *goods* and services, a *relevant entity must*, where appropriate:
- set out the *specifications* in terms of performance and functional requirements; and
 - base technical *specifications* on international *standards*, when they exist and apply to the relevant *procurement*, except when the use of international standards would fail to meet the *relevant entity's* requirements.
- 10.11 Where an Australian *standard* is applicable for *goods* or services being procured, tender responses *must* demonstrate the capability to meet the Australian *standard*, and *contracts must* contain evidence of the applicable standards (see paragraph 7.26).
- 10.12 A *specification must* not require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer, or *supplier*, unless there is no other sufficiently precise or intelligible way of describing the requirement. In an exceptional circumstance when this type of *specification* is used, words such as 'or equivalent' *must* be included in the *specification*.
- 10.13 A *relevant entity* may conduct market research and other activities in developing *specifications* for a particular *procurement* and allow a *supplier* that has been engaged to provide those services to participate in *procurements* related to those services. *Relevant entities must* ensure that such a *supplier* will not have an unfair advantage over other *potential suppliers*.

Defence Procurement Policy Directive

- D48. If essential requirements are specified in *request documentation*, Defence *officials must* exclude a *tenderer* from further consideration in the *procurement* process, if the *official* considers that the *tenderer* has not met those requirements (unless the *procurement* is exempt from Division 2 of the CPRs).

Notes: Defence *officials* should refer to Chapter 3 of the Complex Procurement Guide for more information about the use of standards, *specifications* and essential requirements in *request documentation*. For *procurements* that are exempt from Division 2 of the CPRs, Defence Procurement Policy Directive D48 should be followed as good practice.

CPR 10.14 – 10.19

Modification of evaluation criteria or specifications

10.14 When, during the course of a *procurement*, a *relevant entity* modifies the *evaluation criteria* or *specifications* set out in an *approach to market* or in *request documentation*, or amends or reissues an *approach to market* or *request documentation*, it **must** transmit all modifications or amended or reissued documents:

- a. to all the *potential suppliers* that are participating at the time the information is amended, if known, and, in all other cases, in the same manner as the original information; and
- b. in adequate time to allow *potential suppliers* to modify and re-lodge their *submissions*, if required.

Conditions for participation

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

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

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

- a. evaluate financial, commercial, and technical abilities on the basis of the *tenderer's* business activities, wherever they have occurred; and
- b. base its determination solely on the *conditions for participation* that the *relevant entity* has specified in either the *approach to market* or the *request documentation*.

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

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

- a. labour regulations, including ethical employment practices;
- b. workplace health and safety; and
- c. environmental impacts.

Note: See the Notes following paragraph 4.10 of the CPRs as extracted in Chapter 4 of the DPPM.

Defence Procurement Policy Directive

D49. If *conditions for participation* are specified in *request documentation*, Defence *officials* **must** exclude a *tenderer* from further consideration in the *procurement* process, if the *official* considers that the *tenderer* has not met those conditions (unless the *procurement* is exempt from Division 2 of the CPRs).

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Note: Defence *officials* should refer to Chapters 3 and 5 of the Complex Procurement Guide for more information about *conditions for participation*.

CPR 10.20 – 10.27**Minimum time limits**

- 10.20 *Potential suppliers must* be required to lodge *submissions* in accordance with a common deadline.
- 10.21 *Relevant entities must* provide sufficient time for *potential suppliers* to prepare and lodge *submissions* in response to an *approach to market*. Time limits discussed in this section represent minimum time limits to lodge *submissions* and should not be treated as default time limits.
- 10.22 The time limit for *potential suppliers* to lodge a *submission must* be at least 25 days from the date and time that a *relevant entity* publishes an *approach to market* for an *open tender*.
- 10.23 The 25 day period referred to in paragraph 10.22 **must** be extended by five days for each of the following circumstances:
- when a *relevant entity* does not make *request documentation* available electronically from the date that a *relevant entity* published an *approach to market*; and/or
 - when a *relevant entity* does not accept *submissions* electronically.
- 10.24 A *relevant entity* may establish a time limit that is less than 25 days but no less than 10 days under the following circumstances”
- when the *relevant entity* has published details of the *procurement* in an *annual procurement plan on AusTender*, at least 40 days and not more than 12 months in advance, and those details include a description of the *procurement*, the timing of the *approach to market* and the procedure to obtain *request documentation*;
 - when the *relevant entity* procures *commercial goods and services* (unless the *relevant entity* does not accept the *submissions* electronically, in which case the minimum time limit **must** be no less than 13 days); or
 - when a genuine state of urgency renders the normal time limit impracticable.
- 10.25 In the case of a *multi-stage procurement* each *approach to market must* comply with the time limits stated in paragraph 10.22 – 10.24.
- 10.26 When a *relevant entity* intends to specify *conditions for participation* that require *potential suppliers* to undertake a separate registration procedure, the *relevant entity must* state the time limit for responding to the registration in the *approach to market*. Any such *conditions for participation must* be published in sufficient time to enable all *potential suppliers* to complete the registration procedures within the time limit for the *procurement*.
- 10.27 When a *relevant entity* extends the time limit for registration or *submission*, or when negotiations are terminated and *potential suppliers* are permitted to lodge new *submissions*, the new time limit **must** apply equitably.

Defence Procurement Policy Directive

D50. Defence *officials must* not grant an extension to a deadline for registration or lodgement of *submissions* once the closing date for registration or *submissions* has passed.

CPR 10.28 – 10.31Late submissions

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

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- 10.29 *Relevant entity* mishandling does not include mishandling by a courier or mail service provider engaged by a *potential supplier* to deliver a *submission*. It is the responsibility of the *potential supplier* to ensure that the *submission* is dispatched in sufficient time for it to be received by the *relevant entity* by the deadline.
- 10.30 Late *submissions* should be returned unopened to the *potential supplier* who submitted them, to:
- ensure that they are not evaluated or compared with *submissions* which were submitted by the due time and date;
 - demonstrate to other *tenderers* that the process for receiving *submissions* is fair and impartial; and
 - eliminate scope for any suggestion that the *submission* was rejected for any reason other than because it was late.
- 10.31 It may be necessary to open a late *submission* if there is no return address or any indication of which *approach to market* the *submission* relates. When a *submission* has been opened under such circumstances the *potential supplier* should be advised that the *submission* was rejected due to lateness and advised of the reason it was opened.

Defence Procurement Policy Directives

- D51. Defence *officials* **must** decide whether to accept a late *submission* before the relevant *submission* is opened.
- D52. For *procurements* not covered by Division 2 of the CPRs, Defence *officials* may accept a late *submission* if this is consistent with probity in the circumstances of the case.

Notes: Before accepting a late *submission*, Defence *officials* should seek specialist contracting or legal advice. Defence *officials* should refer to Chapters 4 and 5 of the Complex Procurement Guide for more information about the probity risks relating to the acceptance of late tenders.

There are three ways through which Division 2 of the CPRs will not apply to a *procurement*: First, the *procurement* is below the relevant *procurement threshold* (see paragraph 9.7 of the CPRs); second, the *procurement* is exempt through the application of the general exemptions listed in Appendix A to the CPRs (see Appendix A to the DPPM); and third, the *procurement* is exempt through the application of a Defence specific exemption as a result of a measure made by the Secretary under paragraph 2.6 of the CPRs (see Defence Procurement Policy Directives D2 - D4).

CPR 10.32 – 10.34

Receipt and opening of submissions

- 10.32 Procedures to receive and open *submissions* **must** guarantee fairness and impartiality and **must** ensure that *submissions* are treated in confidence.
- 10.33 When a *relevant entity* provides *tenderers* with opportunities to correct unintentional errors of form between the opening of *submissions* and any decision, the *relevant entity* **must** provide the opportunity equitably to all *tenderers*.
- 10.34 Further consideration **must** be given only to *submissions* that meet *minimum content and format requirements*.

Defence Procurement Policy Directive

- D53. If *minimum content and format requirements* are specified in *request documentation*, Defence *officials* **must** exclude a *tenderer* from further consideration in the *procurement* process, if the *official* considers that the *tenderer* has not met those requirements, unless the *official* considers that there has been an unintentional error of form (or unless the *procurement* is exempt from Division 2 of the CPRs).

Note: Defence *officials* should refer to Chapters 3 and 5 of the Complex Procurement Guide for more information about *minimum content and format requirements* and unintentional errors of form.

CPR 10.35 – 10.36

Awarding contracts

10.35 Unless a *relevant entity* determines that it is not in the public interest to award a *contract*, it **must** award a *contract* to the *tenderer* that the *relevant entity* has determined:

- a. satisfies the *conditions for participation*;
- b. is fully capable of undertaking the *contract*; and
- c. will provide the best value for money, in accordance with the essential requirements and *evaluation criteria* specified in the *approach to market* and *request documentation*.

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

Notes: The CPRs state that public interest grounds generally arise in response to unforeseen events or new information that materially affects the objectives or reasons underlying the original *procurement* requirement as specified in the request document.

Defence *officials* should typically not make any public announcement regarding the selection of a preferred *tenderer* or *tenderers* until *contract* negotiations are completed, all necessary approvals have been obtained, the *contract* signed and unsuccessful *tenderers* have been notified. Defence's experience is that public announcements of preferred *tenderers* can significantly lengthen the time needed to finalise the negotiation of the *contract*.

Defence Procurement Policy Directives

Contract negotiations and management

D54. Prior to entering into *contract* negotiations, Defence *officials* **must** document their negotiation strategy commensurately with the scale, scope and risk of the *procurement* to which the *contract* relates.

D55. If *contract* negotiations result in a significant change to a *tenderer's* offer (including its technical solution, pricing, or commercial terms), Defence *officials* **must** consider whether the amended offer continues to represent best value for money.

D56. Defence *officials* **must** not change the scope of a *contract* to obtain additional or different *goods* or services that fall outside the terms of the original *contract* approval, unless that change is approved by the relevant delegate as a *limited tender* and is otherwise consistent with the CPRs and the Defence Procurement Policy Directives in the DPPM.

Notes: For more complex *procurements*, the negotiation strategy will typically be documented in a *contract* negotiation directive that is endorsed by the relevant delegate for the *procurement*.

To exercise an option in an existing *contract* to procure additional quantities of *goods*, services or optional extras, Defence *officials* should follow the mechanism set out in the relevant *contract*.

Defence *officials* should refer to Chapters 6 of the Complex Procurement Guide for more information about how to undertake *contract* negotiations.

Defence *officials* should refer to the Defence Contract Management Framework to support them achieving best practice contract management. The Framework brings together the underpinning principles, policies, tools, templates, guidance and competencies required to support more collaborative business relationships with industry and deliver more effective contract outcomes. Defence *officials* should refer to Chapter 7 of the Complex Procurement Guide and the Defence Contract Management Handbook for guidance about how to undertake *contract* management.

Appendices

CPR Appendix A – Appendix B

Appendix A: Exemptions from Division 2 of the CPRs

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

1. *procurement* (including leasing) of land, existing buildings or other immovable property or any associated rights (note: the *procurement* of *construction services* is not exempt);
2. *procurement* of *goods* and services from another *Commonwealth entity*, or a state, territory or local government entity;
3. *procurements* funded by international grants, loans or other assistance, when the provision of such assistance is subject to conditions inconsistent with this document;
4. *procurements* funded by grants and sponsorship payments from non-Commonwealth entities;
5. *procurement* for the direct purpose of providing foreign assistance;
6. *procurement* of *research and development* services, but not the *procurement* of inputs to *research and development*;
7. the engagement of an expert or neutral person, including engaging counsel or barristers, for any current or anticipated litigation or dispute;
8. *procurement* of *goods* and services (including construction) outside Australian territory, for consumption outside Australian territory;
9. acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt;
10. *procurement* by the Future Fund Management Agency of investment management, investment advisory, or master custody and safekeeping services for the purposes of managing and investing the assets of the Future Fund;
11. *procurement* of blood plasma products or plasma fractionation services;
12. *procurement* of government advertising services;
13. *procurement* of *goods* and services by, or on behalf of, the Defence Intelligence Organisation, the Australian Signals Directorate, or the Australian Geospatial Intelligence Organisation;
14. *contracts for labour hire*;
15. *procurement* of *goods* and services from a business that primarily exists to provide the services of persons with a disability; and
16. *procurement* of *goods* and services from an SME with at least 50 per cent Indigenous ownership.

Appendix B: Definitions

The following definitions apply for the purposes of the CPRs:

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

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

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

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

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

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

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

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

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

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

Contract – an arrangement, as defined by s23(2) of the PGPA Act, for the *procurement* of *goods* and/or services under which *relevant money* is payable or may become payable. Note: this includes *standing offers* and panels.

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

Corporate Commonwealth entities – as defined in section 8 of the PGPA Act.

Days – means calendar *days*.

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

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

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

GST – The *Goods and Services Tax*, as defined by the *A New Tax Systems (Goods and Services Tax) Act 1999*.

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

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

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

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

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

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

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

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

Procurement – refer to paragraphs 2.7 to 2.9 of the CPRs

Procurement thresholds – refer to paragraph 9.7 of the CPRs

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

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

Relevant entity – *non-corporate Commonwealth entities* and prescribed *corporate Commonwealth entities* (listed at Appendix B) that must comply with the CPRs when performing duties related to *procurement*.

Reporting thresholds – refer to paragraph 7.19 of the CPRs.

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

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

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

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

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

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

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

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

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Defence Procurement Policy Directive

D57. Terms that are defined in Appendix B of the CPRs and which are used in the DPPM, have the same meaning in the DPPM as they do in the CPRs, unless the contrary intention appears.

Note: Terms that are defined in Appendix B and which are used in the DPPM are generally identified through the use of italics text.

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Monitor and Review

This Manual will be reviewed whenever relevant sections of any of the identified references are updated or amended. All feedback and suggestions for improvement should be sent to:

Procurement.Policy@Defence.gov.au

Note to External Agencies

External agencies intending to use this template will need to tailor it in order to meet their specific procurement requirements (including relevant internal guidance) and should seek appropriate professional guidance as required.

Disclaimer

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DPPM Amendment List

Version Number	Change	Date
Version 1.0	Original	1 April 2017
Version 1.1	Version 1.1 Matrix of Changes	19 December 2017

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Chapter 1

Introduction to the Defence Procurement Policy Manual

Overview

1. Welcome to the new version of the Defence Procurement Policy Manual (DPPM). The DPPM has been completely re-written to more clearly set out for Defence *officials* the mandatory policy that **must** be complied with when undertaking *procurement*.
2. The DPPM has also adopted a completely new structure and format. In particular, the DPPM now incorporates the Commonwealth Procurement Rules (CPRs) so that *officials* can find in one place the Commonwealth and Defence *procurement* related policy that applies to them.
3. There are many terms in *italics*. This normally means that the term is a defined term. Appendix B to the CPRs (and the DPPM) sets out the definitions of these terms.

Policy Statement

4. The DPPM incorporates both the CPRs and additional Defence Procurement Policy Directives that **must** be complied with by Defence *officials* in relation to *procurement*. Defence Procurement Policy Directives supplement specific CPRs in the context of the particular circumstances and needs of the Department of Defence ('Defence').

Defence Procurement Policy Directive

- D1. In addition to complying with the CPRs, Defence officials must comply with the Defence Procurement Policy Directives in the DPPM when undertaking procurement. Defence Procurement Policy Directives are generally denoted by the term 'must' (or 'must not').¹

5. Together with the guidance, templates, tools and other resources referred to in the DPPM, the DPPM is an internal control system that forms part of the framework that applies the principles and requirements of the resource management and *procurement* frameworks (focusing on Defence's operations). The DPPM provides primary operational instructions to Defence *officials* in carrying out their duties related to *procurement*, in a way that is tailored to Defence's particular circumstances and needs.

Scope and applicability of this manual

6. The DPPM applies to all Defence *officials*. In addition, a *contract* may extend the application of this manual to a *contractor*,² or a *contractor* may be prescribed to be a Defence *official* in accordance with Defence's Accountable Authority Instructions.

What is the purpose of this manual?

7. The purpose of the DPPM is to:
 - a. assist Defence *officials* to implement the requirements of the CPRs and Defence policy when undertaking *procurement*;
 - b. provide Defence *officials* with a plain English document that is simple to understand and use when undertaking *procurement*;
 - c. update Defence's approach to *procurement* to reduce red tape and costs to industry;

¹ Where the term 'should' or 'may' is used in the DPPM, this generally indicates good practice. See also the section 'How do I read the DPPM' in this Chapter for more information.

² See further paragraph 4.15 of the CPRs and the related Note.

- d. encourage *officials* to use more strategic approaches, commercial expertise and good practice, when procuring for Defence; and
- e. encourage *officials* to engage early with Defence industry to stimulate competition and innovation, and work with industry to develop better solutions and outcomes for Defence.

How do I read the DPPM?

8. The DPPM is divided into five chapters and has two appendices, as follows:

Chapter 1 – Introduction to the Defence Procurement Policy Manual – this chapter provides an overview of the role of the DPPM and how it is designed to be used;

Chapter 2 – An overview of the CPRs and the procurement lifecycle – this chapter provides an overview of the CPRs, including the key policy requirements as they apply to the *procurement* lifecycle, and provides a summary of the *procurement* life cycle to get into *contract*,

Chapter 3 – The procurement framework - this chapter incorporates all of the preliminary rules and guidance contained in the CPRs;

Chapter 4 – Achieving Value for Money in procurement – this chapter incorporates all the rules from Division 1 of the CPRs, as well as additional Defence Procurement Policy Directives;

Chapter 5 - Procurements above the procurement thresholds – this chapter incorporates all of the rules from Division 2 of the CPRs, as well as additional Defence Procurement Policy Directives;

Appendix A – Exemptions from Division 2 of the CPRs – this is Appendix A from the CPRs which sets out the list of *procurements* that are exempt from Division 2 of the CPRs;

Appendix B – Definitions – this is Appendix B from the CPRs which sets out the definitions of the terms used in the CPRs. These terms also have the same meaning when used in the DPPM.

9. Chapters 3 – 5 of the DPPM set out the individual CPR rules that **must** be complied with by all *officials* (including Defence *officials*) undertaking *procurement* for the Commonwealth. The CPR rules have been numbered as they appear in the CPRs, and are easily identifiable as having been drafted in the following format:

EXAMPLE ONLY

‘2. Procurement Framework

- 2.1 The Commonwealth Procurement Rules (CPRs) are issued by the Minister for Finance (Finance Minister) under section 105B(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).
- 2.2 *Officials* from *non-corporate Commonwealth entities* and prescribed *Corporate Commonwealth entities* listed in section 30 of the Public Governance, Performance and Accountability Rule 2014 must comply with the CPRs when performing duties related to *procurement*. These entities will collectively be referred to as relevant entities throughout the CPRs.’

10. Many of the CPR rules stand by themselves and need no further explanation or context. Also, in many cases, there are no additional Defence Procurement Policy Directives over and above the individual CPR rule.

11. In other cases, however, there may be one or more additional Defence Procurement Policy Directives that **must** also be complied with by Defence *officials*. These are also easily identifiable as they appear below the particular CPR rules to which they most closely relate, have been numbered with ‘D’ as an identifier, and have been drafted in the following format:

EXAMPLE ONLY

Defence Procurement Policy Directive

D3. If a Defence *official* determines that an exemption given under paragraph 2.6 of the CPRs applies to a *procurement*, the *official* must ensure that the reasons supporting that determination are appropriately documented.'

12. Also accompanying a CPR rule or Defence Procurement Policy Directive in many cases are 'Notes'. These Notes assist with the interpretation of, or provide more context for readers about, a particular CPR or Defence Procurement Policy Directives, and how they apply in the Defence *procurement* environment. An example of a Note is as follows:

EXAMPLE ONLY

Note: The DPPM also sets out the Defence Procurement Policy Directives that Defence *officials* must comply with when they procure *goods* and services for or on behalf of Defence. The DPPM also indicates *good practice*.'

13. These Notes do not form part of the mandatory policy that **must** be complied with under the DPPM. However, they can be used, along with the material in Chapters 1 and 2 of the DPPM, to assist with interpretation and to give greater context for the DPPM user.

14. The headings in the DPPM are usually the headings from the CPRs. However, other headings have also been included where appropriate to help guide the reader.

Commonwealth legislative and policy framework

15. As paragraph 2.10 of the CPRs notes, Defence and its *officials* operate in an environment of legislation and Commonwealth policy. Defence has numerous business policy owners that are responsible for ensuring Defence complies with applicable Commonwealth legislation and policy requirements, as well as with particular State and Territory legislation that may also apply to Defence activities. This legislation and policy often interacts with Defence *procurement* and in many cases is given effect to through *contracts*.

16. The DPPM refers to and incorporates by reference relevant Commonwealth legislation and policy, and other Defence policy, relating to *procurement*. Also, the endorsed Defence contracting templates have been drafted and are regularly updated to give effect to applicable Commonwealth legislation and policy (including the CPRs), and applicable Defence policy. These templates have been developed to assist Defence *officials* to comply with applicable legislation and policy requirements if used for the purposes for which they are intended. Where the *procurement* involves a unique or unusual requirement not within the contemplation of the endorsed templates, specialist advice should be sought to ensure any specific legislation and policy is addressed. The endorsed Defence contracting templates may be found on the [Commercial Division Tools and Templates intranet page](#).

17. There are also many policy or support areas in Defence that can assist in relation to specific aspects of *procurement* or on legislation and policy that intersect with *procurement* (eg contracting, legal, finance, environment, work health and safety, security, technical regulatory frameworks etc). These resources can be found by the procurement support areas link on the [Commercial Division Help Desk Kiosk](#) intranet page.

18. The Department of Finance's *Buying for the Australian Government* website provides further assistance on policies that interact with *procurement* (called 'Procurement-Connected Policies'). The Department of Finance also releases Resource Management Guides and Finance Circulars that provide additional guidance and interim policy updates. These resources may be found on the [Department of Finance webpage](#).

Resource management framework

19. The resource management framework is part of the broader Commonwealth legislative and policy environment, and consists of the legislation and policy (including the CPRs) governing the management of the Commonwealth's resources. The main elements of this framework are set out in Figure 3 of the CPRs.

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20. The resource management framework is primarily comprised of the PGPA Act and associated *Public Governance Performance and Accountability Rule 2014* (PGPA Rule 2014). The PGPA Act authorises the Secretary, as Defence's *Accountable Authority*, to issue Accountable Authority Instructions (AAIs) (PGPA Act, section 20A; see also paragraph 2.5 of the CPRs). The Secretary has issued the Defence AAIs under this authorisation. The PGPA Act also contains provisions dealing with the commitment of *relevant money* and *officials* entering into arrangements such as *contracts* and *deeds* (PGPA Act, section 23). Section 60 of the PGPA Act governs the granting by the Commonwealth of indemnities, warranties and guarantees ('contingent liabilities'). Sections 23 and 60 of the PGPA Act are key provisions relating to *procurement*.

21. The PGPA Framework requires Defence officials to:

- a not be inconsistent with the policies of the Australian Government (PGPA Act, section 21);
- b use and manage public resources in an efficient, effective, economical and ethical manner (PGPA Act section 8 and 15);
- c exercise 'care and diligence' in performing their duties (PGPA Act, section 25);
- d "Act honestly, in good faith and for a proper purpose" performing their duties (Section 26 PGPA Act);
- e not improperly use their position in performing their duties (PGPA Act, section 27);
- f not improperly use information (PGPA Act, section 28); and
- g disclose interests in relation to the performance of their duties (PGPA Act, section 29).

22. Section 21 of the PGPA Act requires the Secretary to govern Defence in a way that is 'not inconsistent with the policies of the Australian Government'. The 'policies of the Australian Government' is not a defined term and should be interpreted broadly, applying its ordinary dictionary meaning. Among other things, the term will likely include things like Cabinet decisions, or other Government approvals relating to a commitment of *relevant money*, to the extent that the decision or approval establishes a course or line of action.

23. Accordingly, Defence *officials* exercising delegations (especially those for the purposes of section 23 of the PGPA Act) should ensure that they do so consistent with the terms of any Australian Government decisions or approvals relevant to the *procurement*.

24. For a Defence *official* (including a contractor who is prescribed as a Defence *official*) to exercise a power conferred on or delegated to the Secretary under the PGPA Act in relation to *procurement*, they are required to have the delegated authority. These delegations are described in the [Defence AAIs](#) and issued in Financial Delegations Manual ([FINMAN 2](#)).

25. For the purposes of section 23(3) of the PGPA Act, delegated Defence *officials* may approve the commitment of *relevant money* (Commitment Approval delegation). This delegation is required to be exercised before the Commonwealth enters into the arrangement that commits *relevant money*. For the purposes of section 23(1) of the PGPA Act, Defence *officials* may enter into an arrangement on behalf of the Commonwealth (Enter into an Arrangement delegation). The Defence *official* exercises this delegation by the physical act of entering into an arrangement, after the proposed commitment has been approved by a Commitment Approval delegate. These delegations are mentioned in Defence Procurement Policy Directive D5.³ Defence *officials* should be aware that the section 23 PGPA Act delegations apply to all kinds of *procurements*. For example, both delegations will be required for each order placed under a *standing offer* arrangement.⁴

26. Also, a change to a *contract* (whether called a *contract* change, amendment or variation or some other terminology) may itself technically constitute a *procurement*. In any event, both delegations will be required to be exercised for each *contract* change, if the change involves the

³ If a *procurement* includes a contingent liability, Defence Procurement Policy Directive D6 requires the relevant delegate to authorise the granting of the contingent liability for the purposes of section 60 PGPA Act. In Defence (apart from CASG), the Commitment Approval delegate may do this as part of exercising this delegation. In CASG, a separate delegation is required in addition to the Commitment Approval delegation, both of which must be exercised before the exercise of the Enter into an Arrangement delegation.

⁴ The [Establishing and Using Standing Offers factsheet](#) provides further information regarding delegations required for the establishment and use of *standing offer* arrangements.

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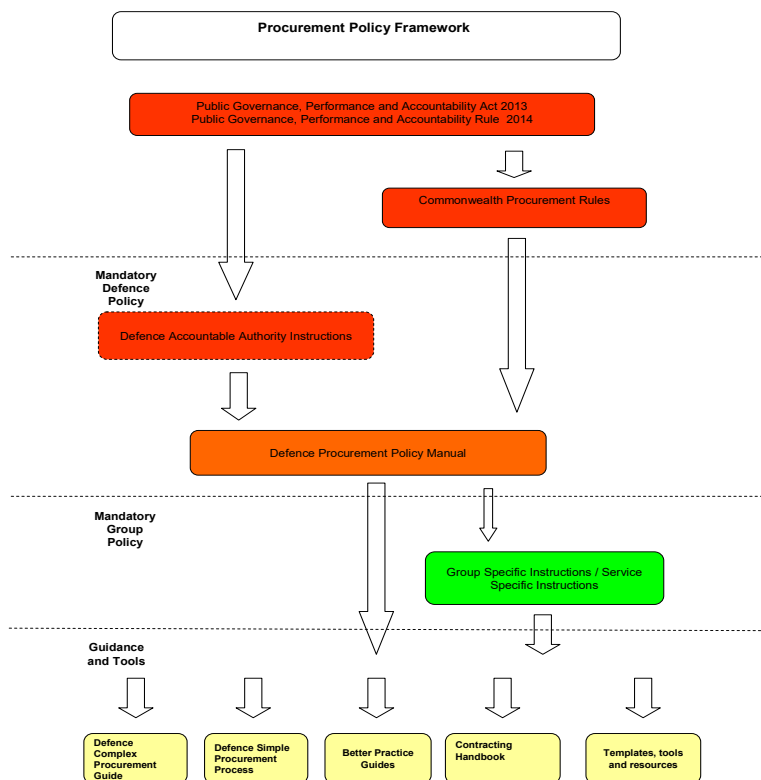
commitment of *relevant money*. If the *contract* change does not involve the commitment of *relevant money* (that is, it is a 'nil-cost' *contract* change), only the Enter into an Arrangement delegation is required.⁵ However, even in this situation, the delegate should be satisfied that the proposed change represents proper use and management of *public resources* and is not inconsistent with the policies of the Australian Government (see further paragraph 6.1 of the CPRs).

27. In addition to these delegations under the PGPA Act, and in accordance with AAI 3, Defence *officials* are also required to obtain an 'Endorsement to Proceed' before undertaking certain *procurements* (see Defence Procurement Policy Directive D9). An Endorsement to Proceed process is part of Defence's internal controls (which are required by section 16 of the PGPA Act) to better ensure the proper use and management of *public resources*. Having a Defence *official* provide an Endorsement to Proceed for *procurements* above a certain value provides additional internal scrutiny through which Defence can satisfy itself that proceeding with the *procurement* would be an efficient, effective, economical and ethical use of *public resources*, and that it will not be inconsistent with the policies of the Australian Government. An [Endorsement to Proceed factsheet](#) and template has been developed to assist Defence *officials* to deal with all the matters they need to consider when exercising this function.⁶

28. Defence has also developed [factsheets](#) and templates to assist and guide Commitment Approval and Enter into Arrangement delegates (as well as any separate delegate authorising the granting of a contingent liability under section 60 of the PGPA Act) through all the considerations they need to be aware of when exercising their delegations.

Compliance with the DPPM

29. The DPPM sits within the procurement policy framework as set out in Figure 1.



⁵ While only the Enter into an Arrangement delegation is required, AAI 2.4.1.8 and FINMAN 2 have the effect that not all Defence *officials* have the delegated authority to agree to enter into arrangements that are nil-cost contract changes. Defence *officials* should refer to AAI 2.4.1.8 and FINMAN 2 to make sure that these contract changes are authorised at the right level.

⁶ For further guidance, see Chapter 4 of the Complex Procurement Guide.

Figure 1

30. If a Defence *official* departs from the DPPM in a way that results in a departure from the CPRs, then the *official* will have contravened the law.
31. When considering a possible departure from a Defence Procurement Policy Directive contained in the DPPM, Defence *officials* should:
- a. consider whether a proposed departure from the policy requirement is reasonable and justified in the circumstances and would produce the same or better outcome for Defence;
 - b. consult their supervisor, wherever practicable, about a proposed departure – a properly informed decision may involve consulting the policy owner; and
 - c. be responsible and accountable for the consequences of departing from, or not adhering to, the content of a manual, including where such departure or non-adherence results in a breach of applicable laws or leads to adverse outcomes for Defence.
32. Officials are not permitted to depart from the mandatory requirements of the PGPA Act, PGPA rule, CPRs, AAI and FINMAN 2
33. Defence *officials* should consider whether contractors should be required to comply with the DPPM when undertaking procurement on behalf of Defence and communicate this requirement to the contractors, including the incorporation of appropriate provisions in *contracts*.⁷

Why do we have *procurement* rules?

34. The CPRs and Defence Procurement Policy Directives in the DPPM exist to assist Defence *officials* make proper use of *public resources* when undertaking *procurement* related activities for the Commonwealth. Defence *officials*, like *officials* from other Commonwealth agencies, are accountable for how they spend *relevant money* (also known as ‘public money’).
35. The DPPM provides a framework that promotes responsible and accountable spending by Defence *officials* when procuring *goods* and services for Defence. This framework supports the proactive management of the risks relating to *procurement*, as required by the CPRs.

Why are the CPRs and the DPPM drafted the way they are?

36. As noted at paragraph 2.14 of the CPRs, the CPRs give effect to Australia’s international treaty obligations. Access to overseas markets is secured through Free Trade Agreements (FTAs). Under FTAs, countries offer reciprocal access to their government *procurements*. The CPRs reflect Australia’s FTA commitments, and in particular are substantially based on the text of Chapter 15 of the Australia-USA FTA. The CPRs also align with the World Trade Organisation’s Agreement on Government Procurement (GPA). Accordingly, the CPRs include *procurement* related rules that give effect to Australia’s international obligations.
37. The CPRs also seek to ensure that Commonwealth agencies achieve value for money in their *procurement* activities, however they have not been specifically drafted to follow the logical order or timeline of the *procurement* life cycle, and it is very difficult to simply translate or allocate the CPR rules to the various parts of the life cycle. The Defence Procurement Policy Directives have been drafted to align with the structure of the CPRs, and therefore also do not follow the *procurement* life cycle. Chapter 2 of the DPPM provides an overview of the CPRs, including a discussion of the core principles underpinning Commonwealth *procurement*. Chapter 2 also provides an overview of how to plan and undertake a *procurement*.
38. By contrast, the [Simple Procurement Process](#) and [Complex Procurement Guide](#), which accompany the DPPM, have been based on the *procurement* life cycle so that Defence *officials* have a more intuitive sequenced guidance document to follow when planning for and undertaking *procurements*. The documents do not contain mandatory policy requirements, rather, along with the practitioner level Better Practice Guides on specific *procurement* topics, they provide more detailed ‘how to’ guidance to undertake good *procurement*, whether for a low risk, low value (‘simple’)

⁷ For more information about when it might be appropriate to require contractors to comply with the DPPM, see paragraph 4.15 of the CPRs and the related Note.

procurement or for the more highly complex *procurements* that are often undertaken in Defence, whether in the materiel or non-materiel environment.

What is the *procurement* life cycle?

39. The *procurement* life cycle is simply the breakdown of the end-to-end *procurement* process into logical phases and stages. If each stage of the life cycle is planned for and executed well, Defence *officials* are more likely to achieve good outcomes from their *procurement* activities. The *procurement* lifecycle separates *procurement* into three phases: planning, sourcing and managing. These phases are further divided into seven distinct, but interrelated stages, which are:

Planning

1. Plan the procurement
2. Request documentation

Sourcing

3. Approach the market
4. Evaluation
5. Negotiation and contract signature

Managing

6. Contract management
7. Disposal.

40. The *procurement* life cycle is represented by the following 'procurement wheel' (see figure 2).



Figure 2

41. While the *procurement* life cycle includes a Disposal stage, the actual disposal of *goods* (for example, Defence materiel at the end of its life of type) is not a *procurement* within the meaning of the CPRs. This is so even though paragraph 2.7 of the CPRs mentions a 'consideration of disposal of *goods*' as being part of *procurement*. Hence, disposal of *goods* is neither subject to the CPRs nor the Defence Procurement Policy Directives in the DPPM. For example, if the disposal strategy for a ship involves selling the ship by tender (see paragraph 2.9c of the CPRs) or through an auction, that process would not be a *procurement* and hence not subject to the CPRs.

42. However, there may be occasions where Defence *officials* wish to engage services to assist with the planning or conduct of a disposal activity. The engagement of these services may constitute a *procurement* under the CPRs. For instance, in the example of a ship disposal, if the strategy involves engaging services to decommission and scrap the ship, then the *procurement* of these services would constitute a *procurement* for the purposes of the CPRs.

43. What paragraph 2.7 of the CPRs requires is that Defence *officials* undertaking a *procurement of goods* consider how the *goods* will be disposed of at the end of life (including any potential costs) as part of the decision about whether and how to proceed with the *procurement*⁸.

44. In Defence, the policy governing disposal of *goods* is set out in AAI 10.12, the Defence Logistics Manual (see [DEFLOGMAN, Part 2, Volume 5, Chapter 10](#)) and the [Electronic Supply Chain Manual](#) ('ESCM'). For guidance and templates on contracting processes for disposals, including sale by tender and gifting or transfer by deed, Defence *officials* should refer to [Materiel Logistics, Disposals and Sales Branch](#).

Guidance, tools, templates and resources

45. The [Complex Procurement Guide](#) has been developed to align with the *procurement* life cycle. Each section of the *procurement* life cycle is represented by a Chapter of the Complex Procurement Guide.

46. The [Simple Procurement Process](#) also follows the *procurement* lifecycle and guides users undertaking a simple *procurement* activity through a step by step process. By following the process, Defence *officials* can rely on this as satisfying their obligations under the CPRs and DPPM.

47. The DPPM also refers to and contains links to further guidance, templates and tools to assist Defence *officials* to meet the requirements of the DPPM and to facilitate better *procurement* outcomes. These materials can be found on the Commercial Division [Commercial Policy Framework](#) intranet page.

48. Collectively, the DPPM and the related guidance, templates, tools and other resources, provide a framework that supports accountability for spending, sound commercial practice and better outcomes for Defence, the Australian Government and the taxpayer.

⁸ The intention of paragraph 2.7 of the CPRs is to ensure disposal costs and related matters are adequately considered and understood (where predictable) to inform the acquiring of goods through the procurement process. For example, Defence may need to factor into the original procurement decision the need for additional funding to cover the costs of making the goods safe for disposal.

Chapter 2

An overview of the CPRs and the procurement life cycle

1. As noted in Chapter 1, the CPRs have not been specifically drafted to follow the logical order or timeline of the *procurement* life cycle. Paragraph 2.7 of the CPRs describes the *procurement* life cycle as covering all aspects of acquiring and delivering *goods* and services - it starts with identifying the need for a *procurement* and finishes with either the end of the related services *contract* or the end of the useful life and disposal of the *goods* that were procured. While the CPRs do not follow the *procurement* life cycle, the CPRs include a number of core principles that underpin Commonwealth *procurement* across the life cycle.

2. This Chapter provides a brief overview of the CPRs and the *procurement* life cycle, and discusses these core principles in the context of Defence *procurement*. This Chapter is not intended to replicate the CPRs and does not attempt to discuss all the CPR rules. Also, even though this Chapter discusses the CPRs, the terms '**must**' and '**must not**' are not used in this Chapter to avoid any confusion about whether this Chapter gives rise to additional mandatory policy requirements. The CPR rules and Defence Procurement Policy Directives in Chapters 3-5 of the DPPM (and Defence Procurement Policy Directive D1 in Chapter 1) stand on their own and apply according to their terms.⁹

CPRs – an overview

3. The CPRs provide all entities governed by the PGPA Act – which includes the Department of Defence - with the policy framework and associated rules for conducting *procurement* activities. The CPRs are a 'legislative instrument', which means that they are part of the law of the Commonwealth.

4. The CPRs are divided into an introductory section and two Divisions - which are set out in Chapters 3, 4 and 5 respectively of the DPPM - and two Appendices (which are included as the Appendices to the DPPM). Division 1 of the CPRs applies to all Commonwealth *procurements* and Division 2 sets out 'additional rules' which apply to *procurements* that are valued at or above the relevant *procurement threshold* - unless a *procurement* is exempted from having to comply with these additional rules. Many Defence *procurements* are exempt from Division 2. The main obligation of the additional rules is to require *officials* to undertake *procurements* by way of an *open tender* in most circumstances, as well as setting out particular requirements for how the tender is undertaken.

5. The introductory section of the CPRs (in Chapter 3 of the DPPM) covers the purpose, scope and legislative and policy framework of the CPRs.

6. Division 1 of the CPRs (in Chapter 4 of the DPPM) sets out rules that apply to all *procurements*. This means that all Defence *procurements* are required to comply with Division 1 (and the additional Defence Procurement Policy Directives in Chapter 4 of the DPPM). This Division establishes 'value for money' as the core requirement of Commonwealth *procurement*. Defence *officials* responsible for a *procurement* need to be satisfied, after reasonable inquiries, that the *procurement* achieves value for money.

Value for money framework

7. Division 1 provides a framework for determining 'value for money'.¹⁰ Under this framework, *procurements* should:

- encourage competition and be non-discriminatory;
- use *public resources* in an efficient, effective, economical and ethical manner that is not inconsistent with the policies of the Commonwealth;
- facilitate accountable and transparent decision making;
- encourage appropriate engagement with risk; and
- be commensurate with the scale and scope of the business requirement.

⁹ See also the section 'How do I read the DPPM' in Chapter 1 for more information.

¹⁰ See section 4 of the CPRs (in Chapter 4 of the DPPM).

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8. In addition to these considerations, for *procurements* valued above \$4 million, *officials* are also required to consider the economic benefit of the *procurement* to the Australian economy as part of the framework for determining value for money.¹¹ However, this additional requirement does not apply if the *procurement* is exempt from the additional rules in Division 2 of the CPRs. This means that the requirement does not apply, for example, to those *procurements* for which there is a Defence specific exemption.¹² For these Defence *procurements*, the consideration of economic benefit occurs through the evaluation of the Australian Industry Capability (AIC) requirements of the *procurement*.¹³ In particular, tenderers are required to submit an AIC plan which sets out the tenderers' Local Industry Activities (LIAs) to meet the specified Industry Requirements of the *procurement*. Tenderers are required to describe the benefits of their LIAs, including the significance of the work, the skills and knowledge that will be transferred, the training that will be provided, the new technologies or innovations that will be introduced, and the contribution to Australian company competitiveness, including access to global supply chains, technical data and intellectual property.

9. Value for money does not automatically mean the lowest price *goods* or services. When conducting a *procurement*, *officials* are required to consider the relevant financial and non-financial costs and benefits of each *submission*, including matters such as:¹⁴

- the quality of the *goods* and services;
- fitness for purpose of the proposal;
- the *potential supplier's* relevant experience and performance history;
- flexibility of the proposal (including innovation and adaptability over the lifecycle of the *procurement*);
- environmental sustainability of the proposed *goods* and services (such as energy efficiency and environmental impact); and
- whole-of life costs.

Valuing a procurement – relevant procurement thresholds

10. The additional rules in Division 2 (and the Defence Procurement Policy Directives in Chapter 5 of the DPPM) apply only to *procurements* that are valued at or above a certain threshold (see paragraph 14 below). This means that Defence *officials* need to estimate the value of their *procurement* to know whether it has to comply with the additional rules.

11. The *procurement* value is the maximum anticipated value of the proposed *contract*, including options, extensions, renewals or other mechanisms that may be executed over the life of a *contract*. The estimated value includes:¹⁵

- all forms of remuneration, including any premiums, fees, commissions, interest, allowances and other revenue streams that may be provided for in the proposed *contract*;
- the total maximum value of the property or services being procured, including the value of any options in the proposed *contract*; and
- any taxes or charges (including GST).

12. If a *procurement* is being conducted in multiple parts with *contracts* awarded either at the same time or over a period of time, with one or more *suppliers* (for example, a *standing offer* panel arrangement), the expected value of the *goods* and services being procured has to include the maximum value of all of the *contracts*. Further, Defence *officials* cannot split a *procurement* into separate parts just to try and avoid the relevant *procurement* threshold.

13. In any case, where the maximum value of a *procurement* over its entire duration cannot be estimated (for example, a *standing offer* panel arrangement), Defence *officials* are required to treat the *procurement* as being valued above the relevant *procurement* threshold.

¹¹ See paragraphs 10.31 and 10.32 of the CPRs, and the guidance on the [Department of Finance webpage](#).

¹² See Defence Procurement Policy Directives D2-D4 and the related Notes.

¹³ See Defence Procurement Policy Directive D13 and the related Note.

¹⁴ See paragraphs 4.5 and 4.6 of the CPRs.

¹⁵ Defence *officials* should be aware that the way in which they value a *procurement* for the purposes of the CPRs is different to the way they need to value it for the purposes of completing the AE643 form to record a contract in ROMAN. See Complex Procurement Guide, Chapter 6 Appendix A for further details.

14. The value thresholds are:

- for *procurements* other than for *construction services* - \$80,000 (including GST);
- for *procurements* of *construction services* by relevant entities the *procurement* threshold is \$7.5 million (including GST).

Exemptions from the additional rules in Division 2

15. As noted above, some *procurements* may be exempt from having to comply with the additional rules in Division 2 of the CPRs. There are two ways in which a Defence *procurement* may be exempt:

- first, the *procurement* may be covered by one of the general exemptions listed in Appendix A of the CPRs (discussed further below); or
- second, a Defence specific exemption may apply as a result of a measure made by the Secretary under paragraph 2.6 of the CPRs. This is discussed further in Chapter 4 of the DPPM. These Defence specific exemptions relate mainly to the acquisition and sustainment of Defence materiel.

16. However, even if exempt from Division 2 of the CPRs, Defence *officials* still have to make sure that they undertake their *procurements* in accordance with Division 1 of the CPRs. Also, Defence *officials* still have to comply with all applicable Defence Procurement Policy Directives contained in this manual.

17. While the full list of general exemptions is set out in Appendix A to the CPRs (see Appendix A to the DPPM), some of the main exemptions relevant to Defence business include:

- leasing or purchase of real property or accommodation (noting that the *procurement* of *construction services* is not exempt);
- *procurement* of *goods* or *services* by a *relevant entity* from other Commonwealth, state, territory or local government entities where no commercial market exists or where legislation or Commonwealth policy requires the use of a government provider (for example, legal services which are tied to the Australian Government Solicitor);
- *procurement* for the direct purpose of providing foreign assistance;
- procurement of research and development services, but not the procurement of inputs to research and development undertaken by Defence;¹⁶
- the engagement of an expert or neutral person, including engaging counsel or barristers, for any current or anticipated litigation or dispute;
- *procurement* of *goods* or *services* (including construction) outside Australian territory, for consumption outside Australian territory;¹⁷
- *procurement* of motor vehicles;
- *procurement* of *goods* or *services* by, or on behalf of, the Defence Intelligence Organisation, the Australian Signals Directorate, or the Australian Geospatial-Intelligence Organisation;
- *contracts* for labour hire (noting that this does not include the engagement of consultants);¹⁸
- *procurement* of *goods* or *services* from a business that primarily exists to provide the services of persons with a disability; and
- *procurement* of *goods* or *services* from a Small to Medium Enterprise with at least 50 per cent Indigenous ownership.

¹⁶ This exemption would be relevant mainly for Defence Science and Technology Group.

¹⁷ This exemption would cover *procurements* of *goods* or *services* by the Offices of the Counsellor Defence Materiel in Washington and London that are needed for the ongoing operation of those Offices.

¹⁸ A '*contract for labour hire*' is a contract under which Defence engages an individual to provide labour, when the individual is engaged either directly or through a firm which primarily exists to provide the services of only that individual (that is, the individual's own company). This includes the appointment of an eminent individual to a special role by the Secretary, or the Secretary's appointment of individuals to a governance committee (for example, an audit committee, ethics committee or steering committee), but does not include the engagement of consultants.

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Indigenous business exemption and the Indigenous Procurement Policy

18. The purpose of the Indigenous Procurement Policy (IPP) is to stimulate indigenous entrepreneurship and business development, providing indigenous Australians with more opportunities to participate in the economy through the awarding of Australian Government *contracts*.

19. Appendix A of the CPRs (item 17) permits Defence to procure *goods* or services directly from a small to medium enterprise with at least 50 per cent indigenous ownership ('indigenous enterprise'), without running an *open tender* process, if the proposed *procurement* represents value for money.

20. The IPP builds on the Appendix A exemption and has two components that apply to *procurement*:

- a mandatory 'set-aside' that applies to certain *procurements* conducted on or after 1 July 2015 and which may result in *contracts* being directly sourced to indigenous enterprises; and
- mandatory minimum requirements that apply to certain high value *procurements* aimed at enhancing indigenous participation for certain Commonwealth *contracts*.

21. [Supply Nation](#) maintains a non-exhaustive list of indigenous enterprises that meet this definition. If an enterprise states that it is an indigenous enterprise and is not listed with Supply Nation, Defence *officials* will need to make sufficient inquiries to satisfy themselves that the enterprise satisfies the IPP definition of an indigenous enterprise.

22. In general terms, the mandatory set-aside part of the IPP applies to *procurements* where the majority (by value) of the *goods* or services will be delivered in a Remote Area (except for transactions paid for by credit cards), and other domestic *procurements* where the estimated value is between \$80,000 and \$200,000 (GST inclusive). The set-aside requirement does not apply to Defence exempt *procurements* (under paragraph 2.6 of the CPRs) and some other specific *procurements*.¹⁹

23. If the set-aside requirement applies, Defence *officials* are required to first determine whether an indigenous enterprise could deliver the required *goods* or services on a value for money basis before making any approach to the market. If satisfied that value for money can be achieved, then the Defence *official* should procure the *goods* or services from the indigenous enterprise (as permitted by Appendix A of the CPRs, item 17). If not, then the Defence *official* may procure through non-indigenous enterprises.

24. In general terms, the mandatory minimum requirements apply to *procurements* (except Defence exempt *procurements*) where the *contract* will be performed in Australia and has an estimated value of \$7.5 million (GST inclusive) or more, and where more than half of the value of the *contract* is anticipated to be spent in one or more of the following industry sectors:

- Building, construction and maintenance services;
- Transportation, storage and mail services;
- Education and training services;
- Industrial cleaning services;
- Farming and fishing and forestry and wildlife contracting services;
- Editorial and design and graphic and fine art services;
- Travel and food and lodging and entertainment services;
- Politics and civic affairs services.

25. The policy requires that the *request documentation* for *procurements* that are subject to the 'mandatory minimum requirements' include clauses (in both the conditions of tender and *contract*) that meet the IPP requirements. Model clauses that meet these requirements are available on the Commercial Division [Minimum Requirements intranet page](#).

26. Defence *officials* can find further information and resources, including links to IPP fact sheets and Remote Area maps, on the Commercial Division [Indigenous Procurement intranet page](#).

¹⁹ For more information about the kinds of *procurements* to which the IPP does not apply, refer to the IPP resources at the Commercial Division [Mandatory Set-Aside intranet page](#).

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Disability business exemption

27. The Australian Government's National Disability Strategy 2010 - 2020 sets out a ten year national policy framework for improving the lives of Australians with disability, their families and carers, including by providing people with a disability with more opportunities to participate in the economy through the awarding of Australian Government *contracts*.

28. Appendix A of the CPRs (item 16) permits Defence to procure *goods* or services directly from a business that primarily exists to provide the services of persons with a disability ('disability business'), without running an *open tender* process, if the proposed *procurement* represents value for money.

29. Similar to the IPP, Defence *officials* should determine whether a disability business could deliver the required *goods* or services on a value for money basis before making any approach to the market. If satisfied that value for money can be achieved, then the Defence *official* should procure the *goods* or services from the disability business. If not, then the Defence *official* may procure through a non-disability enterprise. A list of Australian disability businesses can be found at the Australian Disability Enterprises website www.ade.org.au.

Procurement methods

30. Under the CPRs, there are two main *procurement* methods:

- an *open tender* – where Defence approaches the open market and invites *submissions*; and
- a *limited tender* - where Defence approaches only **one or more potential suppliers** to make *submissions*.

31. There is a third kind of procurement method – 'prequalified tender' – however this is limited to procurement from the Legal Services Multi-use list.

32. Identifying the *procurement* method does no more than categorise the *procurement* for the purposes of the CPRs, with some different rules applying depending on whether the *procurement* is categorised as an *open tender* or *limited tender*. Under the CPRs, the default position is that *procurement* should be undertaken by way of *open tender*. If it is not an *open tender*, then by definition it will almost always be categorised as a *limited tender*, even if the *procurement* is undertaken with only one *supplier* (often called a 'sole source'²⁰ *procurement*). Similarly, a *procurement* process undertaken between two or more (but not all) *potential suppliers* will be a *limited tender* process, even if Defence does not release a formal request for tender to approach the market and instead seeks a different form of response from industry. If Defence establishes a *standing offer* panel arrangement through an *open tender*, then each *procurement* from the panel is categorised as an *open tender*, irrespective of whether the Defence *official* seeks quotes from one, some or all members of the panel.²¹

33. The categorisation of a *procurement* as an *open tender* or *limited tender* does not determine what *approach to market* Defence *officials* may wish to use (which could be done through a request for tender, request for proposal, request for quote under a *standing offer* panel, competitive evaluation, some other form of iterative engagement process, or other form of documentation), nor the project delivery model (for example, prime *contract*, managing contractor, design and construct *contract*, alliance *contract* and so on). Defence *officials* should determine the appropriate *approach to market* strategy and project delivery model during the planning stage of the *procurement*.

34. Also, and as discussed below, a *limited tender* will still be a competitive process as long as it involves more than one *supplier*.

35. While the CPRs generally require an *open tender* process for *procurements* valued at or above the relevant *procurement* threshold, many Defence *procurements* are exempt from this requirement.²² Accordingly, in circumstances where an *open tender* is not mandatory, the following factors are generally relevant to the selection of a *procurement* method:

- the nature and structure of the market;
- the extent of competition (that is, the number of genuinely competitive *suppliers*);

²⁰ When the term 'sole source' is used in the DPPM, it is not being used to indicate a *procurement* method, rather to indicate a situation where Defence is proposing to approach only one supplier for a *procurement*.

²¹ See CPRs, paragraph 9.13.

²² See DPPM, Defence Procurement Policy Directive D2. Appendix A to the CPRs also provides for other exemptions.

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- schedule, cost or other constraints (for example, intellectual property, security etc).

36. Based on an assessment of these factors, Defence *officials* may still determine that an *open tender* process should be conducted as the best mechanism to deliver a value for money outcome.

Limited tenders

37. If a *procurement* is subject to the additional rules in Division 2 of the CPRs, Defence *officials* will normally be required to use an *open tender* for the *procurement*. There are only very limited circumstances in which a Defence *official* may decide to use a *limited tender*. These are set out in paragraph 10.3 of the CPRs. Of these, there are probably four main circumstances on which a Defence *official* may rely to conduct a *limited tender*.

38. First, there is the circumstance of 'reasons of extreme urgency' (paragraph 10.3b of the CPRs). A *limited tender* can be undertaken if there are reasons of extreme urgency that have been brought about by events unforeseen by Defence, such that the *goods* and services could not be obtained in time under *open tender*. A good example of where this provision might be used is where a natural disaster or other unexpected event has occurred and Government has directed Defence to procure *goods* or services in support of its emergency response.

39. However, paragraph 10.3b of the CPRs cannot validly be used in circumstances where Defence *officials* have not planned well enough in advance and now find themselves in a situation where they may not be able to undertake an *open tender* process in time to obtain the *goods* or services when they are needed. Defence *officials* cannot use poor *procurement* planning as a valid justification for running a *limited tender* process. The underlying principle is that the event giving rise to the need to undertake a *procurement* should have arisen at short notice and could not have reasonably been foreseen by Defence.

40. The second main circumstance is for 'unsolicited innovative proposals' where the *procurement* can be categorised as having been made under 'exceptionally advantageous conditions that arise only in the very short term' and which is not 'routine *procurement* from regular *suppliers*'. (paragraph 10.3c of the CPRs). Sometimes industry will have an innovative idea that offers real value to Defence, even though it is not something that Defence has identified as a current need or priority. Paragraph 10.3c of the CPRs offers a mechanism for encouraging industry to put forward these ideas and, if Defence considers the idea of benefit, to procure directly from the relevant company without having to openly test the market.

41. However, Defence companies may sometimes seek to use this mechanism as a way of pitching their *goods* or services to Government without having to compete for a contract. If Defence *officials* act on these proposals without testing the market, then it may be unfair to other suppliers of similar *goods* or services, as well as being difficult to demonstrate value for money. Accordingly, Defence *officials* need to be cautious when using this circumstance to justify undertaking a *limited tender*. It is difficult to give definitive guidance about the kind of proposals that will meet this circumstance, however, as a general rule, it would cover most proposals that are unique or otherwise not readily obtainable in the market place. By contrast, the circumstance should not be used where the proposal is effectively an advance proposal for a requirement that Defence has already identified for *procurement* in the market. Defence *officials* should seek specialist contracting or legal advice before accepting an unsolicited proposal.

42. While Defence business units should be open to receiving and considering unsolicited innovative proposals from industry, Defence has also put in place a formal mechanism to manage these kinds of proposals from industry. This is the Centre for Defence Industry Capability (CDIC) which hosts the Defence Innovation Portal, the primary gateway for companies seeking to submit innovation proposals or ideas to the Defence Innovation Hub and Next Generation Technology Fund. For further information about the CDIC and the Defence Innovation Hub, Defence *officials* should refer to www.business.gov.au/cdic.

43. The third main circumstance is where there is no real alternative because of an 'absence of competition for technical reasons' (Paragraph 10.3d of the CPRs). Normally, this circumstance is used where only one *supplier* can provide the relevant *goods* or services because of intellectual property or other restrictions. This circumstance cannot validly be used by a Defence *official* based simply on the *official's* perceived overall knowledge of the market. An 'absence of competition for technical reasons' has to be something more than an *official's* mere assertion that there is only one *supplier* in the market who is capable of providing the *goods* or services. It requires objective, demonstrable evidence. An example could be a situation where Defence is seeking to procure specialised medical equipment, and

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there are only two manufacturers of the equipment in the world because of its specialised nature. Defence could defensibly undertake a *limited tender* between the two manufacturers because there would be an absence of competition for technical reasons.

44. The fourth main circumstance is for additional deliveries of *goods* and services by the original *supplier* or authorised representative that are for replacement parts or continuing services for existing equipment, software, services or installations, when a change of *supplier* would mean the *goods* or services would be incompatible with the existing equipment or services' (Paragraph 10.3e of the CPRs). This circumstance is often used in the context of ICT *procurements* where Defence needs spare parts for the installed ICT system, or wants to upgrade the system. The parts or upgrades may be available only from the original *supplier* of the system. The underlying matters giving rise to this circumstance will often also support the circumstance discussed above dealing with an absence of competition for technical reasons.

45. Defence *officials* may sometimes seek to use this circumstance to justify the extension or continuation of consultancy or other professional services, whether or not related to ICT systems, equipment, software or support services. As a general rule, this would normally not be a valid use of this circumstance to justify (as a *limited tender*) the extension or continuation of these kinds of services, and would be an example of where the relevant Defence *officials* have not planned their procurement well enough in advance. For instance, *officials* should have built into the original *approach to market* the necessary options to extend the service period, or for the contractor to provide additional services. As noted above, Defence *officials* cannot use poor *procurement* planning as a valid justification for running a *limited tender* process.

The procurement life cycle - core principles

46. The CPRs have some core principles that Defence *officials* need to consider when planning and undertaking their *procurement* activities. These are discussed below.

Value for money

47. As noted above, value for money does not necessarily mean the lowest price. In most Defence *procurements* of any complexity, determining value for money will mean assessing tenders against all the *evaluation criteria* stated in the *request documentation* and determining on the balance of all the assessments which one delivers best value for the Commonwealth. In undertaking this assessment, *officials* need to look at the total cost of ownership of the solutions. Value for money is about getting the best possible outcome over the whole-of-life of the *goods* or services.²³

48. The standard conditions of tender in the [endorsed Defence contracting templates](#) include *evaluation criteria* that meet the requirements of the CPRs for determining value for money, and in particular enable Defence *officials* to properly consider the relevant financial and non-financial costs and benefits of tenders. In major Defence *procurements*, particularly materiel *procurements*, one of the criteria to be considered in determining value for money is Australian Industry Capability (AIC). This is an explicit criterion in ASDEFCON tendering and contracting templates. The ability for the Australian Government to maintain an AIC program is provided for under our free trade agreements as an express exception to the non-discrimination principle (which is discussed below). Indeed, even before Defence releases *request documentation*, Defence *officials* will consider during the planning stage of the *procurement* the requirement or potential for Australian industry involvement in the *procurement*, consistent with the Government's defence and industry policy.

49. During the evaluation stage of a *procurement*, Defence *officials* will evaluate tenders against the stated *evaluation criteria* in accordance with the process and methodology set out in the tender evaluation plan. If the assessment of tenders against the non-price *evaluation criteria* leaves little or no discrimination between the tenders, then it is likely that the lowest priced tender will be the best value for money. However, the assessment of value for money can become more difficult where, for example, one *tenderer* offers a high level of capability or performance at a higher price, than other tenders which meet the minimum requirements but offer a lower level of capability or performance at a lower price. Effectively, the question for Defence *officials* becomes whether the higher level of capability or performance at the higher price is 'worth' more or less to Defence than the lower level of capability or performance at the lower price. This is a subjective assessment and *officials* need to make sure that they can properly articulate the reasons for why they make their decision. As long as

²³ See paragraphs 4.5 and 4.6 of the CPRs.

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the reasons are sensible and logical and in accordance with the PGPA Act framework requirements and duties, then the decision itself will be defensible.

50. Defence *officials* also need to make sure that when making these decisions, they are comparing 'apples with apples'. *Officials* need to ensure that all omissions and risks relating to a tender have been properly understood, considered, and if necessary quantified and 'priced in' to that tender, so as to ensure that when comparing with another tender that does not have those omissions or risks, the comparison is being done on an equivalent basis. For more guidance about how to undertake tender evaluation, Defence *officials* should refer to the [Complex Procurement Guide](#)²⁴.

51. Selecting the most appropriate *procurement* process that is commensurate with the scope, scale and risk of the *procurement* will also help Defence *officials* achieve value for money. This will normally involve some form of competition.

Competition

52. As paragraph 5.1 of the CPRs notes, competition is a key element of the Australian Government's *procurement* framework. A competitive *procurement* process is normally the mechanism by which Defence ensures that it is receiving value for money. Competition is important because time and again it has been shown to be the most effective motivator for industry to reduce costs and improve performance. Whilst early contractor selection and sole source *procurement* can also be an effective and efficient execution strategy in appropriate cases, it should not be used solely to avoid the need for competitive tendering, especially when a viable competition can be held. Sound commercial judgment, not convenience, should determine the right approach.

53. However, competition does not necessarily mean an *open tender*. Any process involving more than one *supplier* will be competitive. Accordingly, if an open competition is not feasible, Defence *officials* should explore opportunities for a limited competition (known under the CPRs as a *limited tender*). However, as discussed earlier in this Chapter, for a *procurement* that is subject to Division 2 of the CPRs, unless it is exempt, there are only very limited grounds on which Defence *officials* are permitted to conduct a *limited tender* (whether sole source or competitive).²⁵

54. Competition is important as under competitive processes (whether *open tender* or *limited tender*), *suppliers* put forward their best solution and price. *Suppliers* know that if they don't do so then it is likely that one of their competitors will win the work instead. Effective competition creates the incentive for *suppliers* to deliver quality *goods* or services at more competitive prices. In other words, value for money is driven by the market.

55. This is so even when Defence *officials* are procuring from *standing offer* panel arrangements. If the *standing offer* is established through an *open tender* process, then Defence *officials* may procure from the panel by approaching one, some or all of the *suppliers* on the panel for a quote or proposal. It is often tempting for Defence *officials* to seek a quote from just one panellist, particularly if the panellist is known to them. However, it is also important to provide opportunities for all capable *suppliers*, particularly small to medium enterprises, as this helps maintain a strong Defence industrial base, as well as incentivising best value performance. Accordingly, the right approach to procuring from a panel will depend on the circumstances of each case. For more information about establishing and using *standing offer* panel arrangements, Defence *officials* should refer to the factsheet on the [Commercial Division Factsheets and Guidance](#) intranet page.

56. Also, the Defence panel manager will usually have established the business rules for the panel to ensure that it is accessed and used appropriately, *suppliers* on the panel have a fair and equitable chance of being engaged through the arrangement, and Defence is able to demonstrate the panel is delivering value for money. Defence *officials* should make themselves aware of and comply with these business rules to ensure that Defence panels are used appropriately.

57. While awarding *contracts* through full and open competition is key to ensuring that the Government efficiently acquires *goods* and services to best meet its needs, there are certain circumstances when competition may not be practical. This can especially be the case given the nature of major Defence *procurement*, and particularly (but not exclusively) in complex materiel related *procurements*. For instance, a competitive process will be unable to be undertaken if Defence requires a unique product or service such that there is only one *supplier* that offers the required capability or solution. This will be the case where, for example, a *supplier* has the patent for a particular product, or

²⁴ See Chapter 5 of the Guide.

²⁵ See paragraph 10.3 of the CPRs.

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because of other intellectual property rights a *supplier* is the only one that is able to install or maintain a particular system or network.

58. A sole source *procurement* may also arise because it is a follow-on *contract* and only the incumbent contractor can continue the work due to intellectual property restrictions or because the contractor is the only one with the necessary skills and expertise. This kind of 'supplier lock in' may be able to be avoided if Defence has acquired sufficient technical data and associated intellectual property rights to enable a competition to be undertaken. Avoiding 'supplier lock in' promotes value for money by establishing competitive tension across the lifecycle of the procured *goods* or services.

59. Accordingly, Defence *officials* should consider during the planning stage of the *procurement* how to maintain the competitive environment not only at the outset of the *procurement*, but over the life of the program or activity. Conducting market research to understand the market and the scope for competition is critical. In addition, early and ongoing engagement with industry around Defence's requirements is also important, particularly as this may allow new entrants to enter the market in time to meet those requirements. The importance of market research and ongoing industry engagement is discussed in the Complex Procurement Guide.²⁶

60. For major Defence *procurements*, a key to being able to avoid *supplier* lock in of the kind mentioned above and to remove barriers to future competition, is for Defence *officials* to have an effective intellectual property and technical data strategy that covers the whole of the lifecycle of the *goods* being procured. For example, for a major ICT project or major materiel acquisition, securing the necessary technical data and associated intellectual property rights (in particular, the ability to licence to third parties) in the initial *procurement* process will maximise competitive alternatives across the whole of life of the capability, including future *procurement* of additional systems or spares, operation and training, maintenance and repair, integration with other systems, and future updates, upgrades or modifications.

61. If proposing to undertake a sole source *procurement*, Defence *officials* will need to justify this in their *procurement* plan or Endorsement to Proceed, noting that the Commitment Approval delegate (see section 23(3) of the PGPA Act) will also need to be satisfied as to the *procurement* method (which would be a *limited tender*). Defence *officials* should consider what mechanisms are available to drive value for money outcomes from their engagement with industry, especially if this is done in a non-competitive environment. In particular, in this context Defence *officials* will need to be able to demonstrate how the price has been determined to be fair and reasonable for the required *goods* or services, and should consider seeking [specialist financial advice](#) to determine this.

62. Achieving value for money in a non-competitive environment can be particularly challenging, and [specialist procurement advice](#) should be sought to develop appropriate sourcing strategies to achieve a value for money outcome across the life of the *goods* or services being procured.

Non-discrimination

63. Effective competition also requires non-discrimination.²⁷ This principle means that Defence is normally unable to require in its *request documentation* that particular work be done in Australia, or done by Australian based *suppliers*, or that *suppliers* use Australian materials. The intent behind the principle is that the market will work out how best to meet the requirement being sought by Defence. In many cases, the work will need to be performed in Australia, and indeed at particular locations in Australia, however, this should not prevent foreign companies from being able to bid to undertake the work as long as they are able to meet Defence's service delivery requirements in those locations.

64. Specific exemptions can be sought from the non-discrimination principle in appropriate cases (for example, through a measure under paragraph 2.6 of the CPRs), or through other mechanisms such as the AIC policy (mentioned above), or other specific Government policy decisions. These exemptions are most likely to be found in major capital equipment acquisition decisions (for example, naval shipbuilding).²⁸ Defence Procurement Policy Directive D13 requires Defence *officials* to comply

²⁶ See Chapter 2 of the Guide

²⁷ See paragraph 5.1 of the CPRs.

²⁸ As noted in Chapter 1 of the DPPM, specific Government policy decisions may be found in Cabinet decisions, or other Government approvals relevant to a commitment of relevant money, to the extent that the decision or approval establishes a course or line of action.

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with the Defence AIC policy (see also the Note following paragraph 5.5 of the CPRs). Importantly, these exemptions have to be consistent with Australia's obligations under its FTAs.²⁹

Ethical behaviour – the balance between probity and industry engagement

65. Section 6 of the CPRs (see Chapter 4 of the DPPM) sets out the requirement for Defence *officials* to properly use and manage *public resources*. 'Proper' means efficient, effective, economical and ethical.³⁰

66. Attention to probity is integral to ensuring the defensibility, transparency and success of Defence *procurements*. Defence *procurements*, particularly those relating to major capital acquisitions, ICT projects and major facilities, are under increasing scrutiny by *tenderers*, the Australian National Audit Office, Senate Estimates and other Parliamentary Committees, and the media.

67. Probity is the evidence of ethical behaviour, and can be defined as complete and confirmed integrity, uprightness and honesty in a particular process. The [Department of Finance website](#) lists a number of principles which underpin ethics and probity in Australian Government *procurement*.

68. Defence *officials* need to put in place appropriate and sensible mechanisms to assure the probity of Defence *procurement* processes in line with the scope, scale, risk and sensitivity of the particular *procurement*. External legal process or probity advisers can be engaged when necessary. Occasionally, Defence may also wish to appoint an external probity auditor, either at the conclusion of the *procurement* process or at a key point during the process, to audit whether Defence *officials* followed the process and probity requirements set out in the documentation governing the *procurement*.

69. However, it is very important that Defence *officials* do not use probity as a reason or excuse not to engage appropriately with the market or *tenderers* throughout a *procurement* process. As long as it is done fairly and consistently, there is no reason why a *procurement* process cannot build in mechanisms (in the *request documentation*) for ongoing engagement with industry and *tenderers* throughout a *procurement* process. This might include engagement before tender release around Defence's requirements or to understand the market's capacity or capability, or engagement during the tender process, such as through *tenderer* clarification activities or mechanisms to allow *tenderers* to update and improve their offers (sometimes called 'offer definition and improvement activities').

70. A key factor in delivering good *procurement* outcomes is early market engagement and continued open dialogue with *suppliers* throughout the *procurement* process. Understanding *suppliers* and the market is part of the planning necessary to develop the right *approach to market*. Defence *procurement* should be supported by robust *procurement* plans that have a level of detail commensurate with the scope, scale and risk of the *procurement*. This is the first stage of the *procurement* life cycle.³¹ Good *procurement* also results from proactively managing *supplier* and other key stakeholder relationships throughout the *procurement* process and for the duration of the *contract*.

71. Defence *officials* may sometimes be approached by *tenderers* or contractors to sign a confidentiality agreement or deed (sometimes called a Non-Disclosure Agreement) either on behalf of the Commonwealth or in their personal capacity prior to receiving information from the *tenderer* or contractor. Defence *officials* are already subject to legal obligations to protect and not misuse information obtained as a result of their employment with Defence (for example, under the *Public Service Act 1999*; see also PGPA Act, section 28). Therefore, Defence *officials* are under no obligation to sign such agreements and should not do so without first seeking legal advice from Defence Legal. In particular, *officials* should be aware that confidentiality agreements will often contain an indemnity from the *official* (or Commonwealth) in favour of the person disclosing the information.

72. As part of Defence's probity framework for major *procurement* processes, Defence *officials* may be requested (for example, by the legal process or probity adviser) to sign a statement confirming that they are aware of their legislative and policy obligations to properly protect confidential information (and to declare any actual or perceived conflicts of interests). It is appropriate for Defence *officials* to sign such a confirmation in these circumstances, noting that the statement does not constitute a formal agreement.

²⁹ This is why paragraph 10.32 of the CPRs provides that the economic benefit requirement set out in paragraph 10.31 of the CPRs has to operate 'within the context of' (that is, subject to) Australia's FTAs.

³⁰ See paragraph 6.1 of the CPRs.

³¹ More guidance on industry engagement and *procurement* planning is set out in Chapter 2 of the Complex Procurement Guide.

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73. There are some senior Defence officials who will have regular access to sensitive information related to Defence *procurements*, in particular the members of the Defence Committee, Investment Committee and Enterprise Business Committee. In addition, Defence's Contestability organisation may also be required to have access to this information to perform its function. As part of Defence's probity framework, members of these Committees and the Contestability organisation acknowledge under their respective business rules the legislative and policy obligations that apply in relation to confidential information and conflicts of interests. Accordingly, these Defence *officials* are not required to receive *procurement* specific probity briefings or sign individual probity statements.

74. The legislative and policy obligations related to probity include:

- the general duties of *officials* set out in sections 25 to 29 of the PGPA Act (dealing with due care, diligence, good faith, declaring interests etc);
- the APS Values and APS Code of Conduct (see *Public Service Act 1999*, sections 10 and 13);
- Defence Instruction (General) - PERS 25-4 - *Notification of Post Separation Employment*;
- Defence Instruction (General) - PERS 25-6 - *Conflicts of Interest and declarations of interests*; and
- Defence Instruction (General) - PERS 25-7 - *Gifts, Hospitality and Sponsorship* (see also AAI 10 - Managing Relevant Property).

75. Legal process and probity advisers can be engaged to help ensure that the processes, procedures and documentation used in implementing a major Defence *procurement* are robust, transparent and capable of external audit. However, there is no requirement for Defence *officials* to engage an external probity or process adviser, or that they be independent of another adviser (for example, the legal adviser). Depending on the nature of the *procurement*, internal personnel (for example, contracting officers or Defence Legal officers) can potentially perform the role of a probity adviser for a Defence *procurement*.

76. In relation to 'high risk' *procurements*, the Australian National Audit Office takes the view that a probity adviser should not have any actual or perceived conflicts of interest that could compromise their duty to give candid advice about the probity aspects of the project. A perceived conflict could include simultaneously serving as both probity and legal adviser. The decision about whether to have an independent probity or legal process adviser should be made based on the individual circumstances of the case, and in particular, whether the *procurement* is likely to be high profile, high value, controversial or sensitive.

77. The main reason to have a 'legal process adviser' as opposed to a 'probity adviser' is to maintain legal professional privilege in relation to the 'probity' advice. Non-lawyers cannot provide legal advice, so no legal professional privilege would apply to their advice if there is a challenge to the *procurement* process. Advice from a lawyer in relation to probity/process would be covered by the same rules as other legal advice.³²

78. A template probity/legal process plan can be found on the Commercial Division [Tools and Templates](#) intranet page.

Risk management

79. A key principle of the CPRs is risk management, and in particular that risks should be borne by the party best placed to manage them.³³ Depending on the nature of the *procurement*, the risks that may need to be considered could include technical, operational, industrial, managerial, work health and safety, financial, legal, commercial, or probity risks. These risks need to be considered across the *procurement* lifecycle. For instance, the Complex Procurement Guide discusses the importance of risk identification and management in the planning stage of the *procurement* life cycle, as well as risk assessment during the tender evaluation stage.³⁴

80. In the planning stage, Defence *officials* will consider the risks relating to the conduct of the *procurement* process itself and what is being procured, and how these can be addressed through the

³² For more information about legal professional privilege (LPP), Defence *officials* should refer to the [Defence Legal LPP factsheet](#).

³³ See section 8 of the CPRs (in Chapter 3 of the DPPM).

³⁴ See Chapters 2 and 5 of the Complex Procurement Guide.

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procurement strategy. During evaluation and *contract* negotiation, Defence *officials* will be more focussed on assessing and addressing the risks in relation to the requirements of the *contract*, and the allocation of commercial and other risk under the *contract*.

81. In relation to *procurements* that are required to be considered by the Defence Investment Committee (for example, Major Capital Equipment, and major ICT and infrastructure procurements), the '[Smart Buyer](#)' framework sets out various risk categories that should be considered when developing the Project Execution Strategy and the *procurement* and contracting strategies for the *procurement*.

82. Defence also has formalised policy and processes for the assessment and management of risk in the Defence environment. For instance, in relation to materiel *procurement*, Defence *officials* should follow the [Defence Materiel Manual \(PROJ\) \(DMM\(PROJ\)\) – 11-0-002- CASG Project Risk Management Manual](#) and [DMM\(LOG\)-04-0- 003- Materiel Logistics Manual Volume 3 – Risk Management in Sustainment](#).

83. The endorsed Defence contracting templates set out the standard Defence approach to risk allocation between the Commonwealth and its contractors. The templates have been drafted in accordance with the above principle that risks should be borne by the party best placed to manage them. In many cases, this will be the contractor, noting that companies are able to take out insurance (or self-insure) for most *contract* related risks.

84. However, given the scope, scale, value and risk of many Defence contracts, it is not unusual for contractors to seek to limit their liability, particularly under ICT *contracts*, and *contracts* for the acquisition or sustainment of major capital equipment. In these circumstances, Defence *officials* need to undertake a risk assessment in relation to the proposed limitation of liability to understand the implications for the Commonwealth and to quantify any potential exposure. For instance, the limitation may mean that the Commonwealth will be unable to sue the contractor for its normal entitlement to damages for breach of *contract*. The Defence contracting templates make clear which categories of liability the Commonwealth may consider limiting and by contrast those categories in relation to which it will not consider limiting the contractor's liability (for example, personal injury or death).

85. Defence has developed tools and guidance to assist Defence *officials* with the conduct of [liability risk assessments](#).

86. The [endorsed Defence contracting templates](#) also contain provisions requiring contractors to take out necessary insurances to cover their work for Defence. Again, depending on the nature of the Defence *contract*, the contractor's insurance arrangements can be both complex and costly (noting that the costs will be passed on to Defence through the *contract* price). Defence has developed tools and guidance to assist Defence *officials* with determining and managing *contract* insurance requirements which can be found on the Commercial Division [Approved Contractor Insurance Program Initiative](#) intranet page.

87. In relation to materiel *procurement*, Defence has established the Approved Contractor Insurance Program (ACIP) as a joint Defence and Industry *procurement* reform initiative that involves a periodic centralised review of participating Defence companies' global/group and local insurance programs. The purpose of the review is to pre-qualify a participating company's insurance program, if Defence is satisfied with the company's insurances. This helps to reduce the costs of tendering for both industry and Defence as well as improve risk management within Defence in respect of insurable risks that arise in connection with the performance of major Defence *contracts*. Companies granted ACIP status are taken to comply with insurance requirements in individual *contracts* and do not have to provide evidence about their insurances during tendering and *contract* management phases of a *procurement*. The ACIP initiative is open to the 'top' 6-7 major Defence companies and participation by the companies is voluntary. The ACIP Register lists those companies currently holding ACIP status. For more information see the Commercial Division [Risk Assessments and Liabilities intranet page](#).

Accountability and transparency

88. The Australian Government is committed to ensuring accountability and transparency in its *procurement* activities. Accountability involves Defence *officials* being responsible for their *procurement* actions and decisions and related outcomes, while transparency involves Defence enabling appropriate scrutiny of its *procurement* activities.³⁵ Accordingly, the CPRs require Defence *officials* to meet certain record-keeping, reporting and other requirements before and after entering

³⁵ See section 7 of the CPRs (in Chapter 3 of the DPPM).

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into a *contract* with a supplier, including documenting relevant approvals and other *procurement* related decisions and actions, and *AusTender* and other reporting requirements. *AusTender* is the Australian Government's *procurement* information system.

89. The [Complex Procurement Guide](#) provides guidance for Defence *officials* about how they can meet their accountability and transparency requirements as they progress through the *procurement* life cycle.

The procurement life cycle – overview of how to plan and undertake a procurement

Introduction

90. Good *procurement* practice is not about just mechanically applying the CPRs or the additional Defence Procurement Policy Directives in the DPPM. It is about developing a strong understanding of all aspects of the *procurement* lifecycle and using judgement to apply this understanding in each case to deliver the best outcomes. While Defence *officials* need to comply with the CPRs and the DPPM, *officials* should design each *procurement* process in a way that is commensurate with the scope, scale and risk of the relevant *procurement*.

91. So, for instance, *procurements* that are valued below the relevant *procurement threshold* will normally be low risk, routine *procurements* of goods or services. They are often called 'simple *procurements*' in Defence. However, many *procurements* valued at or above the relevant *procurement threshold* may also be simple in nature. For example, a *procurement* of more spare parts from an existing *supplier* may be valued at a lot higher than the *procurement threshold*, but would normally be a simple purchasing exercise. Accordingly, using a *procurement* process that involves significant cost, time and resources for both Defence and *suppliers* would not be sensible or represent value for money for these kinds of *procurements*. The concept of value for money is not limited to the *procurement* outcome, but is also a consideration when designing a *procurement* process.

92. By contrast, many Defence *procurements* are highly complex undertakings because of the nature of the goods, works or services being sought. The process for these *procurements* needs to be designed and undertaken in light of the scope, scale and risk of what is being procured.

93. The Complex Procurement Guide provides more in-depth guidance about how these kinds of *procurements* should be planned and executed across the life cycle. The following discussion provides an overview of the guidance for undertaking a *procurement* process.

Guidance overview

94. For more complex *procurements*, Defence *officials* will normally be required to prepare three main documents:

- a *procurement* plan;
- *request documentation*; and
- an evaluation plan.

95. The *procurement* plan details the process that will be undertaken. It differs from a business case in that the business case explains why a *procurement* is being undertaken, including its value proposition, while the *procurement* plan explains how the *procurement* is to be undertaken. However, for convenience, and depending on the scope, scale and risk of the particular *procurement*, Defence *officials* may sometimes include the *procurement* plan as part of, or as an attachment to, the business case.

96. The *procurement* plan will normally cover the following:

- a description of the *procurement*;
- the *procurement* method to be used (for example, *open tender*, *limited tender*), including reasons;
- proposed probity arrangements;
- proposed governance arrangements, such as the need for a steering committee;
- the *procurement* risk assessment; and

- indicative time-lines and resources (including budgeting of funds to support the procurement).

97. The level of detail in the procurement plan should reflect the scope, scale and risk of the *procurement*. For less complex *procurements*, the Endorsement to Proceed document may be sufficient to serve as the procurement plan. For *procurements* that are required to be considered by the Defence Investment Committee (for example, Major Capital Equipment, and major ICT and infrastructure procurements), the procurement plan will be informed by the [Smart Buyer Project Execution Strategy](#).

98. The *request documentation* sets out the rules for the *procurement*. It describes to *potential suppliers*, the specifics of the *procurement*, the manner in which *submissions* are to be forwarded to Defence (for instance, through *AusTender*) and how *submissions* will be evaluated. If there is a possibility that other agencies will access the resulting *contract* (for example, a *standing offer* arrangement), Defence *officials* need to ensure the *request documentation* includes a statement to that effect.

99. The *request documentation* will usually be the primary information source used by *potential suppliers* when developing a *submission*. After reviewing the *request documentation*, the *potential suppliers* should be able to understand Defence's requirements and how the *procurement* is to provide value for money. This is why the CPRs, in effect, require that *request documentation* include all information necessary to permit *suppliers* to prepare and lodge responsive *submissions*.³⁶

100. *Request documentation* will normally include:

- a description of the requirement (for example, the statement of work), including any essential requirements;
- any *conditions for participation* or *minimum content and format requirements*;
- *evaluation criteria* and methodology;
- the other rules of the process; and
- the draft *contract*.

101. The statement of work should describe:

- the nature, scope and, where known, quantity of the *goods*, works or services required;
- specific requirements to be fulfilled or provided, including certification, test and evaluation, plans, drawings and training materials;
- any applicable technical *specifications* (in which case, these should be described in terms of function and performance requirements, rather than specific designs, trademarks, or product descriptions) and the related standards on which the *specifications are based*;³⁷
- whether any of the requirements are 'essential requirements' (in which case, if *suppliers* are not able to meet the requirements, they will be excluded from consideration);
- the timeframes expected for the delivery of the required *goods*, works or services.

102. *Conditions for participation*³⁸ are mandatory requirements which describe minimum standards or essential characteristics that *potential suppliers* have to meet for their *submissions* to be considered. Defence *officials* should take great care when deciding whether to include *conditions for participation* and what these might be, as the CPRs require that Defence reject any *submission* that does not meet the *conditions for participation*. *Conditions for participation* are limited to those assuring the legal, financial, technical or commercial capabilities of the *supplier* to meet the particular requirements of the *procurement*.

³⁶ While this discussion about *request documentation* applies to *procurements* to which the additional rules in Division 2 of the CPRs apply, it is also good practice for all *procurements*.

³⁷ In relation to specifications and standards, see paragraphs 10.9, 10.10, 10.11 and 10.38 of the CPRs

³⁸ While this discussion about *conditions for participation* applies to *procurements* to which the additional rules in Division 2 of the CPRs apply, it is also good practice for all *procurements*.

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103. Defence *officials* may also decide to set out *minimum content and format requirements*³⁹ in their *request documentation*, for example:

- in relation to minimum content – Defence may require the *tenderer* to provide a certificate of insurance or a particular licence to support the *submission*; or
- in relation to formatting – Defence may require *submissions* to be submitted electronically through *AusTender*.

104. If the *tenderer's submission* does not meet the *minimum content and format requirements*, Defence *officials* will normally be required to exclude the *submission* from further consideration, unless the *officials* consider that the failure to meet the requirement has been due to an unintentional error of form in the *submission*. If so, Defence *officials* have the discretion to allow the *submission* to be corrected, subject to ensuring that all *tenderers* are treated fairly and equitably.

105. The *request documentation* will also set out the *evaluation criteria*. These set the foundation for a fair and equitable assessment of *submissions*. What the appropriate criteria are depends on the nature of the particular *procurement* and should flow from the planning stage.

106. Evaluation of *tenderers* should be based on a balance of all the criteria, or if a weighting methodology is used, on the relative importance of each criterion. If a weighting methodology is used, Defence *officials* should consider setting this out in the *request documentation* so that *potential suppliers* can appropriately focus their responses. This will make the process more transparent, which should limit misunderstandings that may result in complaints.

107. The *request documentation* should also set out the rules around lodgement of *submissions*, whether this is through *AusTender* or other means, including the closing time for *submissions*. Adherence to deadlines is important in maintaining the integrity and probity of the tender process. Therefore, Defence *officials* are not normally able to accept late *submissions*, unless there has clearly been a mishandling of the *submission* by Defence.

108. During the time that the tender process is open, Defence *officials* will need to be in a position to answer queries on the *procurement*. This needs to be done fairly and impartially in a manner that does not create an unfair advantage for any *potential supplier*. Therefore, the *request documentation* should explain the rules for answering questions and distributing responses.

109. At least in request for tender processes, Defence normally requires *tenderers* to indicate their compliance (or non-compliance) with a draft *contract* which contains the terms and conditions on which Defence is willing to enter into a *contract* for the requirement. Defence *officials* should assess the risk with the *tenderers'* non-compliances with the draft *contract* to enable *tenderers* to be evaluated against a common baseline.

110. The evaluation plan is an internal Defence document that sets out the methodology and processes to be followed by Defence when evaluating *submissions*. To reduce the risks of a perceived or actual bias in the *procurement* process, Defence *officials* should preferably develop and finalise the plan before an approach is made to the market, but in any event before *submissions* are opened.⁴⁰ The Complex Procurement Guide provides guidance about the contents of an evaluation plan.⁴¹

111. The evaluation plan will normally identify the organisation that is responsible for the evaluation, and recommend a preferred *supplier* (or a shortlist of *potential suppliers*). Depending on the nature and complexity of the evaluation, the evaluation organisation may comprise a steering committee, an evaluation board or team and subordinate evaluation working groups. The evaluation organisation may also include internal or external advisers or experts to assist with elements of the evaluation, for example, the technical requirements, financial viability or price.

112. When receiving *submissions*, Defence *officials* need to use a mechanism that assures fairness and impartiality of the *procurement* process. *Submissions* should only be received into a secure environment. This can be through *AusTender* or other secure electronic system, or a physical tender box or tender room. Any *submissions* received after the closing time should be considered late and should generally not be accepted (see paragraph 107 above).

³⁹ While this discussion about *minimum content and format requirements* applies to *procurements* to which the additional rules in Division 2 of the CPRs apply, it is also good practice for all *procurements*.

⁴⁰ See Defence Procurement Policy Directive D41.

⁴¹ See Chapters 3 and 5 of the Guide.

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113. The evaluation committee should first check the *submissions* to make sure they satisfy any mandatory requirements, such as *minimum content and format requirements* and *conditions for participation*, and should then proceed to undertake the detailed evaluation of *submissions* against the *evaluation criteria*.

114. The evaluation of *submissions* is the most important aspect of determining value for money in a *procurement*. When evaluating *submissions*, the evaluation committee needs to make sure that it faithfully applies the *evaluation criteria*, methodology and procedures that have been set out in the *request documentation* and the evaluation plan. If the committee does not then this could compromise the evaluation outcome and give rise to a complaint or legal action by an affected *tenderer*, and require Defence to set aside the evaluation and possibly the whole *procurement* process, as well as incurring additional costs in dealing with the complaint.

115. The CPRs require Defence *officials* to maintain appropriate documentation of the decision-making process for each *procurement*. Therefore, the evaluation committee should be accurate and scrupulous in recording the evaluation and the reasons underlying its decisions. As a general rule, officials should ensure that there is sufficient documentation to provide an understanding of why the *procurement* was necessary, the process that was followed and all relevant decisions made, including approvals, and the basis of those decisions.

116. The evaluation committee should therefore prepare an evaluation report to document the evaluation process and the recommendation of a preferred *tenderer* (or shortlist of *tenderers*). The report can also assist in the future when providing feedback to *tenderers* through the debriefing process.

117. The evaluation report will normally contain:

- a summary of the evaluation process;
- a summary of the assessment of each *submission*;
- reasons for the exclusion of a *submission* from further consideration;
- recommendations concerning the preferred *tenderer(s)* based on value for money;⁴² and
- details of any issues which need resolution during subsequent contract negotiations.

118. The evaluation committee members will normally sign the report and submit this for endorsement by the relevant delegate.

119. The CPRs require Defence *officials* to notify affected *tenderers* promptly of the rejection of their *submission* or the award of a *contract*, and if requested, provide a debrief to the *tenderers* (both successful and unsuccessful *tenderers*).⁴³ A debrief (whether verbal or written) should include, as appropriate:

- an explanation of why the *submission* was unsuccessful (or successful);
- areas of weakness or non-compliance in the offer;
- suggestions as to how future *submissions* can be improved; and
- in the case of unsuccessful *tenderers*, if the *contract* has already been successfully negotiated, the name of the successful *supplier* and total *contract* price (noting that this needs to be reported on *AusTender* in any event, if valued at or above \$10,000).

120. Defence *officials* should keep a written record of the debriefing.

121. The final stage in the *procurement* process itself relates to the negotiation and award of the *contract* with the preferred *tenderer*. During *contract* negotiations, Defence *officials* should seek to resolve any issues that were identified during the evaluation.

122. At any time during the *procurement* process, Defence can determine that awarding a *contract* is not in the public interest.⁴⁴ Public interest grounds generally arise in response to new information or

⁴² For *procurements* to which the additional rules in Division 2 of the CPRs apply, Defence *officials* are required to award the *contract* to the *tenderer* that is assessed to provide the best value for money in accordance with the *request documentation*, including compliance with any *conditions for participation* and essential requirements. (See CPRs, paragraph 10.32 to 10.36).

⁴³ CPRs, paragraph 7.15.

⁴⁴ For *procurements* to which the additional rules in Division 2 of the CPRs apply, this is the only ground on which a Defence *official* can decide not to award a *contract* in relation to the *procurement*. (See CPRs, paragraphs 10.36 and 10.37).

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unforeseen events which materially affect the objectives or reasons underlying the original *procurement* requirement as specified in the *request documentation*. Examples of situations in which it may not be in the public interest to award the *contract* could include:

- a Government decision to cancel or vary the program to which the *procurement* relates;
- unforeseen technological or environmental changes affecting the business case for the *procurement*;
- discovery of new information materially affecting the policy behind or operational effectiveness of the project or *procurement*.

123. However, termination of a *procurement* process is a serious step with potential legal and management risks that should be considered and addressed before any decision is made. At the least, it can harm Defence's credibility with *suppliers* that, in turn, may discourage *suppliers'* participation in future *procurements*. On the other hand, termination may be compelled in order to protect the integrity of the *procurement* process and avoid the awarding of a *contract* in a manner inconsistent with the stated evaluation process.

124. Defence *officials* cannot terminate a *procurement* process simply because they may be dissatisfied with the outcome of the evaluation conducted in accordance with the stated rules, conditions and criteria set out in the *request documentation* and evaluation plan.

125. If Defence cancels a *procurement* on the basis that it is not in the public interest to award a *contract*, it should normally provide *potential suppliers* with reasons. In any case, prior to cancelling a *procurement*, Defence *officials* should seek specialist legal or contracting advice.

Chapter 3

The procurement framework

2. Procurement framework

CPR 2.1 – 2.6

Procurement framework

- 2.1 The Commonwealth *Procurement Rules* (CPRs) are issued by the Minister for Finance (Finance Minister) under section 105B(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).
- 2.2 *Officials* from *non-Corporate Commonwealth entities* and prescribed *corporate Commonwealth entities* listed in section 30 of the *Public Governance, Performance and Accountability Rule 2014* **must** comply with the CPRs when performing duties related to *procurement*. These entities will collectively be referred to as *relevant entities* throughout the CPRs.
- 2.3 Rules that **must** be complied with in undertaking *procurement* are denoted by the term '**must**'. *Non-corporate Commonwealth entities* **must** report non-compliance with the rules of the CPRs through the Commonwealth's compliance reporting process. The term 'should' indicates good practice.
- 2.4 The CPRs are the core of the *procurement* framework, which also includes:
 - a. [web-based guidance](#), developed by the Department of Finance (Finance) to assist entities to implement the *procurement* framework; and
 - b. [Resource Management Guides](#), which advise of key changes and developments in the *procurement* framework.
- 2.5 An *Accountable Authority* may use [Accountable Authority Instructions](#) to set out entity-specific operational rules to ensure compliance with the rules of the *procurement* framework.

Note: As the Defence *Accountable Authority*, the Secretary has issued Defence's AAs. The AAs set out specific operational rules dealing with *procurement*.

- 2.6 Nothing in any part of these CPRs prevents an *official* from applying 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.

Defence Procurement Policy Directives

- D2. For paragraph 2.6 of the CPRs, the Secretary has determined that the procurement of the *goods* and services listed in Table 1 below are exempt from the operation of Division 2 of the CPRs.
- D3. If a Defence *official* determines that an exemption given under paragraph 2.6 of the CPRs applies to a *procurement*, the *official* **must** ensure that the reasons supporting that determination are appropriately documented.
- D4. If a Defence official seeks to exempt a particular *procurement* (not otherwise covered by an existing exemption) from all or part of the CPRs, the *official* **must** seek the Secretary's written approval.

Table 1

Goods	-
The <i>procurement</i> of	FSC 10 Weapons;

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<p>goods that fall within the following US Federal Supply Codes (FSC):</p>	<ul style="list-style-type: none"> - FSC 12 Fire Control Equipment; - FSC 13 Ammunition and Explosives; - FSC 14 Guided Missiles; - FSC 15 Aircraft and Airframe Structural Components; - FSC 16 Aircraft Components and Accessories; - FSC 17 Aircraft Launching, Landing, and Ground Handling Equipment; - FSC 18 Space Vehicles; - FSC 19 Ships, Small Craft, Pontoons and Floating Docks; - FSC 20 Ships and Marine Equipment; - FSC 23 Ground Effect Vehicles, Motor Vehicles, Trailers and Cycles; - FSC 28 Engines, Turbines, and Components; - FSC 29 Engine Accessories; - FSC 31 Bearings; - FSC 46 Water Purification and Sewage Treatment Equipment; - FSC 48 Valves; - FSC 49 Maintenance and Repair Shop Equipment; - FSC 54 Prefabricated Structures and Scaffolding; - FSC 58 Communication, Detection, and Coherent Radiation Equipment; - FSC 59 Electrical and Electronic Equipment Components; - FSC 60 Fibre Optics Materials, Components, Assemblies, and Accessories; - FSC 61 Electric Wire, and Power and Distribution Equipment; - FSC 63 Alarm, Signal and Security Detection Systems; - FSC 66 Instruments and Laboratory Equipment; and - No code - Specialty Metals.
<p>Services The <i>procurement</i> of the following kinds of services:</p>	<ul style="list-style-type: none"> - design, development, integration, test, evaluation, maintenance, repair, modification, rebuilding and installation of military systems and equipment; - operation of Government-owned facilities; - space services; and - services in support of military forces overseas.

Notes: Paragraph 2.6 of the CPRs allows the Secretary to determine that specific *procurements* should not be subject to all or part of the CPRs. Usually, a measure made under this paragraph will exempt a *procurement* from the rules in Division 2 of the CPRs (in particular, the obligation to undertake an *open tender* process). This exemption mechanism is provided for in the Australia-US Free Trade Agreement (AUSFTA), and is consistent with the market access arrangements agreed by Australia in its other FTAs.

Notes (cont): In the case of Defence, the AUSFTA (Chapter 15, Annex A) specifically provides for various Defence *procurements* to be exempt from the operation of the *procurement* rules in Chapter 15 of the AUSFTA (which rules are now mainly in Division 2 of the CPRs, and which are consistent with the *procurement* rules agreed by Australia in its other FTAs). This exemption is permitted on the grounds of 'essential security' (Article 22.2 of the AUSFTA). To give effect to this exemption, the Secretary has made a measure under paragraph 2.6 of the CPRs to determine that the *procurement* of the various *goods* or services listed in Table 1 above are exempt from the operation of Division 2 of the CPRs. The list in Table 1 replicates the list in Chapter 15, Annex A of the AUSFTA. Further details of the FSC codes mentioned in Table 1 can be found in the [Exemptions factsheet](#) on the Commercial Division intranet site.

Even if a *procurement* is exempt from Division 2 of the CPRs, Defence *officials* are still required to undertake their procurements in accordance with Division 1 of the CPRs. In addition, Defence *officials* are still required to comply with all applicable Defence Procurement Policy Directives contained in this manual (see Defence Procurement Policy Directive D37).

CPR 2.7 – 2.9

Procurement

- 2.7 *Procurement* encompasses the whole process of procuring *goods* and services. It begins when a need has been identified and a decision has been made on the *procurement* requirement. *Procurement* continues through the processes of risk assessment, seeking and evaluating alternative solutions, the awarding of a *contract*, the delivery of and payment for the *goods* and services and, where relevant, the ongoing management of the *contract* and consideration of disposal of *goods*.
- 2.8 In addition to the acquisition of *goods* and services by a *relevant entity* for its own use, *procurement* includes the acquisition of *goods* and services on behalf of another *relevant entity* or a third party.
- 2.9 *Procurement* does not include:
- grants (whether in the form of a *contract*, conditional gift or deed);
 - investments (or divestments);
 - sales by tender;
 - loans;
 - procurement of goods* and services for resale or *procurement of goods* and services used in the production of *goods* for resale;
 - any property right not acquired through the expenditure of *relevant money* (for example, a right to pursue a legal claim for negligence);
 - statutory appointments;
 - appointments made by a Minister using the executive power (for example, the appointment of a person to an advisory board); or
 - the engagement of employees, such as under the *Public Service Act 1999*, the *Parliamentary Services Act 1999*, a *relevant entity's* enabling legislation or the common law concept of employment.

Notes: Paragraph 2.9a of the CPRs makes clear that grants are not *procurements*. Defence manages a number of grant programs and therefore these programs, and the individual grants made under them, are not *procurements* for the CPRs. For example, to give effect to the Australian Government's defence and industry policy, Defence undertakes various grants programs under which Defence companies and other entities receive payments. In undertaking these programs, Defence *officials* are required to comply with the [Commonwealth Grant Rules and Guidelines](#), rather than the CPRs and the Defence Procurement Policy Directives in the DPPM. Defence grant programs also have their own rules that govern their operation.

For guidance on contracting processes for disposals, including sale by tender (see paragraph 2.9c of the CPRs) and gifting or transfer by deed, Defence *officials* should refer to the [Materiel Logistics, Disposals and Sales Branch intranet page](#).

CPR 2.10 – 2.13**Resource management framework**

- 2.10 *Relevant entities* and *officials* operate in an environment of legislation and Commonwealth policy. Within that broad context, the resource management framework consists of the legislation and policy governing the management of the Commonwealth's resources.
- 2.11 The *procurement* framework is a subset of the resource management framework related to the *procurement* of goods and services.
- 2.12 Section 16 of the PGPA Act outlines an *Accountable Authority's* duty to establish appropriate internal control systems for their *relevant entity*. The CPRs provide the necessary framework for Accountable Authorities when issuing Accountable Authority Instructions and operational requirements in relation to *procurement*. In the area of *procurement*, an *Accountable Authority* should provide a mechanism to:
- apply the principles and requirements of the resource management and *procurement* frameworks, focusing on the *relevant entity's* operations; and
 - provide primary operational instructions to *relevant entity officials* in carrying out their duties related to *procurement*, in a way that is tailored to a *relevant entity's* particular circumstances and needs.
- 2.13 Non-compliance with the requirements of the resource management framework, including in relation to *procurement*, may attract a range of criminal, civil or administrative remedies including under the *Public Service Act 1999* and the *Crimes Act 1914*.

Defence Procurement Policy Directives

- D5. When conducting a *procurement*, Defence *officials must* ensure that the following two delegations are exercised in the following order, unless the *procurement* does not involve the commitment of *relevant money* (for example, a 'nil-cost' contract change) in which case only the FINMAN 2 Schedule 2 -Enter into an Arrangement delegation is required:
- FINMAN 2 Schedule 1 (Section 23(3) of the PGPA Act) – To Approve the Commitment of Relevant Money (Commitment Approval): a Defence official must exercise this delegation before the Commonwealth enters into the arrangement that commits *relevant money*; and
 - FINMAN 2 Schedule 2 (Section 23(1) of the PGPA Act) – To Enter into an Arrangement: a Defence *official must not* exercise this delegation (Enter into an Arrangement) unless a Commitment Approval delegation has been exercised for the *procurement* to which the arrangement relates.
- D6. Prior to agreeing to a contingent liability in favour of a third party (for example, granting an indemnity, guarantee or warranty), Defence *officials must*:
- undertake a liability risk assessment in relation to the contingent liability, including considering the full potential cost of the liability to the Commonwealth; and
 - ensure that the relevant delegate (Under FINMAN 2 Schedule 1 or FINMAN 2 Schedule 1A) (or the Finance Minister, if necessary) authorises the contingent liability under section 60 of the PGPA Act.

Notes: Chapter 1 of the DPPM discusses the resource management framework in more detail.

If a *procurement* includes a contingent liability, the effect of Defence Procurement Policy Directive D6 is that the relevant delegate must authorise the granting of the contingent liability for the purposes of section 60 PGPA Act. In Defence (apart from CASG), the Commitment Approval delegate may do this as part of exercising this delegation. In CASG, a separate delegation is required in addition to the Commitment Approval delegation, both of which must be exercised before the exercise of the Enter into an Arrangement delegation.

Notes (cont): If a *procurement* is being undertaken through the Foreign Military Sales (FMS) system, the standard FMS conditions require the Commonwealth to grant an indemnity to the US Government. Accordingly, Defence Procurement Policy Directive D6 dealing with contingent liabilities applies to each FMS case. For guidance on conducting liability risk assessments for FMS cases see the Commercial Division [Risk Assessments and Liabilities intranet page](#).

Agreeing to a contingent liability in favour of a third party is one kind of limitation of liability. The Commonwealth may also limit a third party's liability in other ways, for instance, by agreeing to one or more financial caps on different heads of loss or damage that a contractor may be exposed to under a contract (for example, for personal injury, property damage, delay or other contractual non-performance). Accordingly, in addition to the requirement under Defence Procurement Policy Directive D6 to undertake a liability risk assessment in relation to contingent liabilities, Defence Procurement Policy Directive D22 requires Defence *officials* to undertake a liability risk assessment prior to agreeing to any limitation on a third party's liability under a *contract*. Defence has developed [guidance and tools](#) to assist Defence *officials* with the conduct of liability risk assessments.

The Department of Finance's [Resource Management Guide \(RMG\) No 414](#), together with [Defence AAI 2.6](#) and [FINMAN 2](#), set out Commonwealth and Defence policy in relation to indemnities, guarantees and warranties that give rise to 'contingent liabilities'. Consistently with RMG 414 and AAI 2.6, Defence has developed streamlined processes for undertaking liability risk assessments for certain kinds of contingent liabilities, namely indemnities contained in FMS cases and venue hire agreements. Defence *officials* should refer to the liability risk assessment [guidance and tools](#) for these streamlined processes.

CPR 2.14

International obligations

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

Note: Paragraph 2.14 of the CPRs means that Defence *officials* can refer to the CPRs as the single source of Australia's international commitments on government *procurement* and do not need to refer directly to the various treaties and other agreements. See also the Notes following paragraph 2.6 of the CPRs.

3. How to use the Commonwealth Procurement Rules

CPR 3.1 – 3.4

How to use the Commonwealth Procurement Rules

- 3.1 The CPRs set out the rules that *officials must* comply with when they procure *goods* and services. The CPRs also indicate good practice. The CPRs have been designed to provide *officials* with flexibility in developing and implementing *procurement* processes that reflect their *relevant entity's* needs.
- 3.2 Achieving value for money is the core rule of the CPRs. This requires the consideration of the financial and non-financial costs and benefits associated with *procurement*.
- 3.3 Further information and guidance on applying the CPRs are available on Finance's *procurement* policy website at www.finance.gov.au/procurement.
- 3.4 *Relevant entities* may have additional rules, guidance, templates or tools that apply when conducting *procurements*.

Note: For paragraph 3.4 of the CPRs, the DPPM sets out 'additional rules' in relation to the conduct of Defence *procurement* that Defence *officials must* comply with when they procure *goods* and services for Defence. These additional rules are set out under the heading 'Defence Procurement Policy Directives' in the DPPM. The DPPM also refers to guidance, templates, tools and other resources to further assist Defence *officials* undertaking *procurement*. Defence *officials* should have regard to these resources when undertaking *procurement*.

CPR 3.5 – 3.8**Compliance with the two divisions of the CPRs**

- 3.5 *Officials of non-corporate Commonwealth entities must* comply with the 'rules for all procurements' listed in Division 1, regardless of the *procurement* value. *Officials must* also comply with the 'additional rules' listed in Division 2 when the estimated value of the *procurement* is at or above the relevant *procurement threshold* and when an Appendix A exemption has not been utilised.
- 3.6 *Officials of corporate Commonwealth entities* prescribed in section 30 of the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) as having to comply with the CPRs *must* comply with the 'rules for all procurements' listed in Division 1 and the 'additional rules' listed in Division 2 when the expected value of the *procurement* is at or above the relevant *procurement threshold* and when an Appendix A exemption has not been utilised.
- 3.7 Despite being prescribed *corporate Commonwealth entities*, Australian Digital Health Agency, Australian Human Rights Commission, National Portrait Gallery of Australia, and Old Parliament House *must* apply a *procurement threshold* and *reporting threshold* of \$80,000 for *procurements* other than the procurement of *construction services*. They may opt-in to coordinated procurements and must only comply with those policies of the Commonwealth that specify compliance by *corporate Commonwealth entities*.
- 3.8 Despite being a corporate *Commonwealth entity*, paragraph 3.7 also applies to the Commonwealth Superannuation Corporation in regards to its administrative functions only.

Note: The Department of Defence ('Defence') is a *non-corporate Commonwealth entity*. Hence, paragraph 3.5 of the CPRs applies to Defence *officials* (including a contractor who is prescribed as a Defence *official*). In addition to an Appendix A exemption referred to in paragraph 3.5 of the CPRs, a Defence specific exemption may also be utilised (See Defence Procurement Policy Directives D2 and D4).

CPR 3.9**Using an Appendix A exemption**

- 3.9 When an Appendix A exemption applies, and the *relevant entity* chooses to utilise the exemption, the procurement is exempt from the additional rules for procurements at or above the relevant procurement threshold (Division 2) but *must* still comply with the rules for all procurements (Division 1).

Defence Procurement Policy Directive

- D7. If a Defence *official* determines that an exemption under Appendix A of the CPRs applies to a *procurement*, the *official must* ensure that the reasons supporting that determination are appropriately documented.

Notes: Items 16 and 17 of Appendix A permit Defence *officials* to procure directly from disability businesses and indigenous businesses, respectively. See further Chapter 2 of the DPPM, and Defence Procurement Policy Directive D11 (and the related Notes).

In addition to the exemptions provided for in Appendix A, various other kinds of Defence related *procurements* may be exempt from Division 2 of the CPRs. In particular, see Defence Procurement Policy Directives D2 and D4 (and the related Table 1 for a list of Defence *goods* and services that are exempt).

Chapter 4

Achieving value for money in procurement

Note: Chapter 4 of the DPPM incorporates all the rules from Division 1 of the CPRs.

4. Value for Money

CPR 4.1 – 4.3

Considering value for money

- 4.1 A thorough consideration of value for money begins by *officials* clearly understanding and expressing the goals and purpose of the *procurement*.
- 4.2 When a business requirement arises, *officials* should consider whether a *procurement* will deliver the best value for money. It is important to take into consideration:
 - a. stakeholder input;
 - b. the scale and scope of the business requirement;
 - c. the *relevant entity's* resourcing and budget;
 - d. obligations and opportunities under other existing arrangements;
 - e. relevant Commonwealth policies; and
 - f. the market's capacity to competitively respond to a *procurement*.

Notes: Defence officials should refer to Chapter 2 of the DPPM, and the Complex Procurement Guide, for more guidance about value for money.

Defence *officials* should be aware that 'Commonwealth policies' (paragraph 4.2e.) may include Cabinet decisions and other formal directions issued by the Government (whether through the Minister for Defence or otherwise).

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

Defence Procurement Policy Directives

- D8. Defence *officials* undertaking *procurement* valued at or above \$200,000 (including GST) **must** develop a written *procurement* plan for the *procurement* commensurate with its scale, scope and risk, and which takes account of the *procurement* life cycle, including cost of ownership and disposal considerations.
- D9. Defence *officials* **must** obtain an 'Endorsement to Proceed' prior to approaching the market for *procurements* to establish a *standing offer* arrangement, and all other *procurements* that are valued at or above \$200,000 (including GST).

Notes: See paragraphs 95 to 97 in Chapter 2 of the DPPM for guidance about *procurement* plans, including that the Endorsement to Proceed document may be sufficient to serve as the *procurement* plan for less complex *procurements*. More detailed guidance is set out in Chapter 2 of the Complex Procurement Guide.

Defence *officials* should refer to paragraphs 9.2 – 9.6 of the CPRs in relation to estimating the value of a *procurement*.

An Endorsement to Proceed may also be required to place an order under a *standing offer*. Defence *officials* should refer to the [Endorsement to Proceed factsheet](#).

CPR 4.4 – 4.8**Achieving value for money**

- 4.4 Achieving value for money is the core rule of the CPRs. *Officials* responsible for a *procurement* **must** be satisfied, after reasonable enquires, that the *procurement* achieves a value for money outcome. *Procurements* should:
- a. encourage competition and be non-discriminatory;
 - b. use *public resources* in an efficient, effective, economical and ethical manner that is not inconsistent with the policies of the Commonwealth;
 - c. facilitate accountable and transparent decision making;
 - d. encourage appropriate engagement with risk; and
 - e. be commensurate with the scale and scope of the business requirement.
- 4.5 When conducting a *procurement*, an *official* **must** consider the relevant financial and non-financial costs and benefits of each *submission* including, but not limited to:
- a. the quality of the *goods* and services;
 - b. fitness for purpose of the proposal;
 - c. the *potential supplier's* relevant experience and performance history;
 - d. flexibility of the proposal (including innovation and adaptability over the lifecycle of the *procurement*);
 - e. environmental sustainability of the proposed *goods* and services (such as energy efficiency and environmental impact); and
 - f. whole-of-life costs.
- 4.6 Whole-of-life costs could include:
- a. the initial purchase price of the *goods* and services;
 - b. maintenance costs;
 - c. transition out costs;
 - d. licensing costs (when applicable);
 - e. the cost of additional features procured after the initial *procurement*;
 - f. consumable costs; and
 - g. disposal costs.

Procurement-connected policies

- 4.7 *Procurement*-connected policies are policies of the Commonwealth for which *procurement* has been identified as a means of delivery. To assist *relevant entities* in complying with policies of the Commonwealth, Finance maintains a list of procurement-connected policies, which can be found at www.finance.gov.au/procurement.
- 4.8 Generally, procurement-connected policies are the responsibility of entities other than Finance. The relevant policy-owning entity is responsible for administering, reviewing and providing information on the policy as required.

Notes: Defence contracting templates are drafted and regularly updated to give effect to applicable Commonwealth legislation and policy (including the CPRs), and applicable Defence policy. If using an endorsed Defence contracting template (for example, ASDEFCON, the Defence Facilities and Infrastructure Suite of Contracts or the Commonwealth Contracting Suite) for a *procurement* for which the template is intended, Defence *officials* may rely on the template as meeting applicable legislation and policy requirements. The endorsed Defence contracting templates may be found on the Commercial Division [Tools and Templates intranet page](#).

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Notes (cont): Defence has numerous business policy owners that are responsible for ensuring Defence complies with applicable Commonwealth legislation and policy requirements, as well as with particular State and Territory legislation that may also apply to Defence activities. This legislation and policy often interacts with Defence *procurement* and in many cases is given effect to through *contracts*. There are many policy or support areas in Defence that that can assist in relation to this legislation and policy that intersects with *procurement* (eg contracting, legal, finance, environment, work health and safety, security, technical regulatory frameworks etc). These resources can be found on the procurement support areas link on the [Commercial Division Help Desk Kiosk](#) intranet page.

Defence Procurement Policy Directives

Trade sanctions

D10. Defence *officials* undertaking a *procurement* **must** ensure that the *procurement* does not breach any current [Australian Government trade sanctions](#).

Indigenous Procurement Policy

D11. Prior to approaching the market, Defence *officials* must determine whether the Indigenous Procurement Policy (IPP) applies to the *procurement* and if so comply with the IPP (see also Appendix A, item 17 of the CPRs).

Notes: The IPP is a procurement connected policy.

In addition, while not a Defence Procurement Policy Directive, Defence *officials* should also determine whether a disability business could deliver the required *goods* or services on a value for money basis before making any *approach to market*. If satisfied that value for money can be achieved, then the Defence *official* should procure the *goods* or services from the disability business (as permitted by Appendix A of the CPRs, item 16). If not, then the Defence *official* may procure through normal means. A list of Australian disability businesses can be found at the Australian Disability Enterprises website www.ade.org.au.

See Chapter 2 of the DPPM for more information about the IPP and the disability business exemption.

Workplace gender equality

D12. Defence *officials* undertaking a *procurement* at or above the relevant *procurement threshold* **must not** purchase *goods* or services from [contractors that do not comply](#) with the *Workplace Gender Equality Act 2012*.

Note: Workplace gender equality is a procurement connected policy.

Australian Industry Capability (AIC)

D13. Defence *officials* **must** comply with the Defence Australian Industry Capability (AIC) policy for *procurements* valued at or above \$20 million (including GST), and in particular ensure that the successful *supplier* in the *procurement* implements an AIC plan.

Note: Australian Industry Participation Plans (AIP) for Government Procurement is a procurement connected policy, which was developed in accordance with the AIP National Framework. The AIP National Framework is available at www.industry.gov.au/aip. However, paragraph 3.2 of the Department of Industry, Innovation and Science's User Guide for AIP Plans states that the AIP policy 'does not apply to Department of Defence procurement, which applies similar policies and programmes'. This is a reference to the Defence AIC policy and program. Currently, only the ASDEFCON contracting templates incorporate provisions that give effect to the AIC program, including requiring *tenderers* to submit AIC plans as part of the tender process. The successful *tenderer* is required to give effect to the agreed AIC plan under the *contract*. The AIC program is currently being updated following the [Defence Industry Policy Statement 2016](#). For further information about the AIC program, Defence *officials* should refer to the [Defence Industry Policy Division intranet page](#).

Code for the Tendering and Performance of Building Work 2016

D14. Defence *officials* **must** comply with the Code for the Tendering and Performance of Building Work 2016 (Building Work Code) when undertaking *procurements* for building work to which the Building Work Code applies.

Note: The Building Work Code is a procurement connected policy. In summary, the Building Work Code prevents Commonwealth agencies such as Defence from permitting companies to tender or enter into *contracts* for Commonwealth funded building work, unless the companies meet the requirements of the Building Work Code. In Defence, *procurements* for building work are normally managed by the Defence Estate and Infrastructure Group. The Defence Facilities and Infrastructure Suite of Contracts include provisions to ensure that Defence complies with the Building Work Code.

Public-private partnerships (PPP) policy

D15. Defence *officials* **must:**

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- consider using a public-private partnership (PPP) for all project proposals having an estimated capital cost over \$50 million where there is an opportunity to enter into a long term *contract* (for example, 15-30 years) with a focus on the delivery of services to government (for example, making materiel or facilities available for use by Defence); and
- comply with the [National PPP Policy and Guidelines](#) (December 2008), and complete a [PPP Suitability Checklist](#).

Note: More guidance on PPPs is set out in the [Procurement Delivery Models Better Practice Guide](#). PPPs (or Private Finance Initiatives or 'PFIs') involve the creation of an asset through financing and ownership control by a private party and private sector delivery of related services that may normally have been provided by the Commonwealth. The Commonwealth may contribute to establishing the infrastructure, for example through land, capital works or risk sharing. The service delivered may be paid for by the Commonwealth or directly by the end user. Defence *officials* should consult with the [Public Private Partnership Centre of Expertise](#), and engage the Resource Assurance and Analysis Branch, in Chief Finance Officer Group (CFOG) for an independent review of financial and budgetary impact. Building work that involves a PPP or PFI for the delivery of functions or services of the Commonwealth is also subject to the Building Work Code (see Defence Procurement Policy Directive D14).

CPR 4.9 – 4.10

Coordinated procurement

- 4.9 Coordinated *procurement* refers to whole-of-government arrangements for procuring *goods* and services. A list of coordinated *procurements* can be found at www.finance.gov.au/procurement.
- 4.10 *Non-corporate Commonwealth entities must* use coordinated *procurements*. Exemptions from coordinated *procurements* can only be granted jointly by the requesting *non-corporate Commonwealth entity's* Portfolio Minister and the Finance Minister when a *non-corporate Commonwealth entity* can demonstrate a special need for an alternative arrangement. Prescribed *Corporate Commonwealth entities* may opt-in to coordinated *procurements*.

Defence Procurement Policy Directives

- D16. Prior to selecting a *procurement* method, Defence *officials must* determine whether a coordinated *procurement* arrangement has been established for the *goods* or services to be procured.
- D17. If a coordinated *procurement* arrangement has been established for *goods* or services, Defence *officials must* use the arrangement when procuring relevant *goods* or services unless an exemption is in place.

Notes: The Department of Finance has established several whole of government coordinated *procurement* arrangements for various *goods* and services, for example, ICT, telecommunications, stationery and office supplies, and airline travel. Defence *officials* can find more details at <http://www.finance.gov.au/procurement/wog-procurement>.

Specialised military and classified telecommunications products and services (for military or intelligence agencies) fall outside the operation of the telecommunications coordinated *procurement* arrangements. For information about these exemptions Defence *officials* should refer to [CIOG Non Materiel Procurement Services](#).

CPR 4.11 – 4.13

Cooperative procurement

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

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- 4.12 If a *relevant entity* intends to join an existing *contract* of another *relevant entity*, the initial *request documentation* and the *contract must* have already specified potential use by other *relevant entities*.
- 4.13 *Relevant entities* joining an existing *contract must* ensure that:
- value for money is achieved;
 - the *goods* and services being procured are the same as provided for within the contract; and
 - the terms and conditions of the *contract* are not being materially altered.

Notes: The CASG Support Services panel (CAS-SS Panel) is an example of a cooperative *procurement*. The panel was established so as to be able to be accessed by other Commonwealth agencies, and as a result many agencies have used and continue to use this panel for a range of support services.

Defence *officials* who are planning to establish a new *standing offer* arrangement with multiple *suppliers* should consider whether it would be appropriate for other Commonwealth agencies to be able to use the proposed panel for their needs. If so, the *approach to market* for the panel (and the panel deed) will need to expressly advise the *potential suppliers* that the panel may be used not only by Defence, but also by other agencies. However, in such circumstances, Defence *officials* will also need to consider the administrative arrangements for how the panel may be used, the extent to which this will impose an additional resource burden on Defence, and whether there will be any administrative fee charged to other agencies to cover Defence's costs of managing the panel.

CPR 4.14 – 4.15

Contract end dates

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

Third-party procurement

- 4.15 *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.

Note: Under Defence *contracts*, it is not unusual for contractors to be required to undertake *procurements* on behalf of Defence. In many cases, this is simply part of the contractor's overall contracted responsibility to deliver a particular capability or outcome to Defence. In these cases, Defence does not usually intervene to specify that the contractors comply with CPR requirements, although Defence may wish to approve or specify under the *contract* the key subcontractors that the contractor will use, and further impose obligations on the contractor to ensure value for money is obtained, for example, by requiring the contractor to undertake competitive *procurements*. In other cases, the Commonwealth may task a contractor to undertake *procurement* activity that Defence *officials* might normally undertake themselves; that is, Defence is outsourcing the *procurement* function itself. In these cases, it may be appropriate to require the contractor to comply with the CPRs as if they were bound by them. If not, it could be argued that Defence was outsourcing the *procurement* function simply to avoid the operation of the CPRs. Defence is always under an obligation to ensure that its *procurement* activities (whether outsourced or not) deliver value for money to the Commonwealth.

5. Encouraging Competition

CPR 5.1 – 5.2

Encouraging competition

- 5.1 Competition is a key element of the Australian Government's *procurement* framework. Effective competition requires non-discrimination and the use of competitive *procurement* processes.
- 5.2 Participation in *procurement* imposes costs on relevant entities and *potential suppliers*. Those costs should be considered when designing a process that is commensurate with the scale, scope and risk of the proposed *procurement*.

Note: Chapter 2 of the DPPM discusses the importance of competition and selecting an appropriate *procurement* process to achieve value for money outcomes.

CPR 5.3

Non-discrimination

- 5.3 The Australian Government's *procurement* framework is non-discriminatory. All *potential suppliers* to government **must**, subject to these CPRs, be treated equitably based on their commercial, legal, technical and financial abilities and not be discriminated against due to their size, degree of foreign affiliation or ownership, location, or the origin of their *goods* and services.

Note: See Chapter 2 of the DPPM for more information about the non-discrimination principle.

CPR 5.4 – 5.5

Small and Medium Enterprises

- 5.4 To ensure that *Small and Medium Enterprises* (SMEs) can engage in fair competition for Australian Government business, *officials* should apply *procurement* practices that do not unfairly discriminate against SMEs and provide appropriate opportunities for SMEs to compete. *Officials* should consider, in the context of value for money:
 - a. the benefits of doing business with competitive SMEs when specifying requirements and evaluating value for money;
 - b. barriers to entry, such as costly preparation of *submissions*, that may prevent SMEs from competing;
 - c. SMEs' capabilities and their commitment to local or regional markets; and
 - d. the potential benefits of having a larger, more competitive *supplier* base.
- 5.5 The Australian Government is committed to *non-corporate Commonwealth entities* sourcing at least 10 per cent of *procurement* by value from SMEs.

Notes: In the Defence context, the Australian Government's policy relating to small to medium enterprises (SMEs) is given effect to through the Defence Industry Policy 2016, and in particular, the Australian Industry Capability (AIC) program. As noted in Chapter 2 of the DPPM, the AIC program is identified as a specific exemption from the 'non-discrimination' principle (reflected in paragraph 5.3 of the CPRs) in the Australia-US Free Trade Agreement (AUSFTA), and other FTAs to which Australia is a party. The AUSFTA (Chapter 15, Annex A) provides that 'the Australian Government reserves the right to maintain the Australian Industry Involvement program and its successor programs and policies.' The AIC program is a successor to the previous Australian Industry Involvement (AII) program.

The ASDEFCON templates incorporate provisions that give effect to the AIC program, including requiring *tenderers* to submit AIC plans as part of the tender process. The successful *tenderer* is required to give effect to the agreed AIC plan under the *contract*. See also Defence Procurement Policy Directive D13 and the related note following.

6. Efficient, effective, economical and ethical procurement

CPR 6.1 – 6.8**Efficient, effective, economical and ethical procurement**

- 6.1 The Australian Government promotes the proper use and management of *public resources*. Proper means efficient, effective, economical and ethical. For *non-corporate Commonwealth entities*, this would also include being not inconsistent with the policies of the Commonwealth.
- 6.2 Efficient relates to the achievement of the maximum value for the resources used. In *procurement*, it includes the selection of a *procurement* method that is the most appropriate for the *procurement* activity, given the scale, scope and risk of the *procurement*.
- 6.3 Effective relates to the extent to which intended outcomes or results are achieved. It concerns the immediate characteristics, especially price, quality and quantity, and the degree to which these contribute to specified outcomes.
- 6.4 Economical relates to minimising cost. It emphasises the requirement to avoid waste and sharpens the focus on the level of resources that the Commonwealth applies to achieve outcomes.
- 6.5 Ethical relates to honesty, integrity, probity, diligence, fairness and consistency. Ethical behaviour identifies and manages conflicts of interests, and does not make improper use of an individual's position.

Note: Chapter 2 of the DPPM, and the Complex Procurement Guide, provide more guidance about probity and effective industry engagement.

Ethical behaviour

- 6.6 In particular, *officials* undertaking *procurement* **must** act ethically throughout the *procurement*. Ethical behaviour includes:
 - a. recognising and dealing with actual, potential and perceived conflicts of interest;
 - b. dealing with *potential suppliers*, *tenderers* and *suppliers* equitably, including by:
 - i. seeking appropriate internal or external advice when probity issues arise, and
 - ii. not accepting inappropriate gifts or hospitality;
 - c. carefully considering the use of *public resources*; and
 - d. complying with all directions, including *relevant entity* requirements, in relation to gifts or hospitality, the Australian Privacy Principles of the *Privacy Act 1988* and the security provisions of the *Crimes Act 1914*.
- 6.7 Relevant entities **must** not seek to benefit from *supplier* practices that may be dishonest, unethical or unsafe. This includes not entering into *contracts* with *tenderers* who have had a judicial decision against them (not including decisions under appeal) relating to employee entitlements and who have not satisfied any resulting order. *Officials* should seek declarations from all *tenderers* confirming that they have no such unsettled orders against them.

Note: The [endorsed Defence contracting templates](#) contain the necessary provisions and form of statutory declaration to give effect to paragraph 6.7 of the CPRs.

- 6.8 If a complaint about *procurement* is received, relevant entities **must** apply equitable and non-discriminatory complaint-handling procedures. Relevant entities should aim to manage the complaint process internally, when possible, through communication and conciliation.

Defence Procurement Policy Directive

D18. If a Defence *official* receives a complaint from a third party in relation to a Defence *procurement*, the *official* **must** ensure that the complaint is managed in accordance with the Defence Procurement Complaints Handling Process.

Note: The Defence Procurement Complaints Handling Process can be found on the Commercial Division [Factsheets and Guidance intranet page](#). A *procurement* complaint in itself does not constitute a formal 'claim' against the Commonwealth that would need to be managed in accordance with [AAIs](#) and the Attorney General's Legal Services Directions. A 'claim' would normally not arise until legal action is impending or indeed has been commenced against the Commonwealth.

7. Accountability and transparency in procurement

CPR 7.1 – 7.4

Accountability and transparency in procurement

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

Records

- 7.2 *Officials must* maintain for each *procurement* a level of documentation commensurate with the scope, scale and risk of the *procurement*. Documentation should provide accurate and concise information on:
- the requirement for the *procurement*;
 - the process that was followed;
 - how value for money was considered and achieved;
 - relevant approvals; and
 - relevant decisions and the basis of those decisions.
- 7.3 Relevant entities **must** have access to evidence of agreements with *suppliers*, in the form of one or a combination of the following documents: a written *contract*, a purchase order, an invoice or a receipt.
- 7.4 Documentation **must** be retained in accordance with the *Archives Act 1983*.

Note: For Defence policy in relation to record keeping, Defence *officials* should refer to the [Defence Records Management Manual](#) (RECMAN). RECMAN takes a principles based approach to records management and does not include information about practices and procedures – which are proposed to be set out in a Records Management Operations Guide (under development). For further information, Defence *officials* should contact Directorate of Records Management Policy at DRMP.Policy@defence.gov.au.

CPR 7.5 – 7.8

AusTender

- 7.5 *AusTender*, the Australian Government's *procurement* information system, is a centralised web-based facility that publishes a range of information, including relevant entities' planned *procurements*, *open tenders* and *contracts* awarded. It also supports secure electronic tendering to deliver integrity and efficiency for relevant entities and *potential suppliers*.
- 7.6 *AusTender* is the system used to enable relevant entities to meet their publishing obligations under the CPRs. It also enables relevant entities to monitor and review their *AusTender*-based *procurements*, including approaches to market, publication of *contracts*, and amendments to *contracts*.

Annual procurement plans

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

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

Notes: The *Annual Procurement Plan* (APP) is a tool that facilitates early *procurement* planning and notifies *potential suppliers* to the planned Defence *procurements*. The APP includes a short strategic *procurement* outlook for Defence supported by details of any planned *procurements*. The APP includes only those opportunities that are planned as *open tender* as there are linkages between the APP and subsequent *approaches to market*.

For practical reasons (given the volume of Defence *procurement*), Defence includes in its APP only those *procurements* valued at or above \$1,000,000 (GST inclusive). *Procurements* of a lesser value can be included if advance notice to industry is desired, but this is not mandatory.

Details regarding the coordination and publication of Defence's APP can be found on the [AusTender Publishing intranet page](#). Defence *officials* should refer to the intranet page for more information about the APP process.

CPR 7.9 – 7.13

Notifications to the market

- 7.9 Relevant entities **must** use *AusTender* to publish *open tenders* and, to the extent practicable, to make relevant *request documentation* available. *Relevant entities* may use *AusTender* to publish *limited tender approaches to market* and make relevant *request documentation* available.

Note: All open *approaches to market* (*open tenders*) from Capability Acquisition and Sustainment Group (CASG) to be published on *AusTender* are managed centrally through the [CASG e-tendering service](#). Defence *officials* from other Groups and Services can submit requests for *AusTender* publication for open *approaches to market* to defence.procurement@defence.gov.au. For further information about *AusTender* publication, Defence *officials* should refer to the Commercial Division [AusTender intranet page](#).

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

Defence Procurement Policy Directive

D19. Defence *officials* undertaking a *procurement* **must** ensure that the *evaluation criteria* advertised in the *request documentation* are the criteria used for the evaluation of *submissions*.

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

Note: The [Department of Finance's Resource Management Guide No 407](#) sets out Commonwealth policy in relation to advertising open *approaches to market* in the media. As a general rule, such advertising is not permitted, although exemptions from the policy may be granted on a case by case basis.

- 7.12 When a *relevant entity* provides *request documentation* or any other document, already published on *AusTender* in any other form (for example, a printed version) that documentation **must** be the same as that published on *AusTender*.
- 7.13 The initial approach to market for a multi-stage procurement must include, for every stage, the criteria that will be used to select *potential suppliers*, and if applicable, any limitation on the number of *potential suppliers* that will be invited to make *submissions*.

CPR 7.14 – 7.15

Providing information

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

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

Note: Defence *officials* should refer to Chapter 5 of the Complex Procurement Guide for guidance about when to inform an affected *tenderer* of a decision in relation to a *procurement* process.

CPR 7.16 – 7.18

Reporting arrangements

- 7.16 Relevant entities *must* report *contracts* and amendments on *AusTender* within 42 days of entering into (or amending) a *contract* if they are valued at or above the reporting threshold.
- 7.17 The *reporting thresholds* (including GST) are:
- a. \$10,000 for *non-corporate Commonwealth entities*; and
 - b. for prescribed *corporate Commonwealth entities* ,
 - i. \$400,000 for procurements other than procurement of construction services, or
 - ii. \$7.5 million for procurement of construction services.
- 7.18 Regardless of value, *standing offers* must be reported on *AusTender* within 42 days of the *relevant entity* entering into or amending such arrangements. Relevant details in the *standing offer* notice, such as *supplier* details and the names of other relevant entities participating in the arrangement, must be reported and kept current.

Defence Procurement Policy Directive

D20. To enable Defence to meet its accountability and transparency requirements (including *AusTender* reporting), for all new *contracts* and *contract* amendments that meet the *AusTender reporting thresholds*, Defence *officials must* complete the AE643 Defence Purchasing form.

Notes: The reporting threshold in paragraph 7.17a of the CPRs applies to the Department of Defence as a *non-corporate Commonwealth entity*.

The CPR reporting requirements apply equally to *contract* changes (whether called a *contract* change, amendment or variation or some other terminology) that are valued at or above the relevant *reporting threshold* as they do to the original *contracts*. However, the reporting requirements do not apply to *contracts* or *contract* changes for goods or services procured outside Australia to be used completely outside of Australia.

To assist Defence to meet its *AusTender* reporting requirements, Defence has developed the [AE643 form](#) and related *AusTender* reporting procedure. The form and procedure covers the proper recording of *contracts* and amendments that may be undertaken or processed through ROMAN, MILIS and the CMS financial management system. Defence *officials* should refer to the Commercial Division [AusTender intranet page](#) for more information about *AusTender* reporting requirements, including in relation to *standing offer* notices.

CPR 7.19

Subcontractors

- 7.19 *Relevant entities must* make available on request, the names of any subcontractor(s) engaged by a contractor in respect of a *contract*.
- a. Relevant entities *must* require contractors to agree to the public disclosure of the names of any subcontractors engaged to perform services in relation to a *contract*.
 - b. Contractors *must* be required to inform relevant subcontractors that the subcontractor's participation in fulfilling a *contract* may be publicly disclosed.

Note: The [endorsed Defence contracting templates](#) contain the necessary provisions to give effect to paragraph 7.19 of the CPRs.

CPR 7.20 – 7.23

Treatment of confidential information

- 7.20 When conducting a *procurement* and awarding a *contract*, *relevant entities* should take appropriate steps to protect the Commonwealth's confidential information. This includes observing legal obligations, such as those under the *Privacy Act 1988*, and statutory secrecy provisions.
- 7.21 *Submissions must* be treated as confidential before and after the award of a *contract*. Once a *contract* has been awarded the terms of the *contract*, including parts of the *contract* drawn from the *supplier's submission*, are not confidential unless the *relevant entity* has determined and identified in the *contract* that specific information is to be kept confidential in accordance with the 'confidentiality test' set out in the guidance on *Confidentiality Throughout the Procurement Cycle* at www.finance.gov.au/procurement.
- 7.22 The need to maintain the confidentiality of information should always be balanced against the public accountability and transparency requirements of the Australian Government. It is therefore important for *officials* to plan for, and facilitate, appropriate disclosure of *procurement* information. In particular, *officials* should:
- include provisions in *request documentation* and contracts that alert *potential suppliers* to the public accountability requirements of the Australian Government, including disclosure to the Parliament and its committees;
 - when relevant, include a provision in *contracts* to enable the Australian National Audit Office to access contractors' records and premises to carry out appropriate audits; and
 - consider, on a case-by-case basis, any request by a *supplier* for material to be treated confidentially after the award of a *contract*, and enter into commitments to maintain confidentiality only when such commitments are appropriate.
- 7.23 When confidential information is required to be disclosed, for example following a request from a parliamentary committee, reasonable notice in writing **must** be given to the party from whom the information originated.

Note: The [endorsed Defence contracting templates](#) contain the necessary provisions to give effect to the CPR requirements on treatment of confidential information. Defence *officials* should refer to the Commercial Policy [Factsheets and Guidance intranet page](#) for more guidance on how to determine what information is actually 'confidential' and the use of confidentiality provisions in Defence *contracts*.

CPR 7.24

Other obligations

- 7.24 Other reporting and disclosure obligations apply to *officials* undertaking *procurement*, including:
- disclosure of *procurement* information for *relevant entity* annual reporting purposes;
 - disclosure of non-compliance with the CPRs through the Commonwealth's compliance reporting process;
 - disclosure to the Parliament and its committees, as appropriate, in line with the Government Guidelines for *Officials Witnesses before Parliamentary Committees and Related Matters*;
 - disclosure of information consistent with the *Freedom of Information Act 1982*; and
 - disclosure of discoverable information that is relevant to a case before a court.

8. Procurement risk

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CPR 8.1 – 8.4**Procurement risk**

- 8.1 Risk management comprises the activities and actions taken by a *relevant entity* to ensure that it is mindful of the risks it faces, that it makes informed decisions in managing these risks, and identifies and harnesses potential opportunities.
- 8.2 Relevant entities **must** establish processes for the identification, analysis, allocation and treatment of risk when conducting a *procurement*. The effort directed to risk assessment and management should be commensurate with the scale, scope and risk of the *procurement*. Relevant entities should consider risks and their potential impact when making decisions relating to value for money assessments, approvals of proposals to spend *relevant money* and the terms of the *contract*.
- 8.3 Relevant entities should consider and manage their procurement security risk in accordance with the *Australian Government's Protective Security Policy Framework*.
- 8.4 As a general principle, risks should be borne by the party best placed to manage them; that is, relevant entities should generally not accept risk which another party is better placed to manage. Similarly, when a *relevant entity* is best placed to manage a particular risk, it should not seek to inappropriately transfer that risk to the *supplier*.

Defence Procurement Policy Directives

- D21. For all *procurements* at or above the relevant *procurement threshold*, Defence *officials must*:
- undertake a risk assessment so that they are properly informed about the risks associated with the *procurement*; and
 - subject to the risk assessment, develop and implement a risk management plan to manage the risks.
- D22. Defence *officials must* undertake a liability risk assessment prior to agreeing to limit a third party's liability under a *contract*.

Notes: Chapter 2 of the DPPM provides guidance on risk management.

The Commonwealth may limit a third party's (including a contractor's) liability in various ways, for instance, by agreeing to one or more financial caps on different heads of loss or damage that a contractor may be exposed to under a contract (for example, for personal injury, property damage, delay or other contractual non-performance). Defence has developed tools and guidance to assist Defence *officials* with undertaking [liability risk assessments](#). See also Defence Procurement Policy Directive D6 which requires Defence *officials* to undertake a liability risk assessment in relation to contingent liabilities.

9. Procurement method

CPR 9.1**Procurement method**

- 9.1 Australian Government *procurement* is conducted by one of three methods *open tender*, *prequalified tender* or *limited tender*. These methods are detailed in this section.

Defence Procurement Policy Directives

- D23. In deciding on the *procurement* method for a *procurement*, Defence *officials must* ensure that the method is commensurate with the scope, scale, and risk of the *procurement* and is consistent with value for money.
- D24. Defence *officials must* ensure that all *procurement* method decisions are appropriately documented.

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Note: For *procurements* valued at or above \$200,000 (GST inclusive), the Endorsement to Proceed template is normally the mechanism by which *procurement* method decisions are documented. The Commitment Approval delegate (see section 23(3) of the PGPA Act) would also confirm the *procurement* method decision as part of the exercise of their delegation.

CPR 9.2 – 9.7**Requirement to estimate value of procurement**

- 9.2 The expected value of a *procurement* **must** be estimated before a decision on the *procurement* method is made. The expected value is the maximum value (including GST) of the proposed *contract*, including options, extensions, renewals or other mechanisms that may be executed over the life of the *contract*.
- 9.3 The maximum value of the *goods* and services being procured **must** include:
- a. all forms of remuneration, including any premiums, fees, commissions, interest, allowances and other revenue streams that may be provided for in the proposed *contract*;
 - b. the value of the *goods* and services being procured, including the value of any options in the proposed *contract*; and
 - c. any taxes or charges.
- 9.4 When a *procurement* is to be conducted in multiple parts with *contracts* awarded either at the same time or over a period of time, with one or more *suppliers*, the expected value of the *goods* and services being procured **must** include the maximum value of all of the *contracts*.
- 9.5 A *procurement* **must** not be divided into separate parts solely for the purpose of avoiding a relevant *procurement* threshold.
- 9.6 When the maximum value of a *procurement* over its entire duration cannot be estimated the *procurement* **must** be treated as being valued above the relevant *procurement* threshold.

Procurement thresholds

- 9.7 When the expected value of a *procurement* is at or above the relevant *procurement* threshold and an exemption in Appendix A is not utilised, the rules in Division 2 **must** also be followed. The *procurement* thresholds (including GST) are:
- a. for *non-corporate Commonwealth entities*, other than for *procurements* of *construction services*, the *procurement* threshold is \$80,000;
 - b. for prescribed *corporate Commonwealth entities*, other than for *procurements* of *construction services*, the *procurement* threshold is \$400,000; or
 - c. for *procurements* of *construction services* by relevant entities, the *procurement* threshold is \$7.5 million.

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Defence Procurement Policy DirectivesProcurements under \$10,000 (GST inclusive) - Defence Purchasing Card

- D25. For *procurements* valued under \$10,000 (GST inclusive), Defence *officials must* use the Defence Purchasing Card (DPC), unless there are valid reasons for not doing so.
- D26. Defence *officials must* not use the DPC for *procurements* made through MILIS (the core logistics management system in Defence).

Procurements under \$200,000 (GST inclusive) - Commonwealth Contracting Suite

- D27. For *procurements* valued under \$200,000 (GST inclusive), Defence *officials must* use the Department of Finance's Commonwealth Contracting Suite (CCS), unless the *procurement* has been assessed as exempt from this requirement by applying the Defence specific CCS Decision Tree.
- D28. If the *procurement* is exempt from using the CCS, the *official must* use an endorsed Defence contracting template.

Procurements valued at or above \$200,000 (GST inclusive)

- D29. For *procurements* valued between \$200,000 and \$1 million (GST inclusive), officials must consider using the CCS as the basis for the procurement. If the CCS is unsuitable or the procurement is valued at or above \$1 million (GST inclusive), if an endorsed Defence contracting template exists for the type of *procurement* being undertaken, Defence *officials must* use that template as the basis for the *procurement*.
- D30. If a Defence *official* intends to use a form of *contract* other than an endorsed Defence contracting template, the *official must* ensure the *contract* is appropriate for the requirement, and capable of achieving an appropriate risk allocation consistent with the Commonwealth resource management framework.

Procurements through the US Foreign Military Sales (FMS) system

- D31. If a Defence *official* is undertaking a *procurement* through the FMS system, the *official must* consult with the Office of the Counsellor Defence Materiel (Washington) (DEFMAT (W)) prior to establishing or amending the FMS case.

Notes: Defence *officials* should follow the [Simple Procurement Process](#) when undertaking low risk, low value (or 'simple') *procurements*.

For Defence Procurement Policy Directive D27, the Department of Finance's Commonwealth Contracting Suite (CCS) and the Defence specific CCS Decision Tree can be found at the Department of Finance's [Commonwealth Contracting Suite](#) webpage.

The endorsed Defence contracting templates and guidance on appropriate template selection can be found on the Commercial Policy [Tools and Templates](#) intranet page.

The US Foreign Military Sales (FMS) program is a form of security assistance authorised by the US Arms Export Control Act (AECA) and is part of US foreign policy. Under Section 3, of the AECA, the US may sell defence articles and services to foreign countries like Australia when to do so will strengthen the security of the US and promote world peace. For more information about the FMS system see the [Support Office Foreign Military Sales](#) intranet page.

The Capability Acquisition and Sustainment Group has a Washington office (CASG-W) which is the focal point for Defence materiel related activity in North America, providing acquisition and sustainment support to Defence and other Australian government agencies. DEFMAT (W) provides acquisition advice to the Head of Australian Defence Staff (Washington) (HADS(W)) and is the representative of Deputy Secretary CASG in North America. The office supports a range of activities, including FMS and direct commercial *procurements*. For more information and contact details see the [Support Office Foreign Military Sales](#) intranet page.

CPR 9.8**Three procurement methods**Method 1 – Open tender

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

Defence Procurement Policy Directive

D32. Defence *officials must* use an *open tender* process for all *procurements* at or above the relevant *procurement threshold*, unless the conditions for a *limited tender* can be satisfied, or the *procurement* is otherwise exempt from this requirement.

Note: See Defence Procurement Policy Directive D2 (and the related Table 1) for Defence *procurements* that are exempt from the *open tender* requirement. Appendix A of the CPRs also sets out various kinds of *procurements* that do not require *open tender* processes.

See paragraphs 30 to 36 in Chapter 2 of the DPPM for guidance about *procurement* methods.

CPR 9.9Method 2 – Prequalified tender

- 9.9 *Prequalified tender* involves procurements from the *Legal Services Multi-use List*.

CPR 9.10 – 9.11Method 3 – Limited tender

- 9.10 *Limited tender* involves a *relevant entity* approaching one or more *potential suppliers* to make *submissions*, when the process does not meet the rules for *open tender* or *prequalified tender*.
- 9.11 For *procurements* at or above the relevant *procurement threshold*, *limited tender* can only be conducted in accordance with paragraph 10.3, or when a *procurement* is exempt as detailed in Appendix A.

Defence Procurement Policy Directive

D33. For *procurements* at or above the relevant *procurement threshold*, a Defence *official must not* use a *limited tender* process unless a circumstance in paragraph 10.3 of the CPRs applies, or the *procurement* is otherwise exempt from this requirement.

D34. In undertaking a *limited tender*, Defence *officials must* ensure that, where practicable, the number of *potential suppliers* invited to participate in the process is sufficient to ensure a value for money outcome.

Notes: Many *procurements* related to the acquisition or sustainment of Defence major capital equipment are undertaken through *limited tender* processes, despite not meeting the requirements of paragraph 10.3 of the CPRs. Usually, this is because they are exempt *procurements* of goods or services (see Defence Procurement Policy Directives D2-D4).

A particular *procurement* may be categorised as a *limited tender*, irrespective whether or not a request for tender or similar *request documentation* is used to undertake the *procurement*. Further, a 'sole source' arrangement with a contractor constitutes a *limited tender* for the purposes of the CPRs. Similarly, each FMS case with the US Government constitutes a *limited tender*.

See paragraphs 37 to 45 in Chapter 2 of the DPPM for guidance about how the circumstances set out in paragraph 10.3 of the CPRs may apply so as to justify using a *limited tender* process.

CPR 9.12 – 9.13**Procurement from existing arrangements**Procurements from standing offers

- 9.12 Procurements from an existing standing offer must comply with Division 1.
- 9.13 *Officials* should report the original *procurement* method used to establish the *standing offer* when they report *procurements* from *standing offers*.

Defence Procurement Policy Directive

- D35. If a *standing offer* panel arrangement is established in Defence for *goods* or services, Defence *officials* **must** use the *standing offer* when procuring relevant *goods* or services, unless there is a valid reason for not doing so.
- D36. Defence *officials* **must not** use a *standing offer* panel arrangement to order *goods* or services that were not specified in the *request documentation* used to establish the arrangement, even if the relevant *supplier* may be able to provide the *goods* or services.

Notes: *Standing offer* panels provide an efficient and effective mechanism to enable Defence *officials* to procure relevant *goods* and services from industry. The benefit of these arrangements is eroded if *officials* seek to procure outside the panel, noting that panel members also have the reasonable expectation that Defence will use the panel rather than procure outside it. Nevertheless, there may be occasions when Defence *officials* may need to procure *goods* or services outside the panel, for example, where particular knowledge or expertise is required that is only available outside the panel. A valid reason could also include where a *standing offer* panel arrangement has been established by another Commonwealth agency which is able to be used by Defence and which offers better value for money than the corresponding Defence panel. For further information on *standing offers* and current Defence *standing offer* panel arrangements, Defence *officials* should refer to the factsheet on the Commercial Division [Factsheets and Guidance](#) intranet page and the Commercial Division Defence [Goods and Services Directory](#) intranet page.

The Department of Finance has established several whole of government coordinated *procurement* arrangements for various *goods* and services, for example, ICT, telecommunications, stationery and office supplies, and airline travel. Defence *officials* are required to use these arrangements unless specific exemptions apply (see paragraphs 4.9 and 4.10 of the CPRs and Defence Procurement Policy Directives D16 and D17 and related Notes). Defence *officials* can find more details at <http://www.finance.gov.au/procurement/wog-procurement>.

Chapter 5

Procurements valued at or above the procurement thresholds

Note: Chapter 5 of the DPPM incorporates all the rules from Division 2 of the CPRs.

Defence Procurement Policy Directive

D37. Defence *officials* **must** comply with the Defence Procurement Policy Directives in Chapter 5 of the DPPM (in addition to those in Chapters 1, 3 and 4) when undertaking *procurements* in Defence, if the *procurement* is valued at or above the relevant *procurement threshold* (unless otherwise specified in the relevant Defence Procurement Policy Directive).

Note: Defence Procurement Policy Directive D37 means that, even though Defence *officials* may be exempt from having to comply with the additional rules in Division 2 of the CPRs in relation to their *procurement*, Defence *officials* are still required to comply with the Defence Procurement Policy Directives that are set out in Chapter 5 of the DPPM, unless stated otherwise. This is because these Defence Procurement Policy Directives are of general application and compliance with them will help to ensure that Defence undertakes its *procurements* in an efficient, effective, economical and ethical manner as required by the PGPA Act.

10. Additional rules

CPR 10.1 – 10.8

Additional rules

- 10.1 The rules set out in Division 2 are additional to those in Division 1 and **must** not be interpreted or applied in a manner that diminishes or negates Division 1.
- 10.2 A *procurement*, except a *procurement* that is specifically exempt in accordance with Appendix A, is subject to the rules contained in Division 2 if the expected value of the *procurement* is at, or above, the relevant *procurement threshold*.

Conditions for limited tender

- 10.3 A *relevant entity* **must** only conduct a *procurement* at or above the relevant *procurement threshold* through *limited tender* in the following circumstances:
 - a. when, in response to an *approach to market*:
 - i. no *submissions*, or no *submissions* that represented value for money, were received,
 - ii. no *submissions* that met the minimum content and format requirements for submission as stated in the request documentation were received, or
 - iii. no *tenderers* satisfied the conditions for participation,and the *relevant entity* does not substantially modify the essential requirements of the *procurement*; or
 - b. when, for reasons of extreme urgency brought about by events unforeseen by the *relevant entity*, the *goods* and services could not be obtained in time under *open tender*; or
 - c. for *procurements* made under exceptionally advantageous conditions that arise only in the very short term, such as from unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy, or receivership, and which are not routine *procurement* from regular *suppliers*; or
 - d. when the *goods* and services can be supplied only by a particular business and there is no reasonable alternative or substitute for one of the following reasons
 - i. the requirement is for works of art,

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- ii. to protect patents, copyrights, or other exclusive rights, or proprietary information, or
- iii. due to an absence of competition for technical reasons; or
- e. for additional deliveries of *goods* and services by the original *supplier* or authorised representative that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services, or installations, when a change of *supplier* would compel the *relevant entity* to procure *goods* and services that do not meet requirements for compatibility with existing equipment or services; or
- f. for *procurements* in a *commodity market*; or
- g. when a *relevant entity* procures a prototype or a first *good* or service that is intended for limited trial or that is developed at the *relevant entity's* request in the course of, and for, a particular *contract* for research, experiment, study, or original development; or
- h. in the case of a *contract* awarded to the winner of a design contest, provided that
 - i. the contest has been organised in a manner that is consistent with these CPRs, and
 - ii. the contest is judged by an independent jury with a view to a design *contract* being awarded to the winner.

Note: See paragraphs 37 to 45 in Chapter 2 of the DPPM for guidance about how the circumstances set out in paragraph 10.3 of the CPRs may apply so as to justify using a *limited tender* process.

- 10.4 A *procurement* at or above the relevant *procurement* threshold conducted by *limited tender* is not required to meet the rules in paragraphs 10.6 -10.13 (*Request documentation*), 10.19-10.30 (Minimum time limits), or 10.36 (*Awarding contracts*).
- 10.5 In accordance with the general rules for accountability set out in these CPRs, for each *contract* awarded through *limited tender*, an *official must* prepare and appropriately file within the *relevant entity's* records management system a written report that includes:
 - a. the value and type of *goods* and services procured;
 - b. a statement indicating the circumstances and conditions that justified the use of *limited tender*; and
 - c. a record demonstrating how the *procurement* represented value for money in the circumstances.

Request documentation

- 10.6 *Request documentation must* include a complete description of:
 - a. the *procurement*, including the nature, scope and the quantity of the *goods* and services to be procured or, where the quantity is not known, the estimated quantity, and any requirements to be fulfilled, including any technical *specifications*, conformity certification, plans, drawings, or instructional materials;
 - b. any *conditions for participation*, including any financial guarantees, information and documents that *potential suppliers* are required to submit;
 - c. any *minimum content and format requirements*;
 - d. *evaluation criteria* to be considered in assessing *submissions* and, if applicable to the evaluation, the relative importance of those criteria;
 - e. any dates for the delivery of *goods* or supply of services, taking into account the complexity of the *procurement*; and
 - f. any other terms or conditions relevant to the evaluation of submissions.
- 10.7 However, relevant entities are not obligated to release confidential information, information sensitive to essential security or information that may impede competition.
- 10.8 Relevant entities **must** ensure that *potential suppliers* and *tenderers* are dealt with fairly and in a non-discriminatory manner when providing information leading to, or following,

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an *approach to market*. Relevant entities **must** promptly reply to any reasonable request from a *potential supplier* for relevant information about a *procurement*, and when responding to such enquiries **must** avoid a *potential supplier*, or group of *potential suppliers*, gaining an unfair advantage in a competitive *procurement* process.

Defence Procurement Policy Directives

- D38. Defence *officials* **must** ensure that the *request documentation* for a *procurement* is consistent with the approved *procurement* plan and includes all of the information necessary to enable *potential suppliers* to properly prepare and lodge *submissions*.
- D39. Defence *officials* **must** ensure that all *potential suppliers* are provided with the same information in the *request documentation*, including any amendments to the *request documentation*.
- D40. For all competitive *procurement* processes, Defence *officials* **must** prepare a tender evaluation plan that is commensurate with the scale, scope and risk of the *procurement*.
- D41. Defence *officials* **must** ensure that the tender evaluation plan for a *procurement* is approved by the relevant *official* no later than the opening of *submissions*.

Note: Defence *officials* should refer to Chapter 5 of the Complex Procurement Guide for more information about how to undertake a tender evaluation for a complex procurement.

CPR 10.9 – 10.12

Specifications

- 10.9 In prescribing *specifications* for *goods* and *services*, a *relevant entity* **must**:
- not use *specifications* or prescribe any conformity assessment procedure in order to create an unnecessary obstacle to trade;
 - when possible, set out the *specifications* in terms of performance and functional requirements; and
 - base technical *specifications* on international standards, when they exist and apply to the relevant *procurement*, except when the use of international standards would fail to meet the *relevant entity's* requirements or would impose greater burdens than the use of recognised Australian standards.
- 10.10 Where an Australian standard is applicable for *goods* or *services* being procured, tender responses **must** demonstrate the capability to meet the Australian standard, and *contracts* **must** contain evidence of the applicable standards (see paragraph 10.38).
- 10.11 A *specification* **must** not require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer, or *supplier*, unless there is no other sufficiently precise or intelligible way of describing the requirement. In an exceptional circumstance when this type of *specification* is used, words such as 'or equivalent' **must** be included in the *specification*.
- 10.12 A *relevant entity* may conduct market research and other activities in developing *specifications* for a particular *procurement* and allow a *supplier* that has been engaged to provide those services to participate in *procurements* related to those services. Relevant entities **must** ensure that such a *supplier* will not have an unfair advantage over other *potential suppliers*.

Defence Procurement Policy Directive

- D42. If essential requirements are specified in *request documentation*, Defence *officials* **must** exclude a *tenderer* from further consideration in the *procurement* process, if the *official* considers that the *tenderer* has not met those requirements (unless the *procurement* is exempt from Division 2 of the CPRs).

Notes: Defence *officials* should refer to Chapter 3 of the Complex Procurement Guide for more

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information about the use of standards, *specifications* and essential requirements in *request documentation*. For *procurements* that are exempt from Division 2 of the CPRs, Defence Procurement Policy Directive D42 should be followed as good practice.

CPR 10.13 – 10.18**Modification of evaluation criteria or specifications**

10.13 When, during the course of a *procurement*, a *relevant entity* modifies the *evaluation criteria* or *specifications* set out in an *approach to market* or in *request documentation*, or amends or reissues an *approach to market* or *request documentation*, it **must** transmit all modifications or amended or reissued documents:

- a. to all the *potential suppliers* that are participating at the time the information is amended, if known, and, in all other cases, in the same manner as the original information; and
- b. in adequate time to allow *potential suppliers* to modify and re-lodge their *submissions*, if required.

Conditions for participation

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

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

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

- a. evaluate financial, commercial, and technical abilities on the basis of the *tenderer's* business activities, wherever they have occurred; and
- b. base its determination solely on the *conditions for participation* that the *relevant entity* has specified in either the *approach to market* or the *request documentation*.

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

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

- a. labour regulations, including ethical employment practices;
- b. occupational, health and safety; and
- c. environmental impacts.

Note: See the Notes following paragraph 4.8 of the CPRs.

Defence Procurement Policy Directive

D43. If *conditions for participation* are specified in *request documentation*, Defence *officials* **must** exclude a *tenderer* from further consideration in the *procurement* process, if the *official* considers that the *tenderer* has not met those conditions (unless the *procurement* is exempt from Division 2 of the CPRs).

Note: Defence *officials* should refer to Chapters 3 and 5 of the Complex Procurement Guide for more

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information about *conditions for participation*.

CPR 10.19 – 10.26

Minimum time limits

- 10.19 *Potential suppliers must* be required to lodge *submissions* in accordance with a common deadline.
- 10.20 Relevant entities **must** provide sufficient time for *potential suppliers* to prepare and lodge *submissions* in response to an *approach to market*. Time limits discussed in this section represent minimum time limits to lodge *submissions* and should not be treated as default time limits.
- 10.21 The time limit for *potential suppliers* to lodge a *submission must* be at least 25 days from the date and time that a *relevant entity* publishes an *approach to market* for an *open tender*.
- 10.22 The 25 day period referred to in paragraph 10.21 **must** be extended by five days for each of the following circumstances:
- when a *relevant entity* does not make *request documentation* available electronically from the date that a *relevant entity* published an *approach to market*; and/or
 - when a *relevant entity* does not accept *submissions* electronically.
- 10.23 A *relevant entity* may establish a time limit that is less than 25 days but no less than 10 days under the following circumstances”
- when the *relevant entity* has published details of the *procurement* in an *annual procurement plan on AusTender*, at least 40 days and not more than 12 months in advance, and those details include a description of the *procurement*, the timing of the *approach to market* and the procedure to obtain *request documentation*;
 - when the *relevant entity* procures commercial goods and services; or
 - when a genuine state of urgency renders the normal time limit impracticable.
- 10.24 In the case of a *multi-stage procurement* each *approach to market must* comply with the time limits stated in paragraph 10.21 – 10.23.
- 10.25 When a *relevant entity* intends to specify *conditions for participation* that require *potential suppliers* to undertake a separate registration procedure, the *relevant entity must* state the time limit for responding to the registration in the *approach to market*. Any such *conditions for participation must* be published in sufficient time to enable all *potential suppliers* to complete the registration procedures within the time limit for the *procurement*.
- 10.26 When a *relevant entity* extends the time limit for registration or *submission*, or when negotiations are terminated and *potential suppliers* are permitted to lodge new *submissions*, the new time limit **must** apply equitably.

Defence Procurement Policy Directive

- D44. Defence *officials must* not grant an extension to a deadline for registration or lodgement of *submissions* once the closing date for registration or *submissions* has passed.

CPR 10.27 – 10.30

Late submissions

- 10.267 Late *submissions must* not be accepted unless the *submission* is late as a consequence of mishandling by the *relevant entity*. A *relevant entity must* not penalise any *potential supplier* whose *submission* is received after the specified deadline if the delay is due solely to mishandling by the *relevant entity*.
- 10.28 *Relevant entity* mishandling does not include mishandling by a courier or mail service provider engaged by a *potential supplier* to deliver a *submission*. It is the responsibility of

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the *potential supplier* to ensure that the *submission* is dispatched in sufficient time for it to be received by the *relevant entity* by the deadline.

- 10.29 Late *submissions* should be returned unopened to the *potential supplier* who submitted them, to:
- ensure that they are not evaluated or compared with *submissions* which were submitted by the due time and date;
 - demonstrate to other *tenderers* that the process for receiving *submissions* is fair and impartial; and
 - eliminate scope for any suggestion that the *submission* was rejected for any reason other than because it was late.
- 10.30 It may be necessary to open a late *submission* if there is no return address or any indication of which *approach to market* the *submission* relates. When a *submission* has been opened under such circumstances the *potential supplier* should be advised that the *submission* was rejected due to lateness and advised of the reason it was opened.

Defence Procurement Policy Directives

- D45. Defence *officials* **must** decide whether to accept a late *submission* before the relevant *submission* is opened.
- D46. For *procurements* not covered by Division 2 of the CPRs, Defence *officials* may accept a late *submission* if this is consistent with probity in the circumstances of the case.

Notes: Before accepting a late *submission*, Defence *officials* should seek specialist contracting or legal advice. Defence *officials* should refer to Chapters 4 and 5 of the Complex Procurement Guide for more information about the probity risks relating to the acceptance of late tenders.

There are three ways through which Division 2 of the CPRs will not apply to a *procurement*: First, the *procurement* is below the relevant *procurement threshold* (see paragraph 9.7 of the CPRs); second, the *procurement* is exempt through the application of the general exemptions listed in Appendix A to the CPRs (see Appendix A to the DPPM); and third, the *procurement* is exempt through the application of a Defence specific exemption as a result of a measure made by the Secretary under paragraph 2.6 of the CPRs (see Defence Procurement Policy Directives D2 - D4).

CPR 10.31 – 10.32

Value for money and broader benefits to the Australian economy

- 10.31 In addition to the considerations at paragraph 4.4, for *procurements* above \$4 million, Commonwealth *officials* are required to consider the economic benefit of the *procurement* to the Australian economy.
- 10.32 The policy operates within the context of relevant national and international agreements and *procurement* policies to which Australia is a signatory, including free trade agreements and the Australia and New Zealand Government Procurement Agreement.

Note: Defence *officials* should refer to paragraph 8 in Chapter 2 of the DPPM for guidance about the application of the 'economic benefit' requirement in relation to Defence *procurement*. The Department of Finance has also released guidance about paragraphs 10.31 and 10.32 of the CPRs on the [Department of Finance webpage](#).

CPR 10.33 – 10.35

Receipt and opening of submissions

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

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

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

Defence Procurement Policy Directive

D47. If *minimum content and format requirements* are specified in *request documentation*, Defence *officials* **must** exclude a *tenderer* from further consideration in the *procurement* process, if the *official* considers that the *tenderer* has not met those requirements, unless the *official* considers that there has been an unintentional error of form (or unless the *procurement* is exempt from Division 2 of the CPRs).

Note: Defence *officials* should refer to Chapters 3 and 5 of the Complex Procurement Guide for more information about *minimum content and format requirements* and unintentional errors of form.

CPR 10.36 – 10.37

Awarding contracts

10.36 Unless a *relevant entity* determines that it is not in the public interest to award a *contract*, it **must** award a *contract* to the *tenderer* that the *relevant entity* has determined:

- a. satisfies the *conditions for participation*;
- b. is fully capable of undertaking the *contract*; and
- c. will provide the best value for money, in accordance with the essential requirements and *evaluation criteria* specified in the *approach to market* and *request documentation*.

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

Notes: The CPRs state that public interest grounds generally arise in response to unforeseen events or new information that materially affects the objectives or reasons underlying the original procurement requirement as specified in the request document.

Defence *officials* should typically not make any public announcement regarding the selection of a preferred *tenderer* or *tenderers* until *contract* negotiations are completed, all necessary approvals have been obtained, the *contract* signed and unsuccessful *tenderers* have been notified. Defence's experience is that public announcements of preferred *tenderers* can significantly lengthen the time needed to finalise the negotiation of the *contract*.

CPR 10.38

Contract Management / Standard Verification

10.38 Where applying a standard (Australian, or in its absence, international) for *goods* or *services*, *relevant entities* **must** make reasonable enquiries to determine compliance with that standard:

- a. this includes gathering evidence of relevant certifications; and
- b. periodic auditing of compliance by an independent assessor.

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Defence Procurement Policy Directives

Contract negotiations and management

- D48. Prior to entering into *contract* negotiations, Defence *officials* **must** document their negotiation strategy commensurately with the scale, scope and risk of the *procurement* to which the *contract* relates.
- D49. If *contract* negotiations result in a significant change to a *tenderer's* offer (including its technical solution, pricing, or commercial terms), Defence *officials* **must** consider whether the amended offer continues to represent best value for money.
- D50. Defence *officials* **must** not change the scope of a *contract* to obtain additional or different *goods* or services that fall outside the terms of the original *contract* approval, unless that change is approved by the relevant delegate as a *limited tender* and is otherwise consistent with the CPRs and the Defence Procurement Policy Directives in the DPPM.

Notes: For more complex *procurements*, the negotiation strategy will typically be documented in a *contract* negotiation directive that is endorsed by the relevant delegate for the *procurement*.

To exercise an option in an existing *contract* to procure additional quantities of *goods*, services or optional extras, Defence *officials* should follow the mechanism set out in the relevant *contract*.

Defence *officials* should refer to Chapters 6 and 7 of the Complex Procurement Guide for more information about how to undertake *contract* negotiations and manage *contracts*, respectively.

Appendices

CPR Appendix A – Appendix B

Appendix A: Exemptions from Division 2 of the CPRs

Procurements that are exempt from the rules of Division 2 of the CPRs by the operation of Appendix A are still required to be undertaken in accordance with value for money and with the rules of Division 1 of the CPRs.

Division 2 does not apply to:

1. *procurement* including leasing of land, existing buildings or other immovable property or any associated rights (note: the *procurement* of *construction services* is not exempt);
2. *procurement* of *goods* and services by a *relevant entity* from another Commonwealth, state, territory or local government entity;
3. *procurements* funded by international grants, loans or other assistance, when the provision of such assistance is subject to conditions inconsistent with this document;
4. *procurements* funded by grants and sponsorship payments from non-Commonwealth entities;
5. *procurement* for the direct purpose of providing foreign assistance;
6. *procurement* of *research and development* services, but not the *procurement* of inputs to *research and development* undertaken by a *relevant entity*;
7. the engagement of an expert or neutral person, including engaging counsel or barristers, for any current or anticipated litigation or dispute;
8. *procurement* of *goods* and services (including construction) outside Australian territory, for consumption outside Australian territory;
9. acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt;
10. *procurement* of motor vehicles;
11. *procurement* by the Future Fund Management Agency of investment management, investment advisory, or master custody and safekeeping services for the purposes of managing and investing the assets of the Future Fund;
12. *procurement* of blood plasma products or plasma fractionation services;
13. *procurement* of government advertising services;
14. *procurement* of *goods* and services by, or on behalf of, the Defence Intelligence Organisation, the Australian Signals Directorate, or the Australian Geospatial Intelligence Organisation;
15. *contracts for labour hire*;
16. *procurement* of *goods* and services from a business that primarily exists to provide the services of persons with a disability; and
17. *procurement* of *goods* and services from an SME with at least 50 per cent Indigenous ownership.

Appendix B: Definitions

The following definitions apply for the purposes of the CPRs:

Accountable Authority – as defined in section 8 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act)

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

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

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

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

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

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

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

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

Contract – an arrangement, as defined by s23(2) of the PGPA Act, for the *procurement* of *goods* and services under which *relevant money* is payable or may become payable. Note: this includes *standing offers* and panels.

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

Corporate Commonwealth entities – as defined in section 8 of the PGPA Act.

Days – means calendar *days*.

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

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

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

GST – The Goods and Services Tax, as defined by the A New Tax Systems (Goods and Services Tax) Act 1999.

Legal Services Multi-use List – as defined in the *Legal Services Directions 2017*.

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

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

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

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

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

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

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

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

Prequalified tender – involves procurements from the *Legal Services Multi-use List*.

Procurement – refer to paragraphs 2.7 to 2.9 of the CPRs

Procurement thresholds – refer to paragraph 9.7 of the CPRs

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

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

Relevant entity – *non-corporate Commonwealth entities* and prescribed *corporate Commonwealth entities* (listed at Appendix B) that must comply with the CPRs when performing duties related to *procurement*.

Reporting thresholds – refer to paragraph 7.17 of the CPRs.

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

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

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

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

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

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

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

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

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Defence Procurement Policy Directive

D51. Terms that are defined in Appendix B of the CPRs and which are used in the DPPM, have the same meaning in the DPPM as they do in the CPRs, unless the contrary intention appears.

Note: Terms that are defined in Appendix B and which are used in the DPPM are generally identified through the use of italics text.

Monitor and Review

This Manual will be reviewed whenever relevant sections of any of the identified references are updated or amended. All feedback and suggestions for improvement should be sent to:

Procurement.Policy@Defence.gov.au

Note to External Agencies

External agencies intending to use this template will need to tailor it in order to meet their specific procurement requirements (including relevant internal guidance) and should seek appropriate professional guidance as required.

Disclaimer

The information in this publication is provided by Defence for the purpose of disseminating procurement guidance to its staff. While every effort has been made to ensure the guidance in this publication is accurate and up-to-date, independent skill and judgment should be exercised before relying upon it.

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Please note that while the Procurement Policy Help Desk can respond to DPPM policy questions, this service is not available to those outside of Defence. Contractors should, in the first instance, seek guidance from the relevant Contact Officer for their specific procurement.

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DPPM Amendment List

Version Number	Change	Date
Version 1.0	Original	1 April 2017
Version 1.1	Version 1.1 Matrix of Changes	19 December 2017
Version 1.2	Version 1.2 Matrix of Changes	8 November 2018
Version 1.3	Table of Changes to CPRs	1 January 2019
Version 1.4	Version 1.4 Matrix of Changes	20 April 2019

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Chapter 1

Introduction to the Defence Procurement Policy Manual

Overview

1. Welcome to the new version of the Defence Procurement Policy Manual (DPPM). The DPPM has been completely re-written to more clearly set out for Defence *officials* the mandatory policy that **must** be complied with when undertaking *procurement*.
2. The DPPM has also adopted a completely new structure and format. In particular, the DPPM now incorporates the Commonwealth Procurement Rules (CPRs) so that *officials* can find in one place the Commonwealth and Defence *procurement* related policy that applies to them.
3. There are many terms in *italics*. This normally means that the term is a defined term. Appendix B to the CPRs (and the DPPM) sets out the definitions of these terms.

Policy Statement

4. The DPPM incorporates both the CPRs and additional Defence Procurement Policy Directives that **must** be complied with by Defence *officials* in relation to *procurement*. Defence Procurement Policy Directives supplement specific CPRs in the context of the particular circumstances and needs of the Department of Defence ('Defence').

Defence Procurement Policy Directive

- D1. In addition to complying with the CPRs, Defence officials must comply with the Defence Procurement Policy Directives in the DPPM when undertaking procurement. Defence Procurement Policy Directives are generally denoted by the term 'must' (or 'must not').¹

5. Together with the guidance, templates, tools and other resources referred to in the DPPM, the DPPM is an internal control system that forms part of the framework that applies the principles and requirements of the resource management and *procurement* frameworks (focusing on Defence's operations). The DPPM provides primary operational instructions to Defence *officials* in carrying out their duties related to *procurement*, in a way that is tailored to Defence's particular circumstances and needs.

Scope and applicability of this manual

6. The DPPM applies to all Defence *officials*. In addition, a *contract* may extend the application of this manual to a *contractor*,² or a *contractor* may be prescribed to be a Defence *official* in accordance with Defence's Accountable Authority Instructions.

What is the purpose of this manual?

7. The purpose of the DPPM is to:
 - a. assist Defence *officials* to implement the requirements of the CPRs and Defence policy when undertaking *procurement*;
 - b. provide Defence *officials* with a plain English document that is simple to understand and use when undertaking *procurement*;
 - c. update Defence's approach to *procurement* to reduce red tape and costs to industry;
 - d. encourage *officials* to use more strategic approaches, commercial expertise and good practice, when procuring for Defence; and

¹ Where the term 'should' or 'may' is used in the DPPM, this generally indicates good practice. See also the section 'How do I read the DPPM' in this Chapter for more information.

² See further paragraph 4.15 of the CPRs and the related Note.

- e. encourage *officials* to engage early with Defence industry to stimulate competition and innovation, and work with industry to develop better solutions and outcomes for Defence.

How do I read the DPPM?

8. The DPPM is divided into five chapters and has two appendices, as follows:

Chapter 1 – Introduction to the Defence Procurement Policy Manual – this chapter provides an overview of the role of the DPPM and how it is designed to be used;

Chapter 2 – An overview of the CPRs and the procurement lifecycle – this chapter provides an overview of the CPRs, including the key policy requirements as they apply to the *procurement* lifecycle, and provides a summary of the *procurement* life cycle to get into *contract*,

Chapter 3 – The procurement framework - this chapter incorporates all of the preliminary rules and guidance contained in the CPRs;

Chapter 4 – Achieving Value for Money in procurement – this chapter incorporates all the rules from Division 1 of the CPRs, as well as additional Defence Procurement Policy Directives;

Chapter 5 - Procurements above the procurement thresholds – this chapter incorporates all of the rules from Division 2 of the CPRs, as well as additional Defence Procurement Policy Directives;

Appendix A – Exemptions from Division 2 of the CPRs – this is Appendix A from the CPRs which sets out the list of *procurements* that are exempt from Division 2 of the CPRs;

Appendix B – Definitions – this is Appendix B from the CPRs which sets out the definitions of the terms used in the CPRs. These terms also have the same meaning when used in the DPPM.

9. Chapters 3 – 5 of the DPPM set out the individual CPR rules that **must** be complied with by all *officials* (including Defence *officials*) undertaking *procurement* for the Commonwealth. The CPR rules have been numbered as they appear in the CPRs, and are easily identifiable as having been drafted in the following format:

EXAMPLE ONLY

‘2. Procurement Framework

- 2.1 The Commonwealth Procurement Rules (CPRs) are issued by the Minister for Finance (Finance Minister) under section 105B(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).
- 2.2 *Officials* from *non-corporate Commonwealth entities* and prescribed *Corporate Commonwealth entities* listed in section 30 of the Public Governance, Performance and Accountability Rule 2014 must comply with the CPRs when performing duties related to *procurement*. These entities will collectively be referred to as relevant entities throughout the CPRs.’

10. Many of the CPR rules stand by themselves and need no further explanation or context. Also, in many cases, there are no additional Defence Procurement Policy Directives over and above the individual CPR rule.

11. In other cases, however, there may be one or more additional Defence Procurement Policy Directives that **must** also be complied with by Defence *officials*. These are also easily identifiable as they appear below the particular CPR rules to which they most closely relate, have been numbered with ‘D’ as an identifier, and have been drafted in the following format:

EXAMPLE ONLY

Defence Procurement Policy Directive

D3. If a Defence *official* determines that an exemption given under paragraph 2.6 of the CPRs applies to a *procurement*, the *official* must ensure that the reasons supporting that determination are appropriately documented.'

12. Also accompanying a CPR rule or Defence Procurement Policy Directive in many cases are 'Notes'. These Notes assist with the interpretation of, or provide more context for readers about, a particular CPR or Defence Procurement Policy Directives, and how they apply in the Defence *procurement* environment. An example of a Note is as follows:

EXAMPLE ONLY

Note: The DPPM also sets out the Defence Procurement Policy Directives that Defence *officials* must comply with when they procure *goods* and services for or on behalf of Defence. The DPPM also indicates *good practice*.'

13. These Notes do not form part of the mandatory policy that **must** be complied with under the DPPM. However, they can be used, along with the material in Chapters 1 and 2 of the DPPM, to assist with interpretation and to give greater context for the DPPM user.

14. The headings in the DPPM are usually the headings from the CPRs. However, other headings have also been included where appropriate to help guide the reader.

Commonwealth legislative and policy framework

15. As paragraph 2.10 of the CPRs notes, Defence and its *officials* operate in an environment of legislation and Commonwealth policy. Defence has numerous business policy owners that are responsible for ensuring Defence complies with applicable Commonwealth legislation and policy requirements, as well as with particular State and Territory legislation that may also apply to Defence activities. This legislation and policy often interacts with Defence *procurement* and in many cases is given effect to through *contracts*.

16. The DPPM refers to and incorporates by reference relevant Commonwealth legislation and policy, and other Defence policy, relating to *procurement*. Also, the endorsed Defence contracting templates have been drafted and are regularly updated to give effect to applicable Commonwealth legislation and policy (including the CPRs), and applicable Defence policy. These templates have been developed to assist Defence *officials* to comply with applicable legislation and policy requirements if used for the purposes for which they are intended. Where the *procurement* involves a unique or unusual requirement not within the contemplation of the endorsed templates, specialist advice should be sought to ensure any specific legislation and policy is addressed. The endorsed Defence contracting templates may be found on the [Commercial Division Tools and Templates intranet page](#).

17. There are also many policy or support areas in Defence that can assist in relation to specific aspects of *procurement* or on legislation and policy that intersect with *procurement* (eg contracting, legal, finance, environment, work health and safety, security, technical regulatory frameworks etc). These resources can be found by the procurement support areas link on the [Commercial Division Help Desk Kiosk](#) intranet page.

18. The Department of Finance's *Buying for the Australian Government* website provides further assistance on policies that interact with *procurement* (called 'Procurement-Connected Policies'). The Department of Finance also releases Resource Management Guides and Finance Circulars that provide additional guidance and interim policy updates. These resources may be found on the [Department of Finance webpage](#).

Resource management framework

19. The resource management framework is part of the broader Commonwealth legislative and policy environment, and consists of the legislation and policy (including the CPRs) governing the management of the Commonwealth's resources. The main elements of this framework are set out in Figure 3 of the CPRs.

20. The resource management framework is primarily comprised of the PGPA Act and associated *Public Governance Performance and Accountability Rule 2014* (PGPA Rule 2014). The PGPA Act authorises the Secretary, as Defence's *Accountable Authority*, to issue Accountable Authority Instructions (AAIs) (PGPA Act, section 20A; see also paragraph 2.5 of the CPRs). The Secretary has issued the Defence AAIs under this authorisation. The PGPA Act also contains provisions dealing with the commitment of *relevant money* and *officials* entering into arrangements such as *contracts* and *deeds* (PGPA Act, section 23). Section 60 of the PGPA Act governs the granting by the Commonwealth of indemnities, warranties and guarantees ('contingent liabilities'). Sections 23 and 60 of the PGPA Act are key provisions relating to *procurement*.

21. The PGPA Framework requires Defence officials to:

- a not be inconsistent with the policies of the Australian Government (PGPA Act, section 21);
- b use and manage public resources in an efficient, effective, economical and ethical manner (PGPA Act section 8 and 15);
- c exercise 'care and diligence' in performing their duties (PGPA Act, section 25);
- d exercise powers, perform functions and discharge duties "honestly, in good faith and for a proper purpose" (PGPA Act, section 26);
- e not improperly use their position in performing their duties (PGPA Act, section 27);
- f not improperly use information (PGPA Act, section 28); and
- g disclose interests in relation to the performance of their duties (PGPA Act, section 29).

22. Section 21 of the PGPA Act requires the Secretary to govern Defence in a way that is 'not inconsistent with the policies of the Australian Government'. The 'policies of the Australian Government' is not a defined term and should be interpreted broadly, applying its ordinary dictionary meaning. Among other things, the term will likely include things like Cabinet decisions, or other Government approvals relating to a commitment of *relevant money*, to the extent that the decision or approval establishes a course or line of action.

23. Accordingly, Defence *officials* exercising delegations (especially those for the purposes of section 23 of the PGPA Act) should ensure that they do so consistent with the terms of any Australian Government decisions or approvals relevant to the *procurement*.

24. For a Defence *official* (including a contractor who is prescribed as a Defence *official*) to exercise a power conferred on or delegated to the Secretary under the PGPA Act in relation to *procurement*, they are required to have the delegated authority. These delegations are described in the [Defence AAIs](#) and issued in Financial Delegations Manual ([FINMAN 2](#)).

25. For the purposes of section 23(3) of the PGPA Act, delegated Defence *officials* may approve the commitment of *relevant money* (Commitment Approval delegation). This delegation is required to be exercised before the Commonwealth enters into the arrangement that commits *relevant money*. For the purposes of section 23(1) of the PGPA Act, Defence *officials* may enter into an arrangement on behalf of the Commonwealth (Enter into an Arrangement delegation). The Defence *official* exercises this delegation by the physical act of entering into an arrangement, after the proposed commitment has been approved by a Commitment Approval delegate. These delegations are mentioned in Defence Procurement Policy Directive D5.³ Defence *officials* should be aware that the section 23 PGPA Act delegations apply to all kinds of *procurements*. For example, both delegations will be required for each order placed under a *standing offer* arrangement.⁴

26. Also, a change to a *contract* (whether called a *contract* change, amendment or variation or some other terminology) may itself technically constitute a *procurement*. In any event, both delegations will be required to be exercised for each *contract* change, if the change involves the commitment of *relevant money*. If the *contract* change does not involve the commitment of *relevant*

³ If a *procurement* includes a contingent liability, Defence Procurement Policy Directive D6 requires the relevant delegate to authorise the granting of the contingent liability for the purposes of section 60 PGPA Act. In Defence (apart from CASG), the Commitment Approval delegate may do this as part of exercising this delegation. In CASG, a separate delegation is required in addition to the Commitment Approval delegation, both of which must be exercised before the exercise of the Enter into an Arrangement delegation.

⁴ The [Establishing and Using Standing Offers Fact Sheet](#) provides further information regarding delegations required for the establishment and use of *standing offer* arrangements.

money (that is, it is a 'nil-cost' *contract* change), only the Enter into an Arrangement delegation is required.⁵ However, even in this situation, the delegate should be satisfied that the proposed change represents proper use and management of *public resources* and is not inconsistent with the policies of the Australian Government (see further paragraph 6.1 of the CPRs).

27. In addition to these delegations under the PGPA Act, and in accordance with AAI 3, Defence *officials* are also required to obtain an 'Endorsement to Proceed' before undertaking certain *procurements* (see Defence Procurement Policy Directive D9). An Endorsement to Proceed process is part of Defence's internal controls (which are required by section 16 of the PGPA Act) to better ensure the proper use and management of *public resources*. Having a Defence *official* provide an Endorsement to Proceed for *procurements* above a certain value provides additional internal scrutiny through which Defence can satisfy itself that proceeding with the *procurement* would be an efficient, effective, economical and ethical use of *public resources*, and that it will not be inconsistent with the policies of the Australian Government. An [Endorsement to Proceed Fact Sheet](#) and template have been developed to assist Defence *officials* to deal with all the matters they need to consider when exercising this function.⁶

28. Defence has also developed templates to assist and guide Commitment Approval and Enter into Arrangement delegates (as well as any separate delegate authorising the granting of a contingent liability under section 60 of the PGPA Act) through all the considerations they need to be aware of when exercising their delegations.

Compliance with the DPPM

29. The DPPM sits within the procurement policy framework as set out in Figure 1.

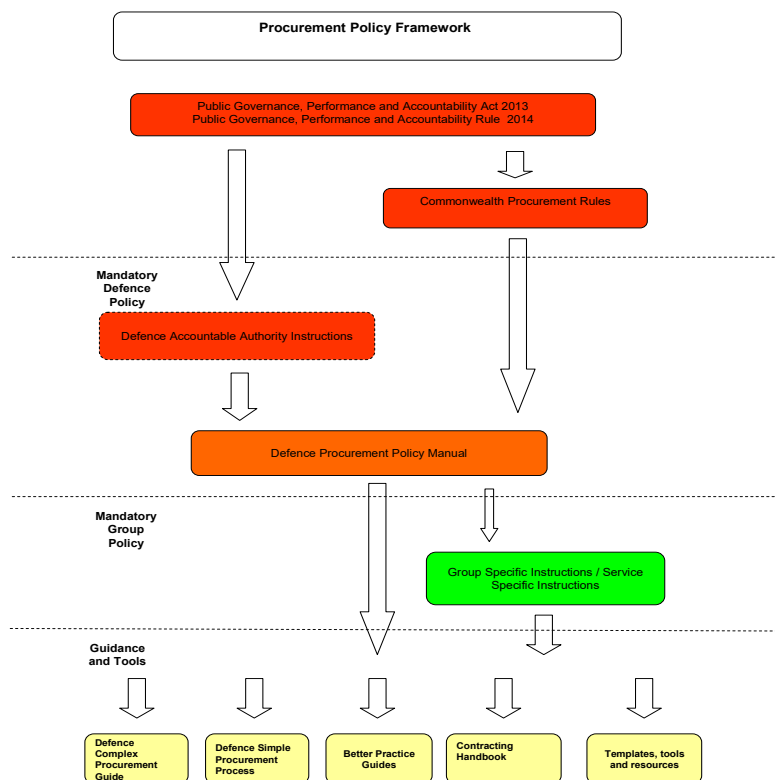


Figure 1

⁵ While only the Enter into an Arrangement delegation is required, AAI 2.4.1.8 and FINMAN 2 have the effect that not all Defence *officials* have the delegated authority to agree to enter into arrangements that are nil-cost contract changes. Defence *officials* should refer to AAI 2.4.1.8 and FINMAN 2 to make sure that these contract changes are authorised at the right level.
⁶ For further guidance, see Chapter 4 of the Complex Procurement Guide.

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30. If a Defence *official* departs from the DPPM in a way that results in a departure from the CPRs, (or the PGPA Act or PGPA Rule 2014), then the *official* will have contravened the law.
31. When considering a possible departure from a Defence Procurement Policy Directive contained in the DPPM, Defence *officials* should:
- consider whether a proposed departure from the policy requirement is reasonable and justified in the circumstances and would produce the same or better outcome for Defence;
 - consult their supervisor, wherever practicable, about a proposed departure – a properly informed decision may involve consulting the policy owner; and
 - be responsible and accountable for the consequences of departing from, or not adhering to, the content of a manual, including where such departure or non-adherence results in a breach of applicable laws or leads to adverse outcomes for Defence.
32. Officials are not permitted to depart from the mandatory requirements of the PGPA Act, PGPA rule, CPRs, AAI and FINMAN 2
33. Defence *officials* should consider whether contractors should be required to comply with the DPPM when undertaking procurement on behalf of Defence and communicate this requirement to the contractors, including the incorporation of appropriate provisions in *contracts*.⁷

Why do we have procurement rules?

34. The CPRs and Defence Procurement Policy Directives in the DPPM exist to assist Defence *officials* make proper use of *public resources* when undertaking *procurement* related activities for the Commonwealth. Defence *officials*, like *officials* from other Commonwealth agencies, are accountable for how they spend *relevant money* (also known as ‘public money’).
35. The DPPM provides a framework that promotes responsible and accountable spending by Defence *officials* when procuring *goods* and services for Defence. This framework supports the proactive management of the risks relating to *procurement*, as required by the CPRs.

Why are the CPRs and the DPPM drafted the way they are?

36. As noted at paragraph 2.15 of the CPRs, the CPRs give effect to Australia’s international treaty obligations. Access to overseas markets is secured through Free Trade Agreements (FTAs). Under FTAs, countries offer reciprocal access to their government *procurements*. The CPRs reflect Australia’s FTA commitments, and in particular are substantially based on the text of Chapter 15 of the Australia-USA FTA. The CPRs also align with the World Trade Organisation’s Agreement on Government Procurement (GPA). Accordingly, the CPRs include *procurement* related rules that give effect to Australia’s international obligations.
37. The CPRs also seek to ensure that Commonwealth agencies achieve value for money in their *procurement* activities, however they have not been specifically drafted to follow the logical order or timeline of the *procurement* life cycle, and it is very difficult to simply translate or allocate the CPR rules to the various parts of the life cycle. The Defence Procurement Policy Directives have been drafted to align with the structure of the CPRs, and therefore also do not follow the *procurement* life cycle. Chapter 2 of the DPPM provides an overview of the CPRs, including a discussion of the core principles underpinning Commonwealth *procurement*. Chapter 2 also provides an overview of how to plan and undertake a *procurement*.
38. By contrast, the [Simple Procurement Process](#) and [Complex Procurement Guide](#), which accompany the DPPM, have been based on the *procurement* life cycle so that Defence *officials* have a more intuitive sequenced guidance document to follow when planning for and undertaking *procurements*. The documents do not contain mandatory policy requirements, rather, along with the practitioner level Better Practice Guides and Handbooks on specific *procurement* topics, they provide more detailed ‘how to’ guidance to undertake good *procurement*, whether for a low risk, low value (‘simple’) *procurement* or for the more highly complex *procurements* that are often undertaken in Defence, whether in the materiel or non-materiel environment.

⁷ For more information about when it might be appropriate to require contractors to comply with the DPPM, see paragraph 4.17 of the CPRs and the related Note.

What is the *procurement* life cycle?

39. The *procurement* life cycle is simply the breakdown of the end-to-end *procurement* process into logical phases and stages. If each stage of the life cycle is planned for and executed well, Defence *officials* are more likely to achieve good outcomes from their *procurement* activities. The *procurement* lifecycle separates *procurement* into three phases: planning, sourcing and managing. These phases are further divided into seven distinct, but interrelated stages, which are:

Planning

1. Plan the procurement
2. Request documentation

Sourcing

3. Approach the market
4. Evaluation
5. Negotiation and contract signature

Managing

6. Contract management⁸
7. Disposal.

40. The *procurement* life cycle is represented by the following ‘procurement wheel’ (see figure 2).



Figure 2

41. While the *procurement* life cycle includes a Disposal stage, the actual disposal of *goods* (for example, Defence materiel at the end of its life of type) is not a *procurement* within the meaning of the CPRs. This is so even though paragraph 2.10 of the CPRs mentions a ‘consideration of disposal of *goods*’ as being part of *procurement*. Hence, disposal of *goods* is neither subject to the CPRs nor the Defence Procurement Policy Directives in the DPPM. For example, if the disposal strategy for a ship involves selling the ship by tender (see paragraph 2.9c of the CPRs) or through an auction, that process would not be a *procurement* and hence not subject to the CPRs.

⁸ Defence Officials should refer to the [Defence Contract Management Framework](#) and the [Defence Contract Management Handbook](#) for guidance about the contract management stage of the procurement life cycle.

42. However, there may be occasions where Defence *officials* wish to engage services to assist with the planning or conduct of a disposal activity. The engagement of these services may constitute a *procurement* under the CPRs. For instance, in the example of a ship disposal, if the strategy involves engaging services to decommission and scrap the ship, then the *procurement* of these services would constitute a *procurement* for the purposes of the CPRs.

43. What paragraph 2.10 of the CPRs requires is that Defence *officials* undertaking a *procurement* of *goods* consider how the *goods* will be disposed of at the end of life (including any potential costs) as part of the decision about whether and how to proceed with the *procurement*⁹.

44. In Defence, the policy governing disposal of *goods* is set out in AAI 10.12, the Defence Logistics Manual (see [DEFLOGMAN, Part 2, Volume 5, Chapter 10](#)) and the [Electronic Supply Chain Manual](#) ('ESCM'). For guidance and templates on contracting processes for disposals, including sale by tender and gifting or transfer by deed, Defence *officials* should refer to [Materiel Logistics, Disposals and Sales Branch](#).

Guidance, tools, templates and resources

45. The [Complex Procurement Guide](#) has been developed to align with the *procurement* life cycle. Each section of the *procurement* life cycle is represented by a Chapter of the Complex Procurement Guide.

46. The [Simple Procurement Process](#) also follows the *procurement* lifecycle and guides users undertaking a simple *procurement* activity through a step by step process. By following the process, Defence *officials* can rely on this as satisfying their obligations under the CPRs and DPPM.

47. The DPPM also refers to and contains links to further guidance, templates and tools to assist Defence *officials* to meet the requirements of the DPPM and to facilitate better *procurement* outcomes. These materials can be found on the Commercial Division [Commercial Policy Framework](#) intranet page.

48. Collectively, the DPPM and the related guidance, templates, tools and other resources, provide a framework that supports accountability for spending, sound commercial practice and better outcomes for Defence, the Australian Government and the taxpayer.

⁹ The intention of paragraph 2.10 of the CPRs is to ensure disposal costs and related matters are adequately considered and understood (where predictable) to inform the acquiring of goods through the procurement process. For example, Defence may need to factor into the original procurement decision the need for additional funding to cover the costs of making the goods safe for disposal.

Chapter 2

An overview of the CPRs and the procurement life cycle

1. As noted in Chapter 1, the CPRs have not been specifically drafted to follow the logical order or timeline of the *procurement* life cycle. Paragraphs 2.7 and 2.10 of the CPRs describes the *procurement* life cycle as covering all aspects of acquiring and delivering *goods* and services - it starts with identifying the need for a *procurement* and finishes with either the end of the related services *contract* or the end of the useful life and disposal of the *goods* that were procured. While the CPRs do not follow the *procurement* life cycle, the CPRs include a number of core principles that underpin Commonwealth *procurement* across the life cycle.

2. This Chapter provides a brief overview of the CPRs and the *procurement* life cycle, and discusses these core principles in the context of Defence *procurement*. This Chapter is not intended to replicate the CPRs and does not attempt to discuss all the CPR rules. Also, even though this Chapter discusses the CPRs, the terms '**must**' and '**must not**' are not used in this Chapter to avoid any confusion about whether this Chapter gives rise to additional mandatory policy requirements. The CPR rules and Defence Procurement Policy Directives in Chapters 3-5 of the DPPM (and Defence Procurement Policy Directive D1 in Chapter 1) stand on their own and apply according to their terms.¹⁰

CPRs – an overview

3. The CPRs provide all entities governed by the PGPA Act – which includes the Department of Defence - with the policy framework and associated rules for conducting *procurement* activities. The CPRs are a 'legislative instrument', which means that they are part of the law of the Commonwealth.

4. The CPRs are divided into an introductory section and two Divisions - which are set out in Chapters 3, 4 and 5 respectively of the DPPM - and two Appendices (which are included as the Appendices to the DPPM). Division 1 of the CPRs applies to all Commonwealth *procurements* and Division 2 sets out 'additional rules' which apply to *procurements* that are valued at or above the relevant *procurement threshold* - unless a *procurement* is exempted from having to comply with these additional rules. Many Defence *procurements* are exempt from Division 2. The main obligation of the additional rules is to require *officials* to undertake *procurements* by way of an *open tender* in most circumstances, as well as setting out particular requirements for how the tender is undertaken.

5. The introductory section of the CPRs (in Chapter 3 of the DPPM) covers the purpose, scope and legislative and policy framework of the CPRs.

6. Division 1 of the CPRs (in Chapter 4 of the DPPM) sets out rules that apply to all *procurements*. This means that all Defence *procurements* are required to comply with Division 1 (and the additional Defence Procurement Policy Directives in Chapter 4 of the DPPM). This Division establishes 'value for money' as the core requirement of Commonwealth *procurement*. Defence *officials* responsible for a *procurement* need to be satisfied, after reasonable inquiries, that the *procurement* achieves value for money.

Value for money framework

7. Division 1 provides a framework for determining 'value for money'.¹¹ Under this framework, *procurements* should:

- encourage competition and be non-discriminatory;
- use *public resources* in an efficient, effective, economical and ethical manner that is not inconsistent with the policies of the Commonwealth;
- facilitate accountable and transparent decision making;
- encourage appropriate engagement with risk; and
- be commensurate with the scale and scope of the business requirement.

¹⁰ See also the section 'How do I read the DPPM' in Chapter 1 for more information.

¹¹ See section 4 of the CPRs (in Chapter 4 of the DPPM).

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8. In addition to these considerations, for *procurements* valued above \$4 million, *officials* are also required to consider the economic benefit of the *procurement* to the Australian economy as part of the framework for determining value for money.¹² For Defence materiel *procurements*¹³ over \$20 million (including GST), the consideration of economic benefit occurs through the evaluation of the Australian Industry Capability (AIC) requirements of the *procurement*.¹⁴ In particular, tenderers are required to submit an AIC plan which sets out the tenderers' Local Industry Activities (LIAs) to meet the specified Industry Requirements of the *procurement*. Tenderers are required to describe the benefits of their LIAs, including the significance of the work, the skills and knowledge that will be transferred, the training that will be provided, the new technologies or innovations that will be introduced, and the contribution to Australian company competitiveness, including access to global supply chains, technical data and intellectual property.

9. Price is not the sole factor when assessing value for money, value for money does not automatically mean the lowest price *goods* or services. When conducting a *procurement*, *officials* are required to consider the relevant financial and non-financial costs and benefits of each *submission*, including matters such as:¹⁵

- the quality of the *goods* and services;
- fitness for purpose of the proposal;
- the *potential supplier's* relevant experience and performance history;
- flexibility of the proposal (including innovation and adaptability over the lifecycle of the *procurement*);
- environmental sustainability of the proposed *goods* and services (such as energy efficiency, environmental impact and use of recycled products); and
- whole-of life costs.

Valuing a procurement – relevant procurement thresholds

10. The additional rules in Division 2 (and the Defence Procurement Policy Directives in Chapter 5 of the DPPM) apply only to *procurements* that are valued at or above a certain threshold (see paragraph 14 below). This means that Defence *officials* need to estimate the value of their *procurement* to know whether it has to comply with the additional rules.

11. The *procurement* value is the maximum anticipated value of the proposed *contract*, including options, extensions, renewals or other mechanisms that may be executed over the life of a *contract*. The estimated value includes:¹⁶

- all forms of remuneration, including any premiums, fees, commissions, interest, allowances and other revenue streams that may be provided for in the proposed *contract*;
- the total maximum value of the property or services being procured, including the value of any options in the proposed *contract*; and
- any taxes or charges (including GST).

12. If a *procurement* is being conducted in multiple parts with *contracts* awarded either at the same time or over a period of time, with one or more *suppliers* (for example, a *standing offer* panel arrangement), the expected value of the *goods* and services being procured has to include the maximum value of all of the *contracts*. Further, Defence *officials* cannot split a *procurement* into separate parts just to try and avoid the relevant *procurement* threshold.

¹² See paragraphs 4.7 and 4.8 of the CPRs, and the guidance on the [Department of Finance webpage](#).

¹³ Materiel procurements include goods and services for 'military purposes'. 'Goods' include everything from major platforms, such as ships, vehicles and aircraft to consumables, such as oil, and nuts and bolts used on materiel systems. Services related to materiel include those services applied directly ('physically') to the materiel, such as maintenance and supply activities, and services that are otherwise 'related' to the materiel, such as reliability analysis, maintenance requirements determination or inventory requirements determination.

¹⁴ See Defence Procurement Policy Directive D15 and the related Note.

¹⁵ See paragraphs 4.5 and 4.6 of the CPRs.

¹⁶ Defence *officials* should be aware that the way in which they value a *procurement* for the purposes of the CPRs is different to the way they need to value it for the purposes of completing the AE643 form to record a contract in ROMAN. See Complex Procurement Guide, Chapter 6 Appendix A for further details.

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13. In any case, where the maximum value of a *procurement* over its entire duration cannot be estimated (for example, a *standing offer* panel arrangement), Defence *officials* are required to treat the *procurement* as being valued above the relevant *procurement* threshold.

14. The value thresholds are:

- for *procurements* other than for *construction services* - \$80,000 (including GST);
- for *procurements of construction services* by relevant entities the *procurement* threshold is \$7.5 million (including GST).

15. The term 'covered procurement' is an additional term used to refer to a class of procurements which are subject to the *Government Procurement (Judicial Review) Act 2018*, see paragraphs 48 - - of the DPPM below.

Exemptions from the additional rules in Division 2

16. As noted above, some *procurements* may be exempt from having to comply with the additional rules in Division 2 of the CPRs. There are two ways in which a Defence *procurement* may be exempt:

- first, the *procurement* may be covered by one of the general exemptions listed in Appendix A of the CPRs (discussed further below); or
- second, a Defence specific exemption may apply as a result of a measure made by the Secretary under paragraph 2.6 of the CPRs. This is discussed further in Chapter 4 of the DPPM. These Defence specific exemptions relate mainly to the acquisition and sustainment of Defence materiel.

17. However, even if exempt from Division 2 of the CPRs, Defence *officials* still have to make sure that they undertake their *procurements* in accordance with Division 1 of the CPRs. Also, Defence *officials* still have to comply with all applicable Defence Procurement Policy Directives contained in this manual.

18. While the full list of general exemptions is set out in Appendix A to the CPRs (see Appendix A to the DPPM), some of the main exemptions relevant to Defence business include:

- leasing or purchase of real property or accommodation (noting that the *procurement of construction services* is not exempt);
- *procurement of goods* or services from another Commonwealth entity, or a state, territory or local government entities where no commercial market exists or where legislation or Commonwealth policy requires the use of a government provider (for example, legal services which are tied to the Australian Government Solicitor);
- *procurement* for the direct purpose of providing foreign assistance;
- procurement of research and development services, but not the procurement of inputs to research and development undertaken by Defence;¹⁷
- the engagement of an expert or neutral person, including engaging counsel or barristers, for any current or anticipated litigation or dispute;
- *procurement of goods* or services (including construction) outside Australian territory, for consumption outside Australian territory;¹⁸
- *procurement of goods* or services by, or on behalf of, the Defence Intelligence Organisation, the Australian Signals Directorate, or the Australian Geospatial-Intelligence Organisation;
- *contracts* for labour hire (noting that this does not include the engagement of consultants);¹⁹

¹⁷ This exemption would be relevant mainly for Defence Science and Technology Group.

¹⁸ This exemption would cover *procurements of goods* or services by the Offices of the Counsellor Defence Materiel in Washington and London that are needed for the ongoing operation of those Offices.

¹⁹ A 'contract for labour hire' is a contract under which Defence engages an individual to provide labour, when the individual is engaged either directly or through a firm which primarily exists to provide the services of only that individual (that is, the individual's own company). This includes the appointment of an eminent individual to a special role by the Secretary, or the Secretary's appointment of individuals to a governance committee (for example, an audit committee, ethics committee or steering committee), but does not include the engagement of consultants.

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- *procurement of goods* or services from a business that primarily exists to provide the services of persons with a disability; and
- *procurement of goods* or services from a Small to Medium Enterprise with at least 50 per cent Indigenous ownership.

Indigenous business exemption and the Indigenous Procurement Policy

19. The purpose of the Indigenous Procurement Policy (IPP) is to stimulate indigenous entrepreneurship and business development, providing indigenous Australians with more opportunities to participate in the economy through the awarding of Australian Government *contracts*.

20. Appendix A of the CPRs (item 16) permits Defence to procure *goods* or services directly from a small to medium enterprise with at least 50 per cent indigenous ownership ('indigenous enterprise'), without running an *open tender* process, if the proposed *procurement* represents value for money.

21. The IPP builds on the Appendix A exemption and has two components that apply to *procurement*:

- a mandatory 'set-aside' that applies to certain *procurements* conducted on or after 1 July 2015 and which may result in *contracts* being directly sourced to indigenous enterprises; and
- mandatory minimum requirements that apply to certain high value *procurements* aimed at enhancing indigenous participation for certain Commonwealth *contracts*.

22. [Supply Nation](#) maintains a non-exhaustive list of indigenous enterprises that meet this definition. If an enterprise states that it is an indigenous enterprise and is not listed with Supply Nation, Defence *officials* will need to make sufficient inquiries to satisfy themselves that the enterprise satisfies the IPP definition of an indigenous enterprise.

23. In general terms, the mandatory set-aside part of the IPP applies to *procurements* where the majority (by value) of the *goods* or services will be delivered in a Remote Area (except for transactions paid for by credit cards), and other domestic *procurements* where the estimated value is between \$80,000 and \$200,000 (GST inclusive). The set-aside requirement does not apply to Defence exempt *procurements* (under paragraph 2.6 of the CPRs) and some other specific *procurements*.²⁰

24. If the set-aside requirement applies, Defence *officials* are required to first determine whether an indigenous enterprise could deliver the required *goods* or services on a value for money basis before making any approach to the market. If satisfied that value for money can be achieved, then the Defence *official* should procure the *goods* or services from the indigenous enterprise (as permitted by Appendix A of the CPRs, item 16). If not, then the Defence *official* may procure through non-indigenous enterprises.

25. In general terms, the mandatory minimum requirements apply to *procurements* (except Defence exempt *procurements*) where the *contract* will be performed in Australia and has an estimated value of \$7.5 million (GST inclusive) or more, and where more than half of the value of the *contract* is anticipated to be spent in one or more of the following industry sectors:

- Building, construction and maintenance services;
- Transportation, storage and mail services;
- Education and training services;
- Industrial cleaning services;
- Farming and fishing and forestry and wildlife contracting services;
- Editorial and design and graphic and fine art services;
- Travel and food and lodging and entertainment services;
- Politics and civic affairs services.

26. The policy requires that the *request documentation* for *procurements* that are subject to the 'mandatory minimum requirements' include clauses (in both the conditions of tender and *contract*) that

²⁰ For more information about the kinds of *procurements* to which the IPP does not apply, refer to the IPP resources at the Commercial Division [Mandatory Set-Aside intranet page](#).

meet the IPP requirements. Model clauses that meet these requirements are available on the Commercial Division [Minimum Requirements intranet page](#).

27. Defence *officials* can find further information and resources, including links to IPP fact sheets and Remote Area maps, on the Commercial Division [Indigenous Procurement intranet page](#).

Disability business exemption

28. The Australian Government's National Disability Strategy 2010 - 2020 sets out a ten year national policy framework for improving the lives of Australians with disability, their families and carers, including by providing people with a disability with more opportunities to participate in the economy through the awarding of Australian Government *contracts*.

29. Appendix A of the CPRs (item 15) permits Defence to procure *goods* or services directly from a business that primarily exists to provide the services of persons with a disability ('disability business'), without running an *open tender* process, if the proposed *procurement* represents value for money.

30. Similar to the IPP, Defence *officials* should determine whether a disability business could deliver the required *goods* or services on a value for money basis before making any approach to the market. If satisfied that value for money can be achieved, then the Defence *official* should procure the *goods* or services from the disability business. If not, then the Defence *official* may procure through a non-disability enterprise. A list of Australian disability businesses can be found at the Australian Disability Enterprises website www.ade.org.au.

Procurement methods

31. Under the CPRs, there are two *procurement* methods:

- an *open tender* – where Defence approaches the open market and invites *submissions*; and
- a *limited tender* - where Defence approaches only **one or more potential suppliers** to make *submissions*.

32. Identifying the *procurement* method does no more than categorise the *procurement* for the purposes of the CPRs, with some different rules applying depending on whether the *procurement* is categorised as an *open tender* or *limited tender*. Under the CPRs, the default position is that *procurement* should be undertaken by way of *open tender*. If it is not an *open tender*, then by definition it will be categorised as a *limited tender*, even if the *procurement* is undertaken with only one *supplier* (often called a 'sole source'²¹ *procurement*). Similarly, a *procurement* process undertaken between two or more (but not all) *potential suppliers* will be a *limited tender* process, even if Defence does not release a formal request for tender to approach the market and instead seeks a different form of response from industry. If Defence establishes a *standing offer* panel arrangement through an *open tender*, then each *procurement* from the panel is categorised as an *open tender*, irrespective of whether the Defence *official* seeks quotes from one, some or all members of the panel.²²

33. The categorisation of a *procurement* as an *open tender* or *limited tender* does not determine what *approach to market* Defence *officials* may wish to use (which could be done through a request for tender, request for proposal, request for quote under a *standing offer* panel, competitive evaluation, some other form of iterative engagement process, or other form of documentation), nor the project delivery model (for example, prime *contract*, managing contractor, design and construct *contract*, alliance *contract* and so on). Defence *officials* should determine the appropriate *approach to market* strategy and project delivery model during the planning stage of the *procurement*.

34. Also, and as discussed below, a *limited tender* will still be a competitive process as long as it involves more than one *supplier*.

35. While the CPRs generally require an *open tender* process for *procurements* valued at or above the relevant *procurement* threshold, many Defence *procurements* are exempt from this requirement.²³ Accordingly, in circumstances where an *open tender* is not mandatory, the following factors are generally relevant to the selection of a *procurement* method:

- the nature and structure of the market;

²¹ When the term 'sole source' is used in the DPPM, it is not being used to indicate a *procurement* method, rather to indicate a situation where Defence is proposing to approach only one supplier for a *procurement*.

²² See CPRs, paragraph 9.13.

²³ See DPPM, Defence Procurement Policy Directive D2. Appendix A to the CPRs also provides for other exemptions.

- the extent of competition (that is, the number of genuinely competitive *suppliers*);
- schedule, cost or other constraints (for example, intellectual property, security etc).

36. Based on an assessment of these factors, Defence *officials* may still determine that an *open tender* process should be conducted as the best mechanism to deliver a value for money outcome.

Limited tenders

37. *Limited tenders* may only be undertaken in circumstances where the value of the *procurement*:

- is below the relevant procurement threshold – see Chapter 2 paragraph 4 above; ;
- is at or above the relevant procurement threshold but exempt from the additional rules in Division 2 of the CPRs (see Chapter 2 paragraphs 16 – 18); or
- is above the relevant procurement threshold and subject to the additional rules in Division 2 of the CPRs, but satisfies the Conditions for limited tender in paragraph 10.3 of the CPRs.

38. If a *procurement* is subject to the additional rules in Division 2 of the CPRs, Defence *officials* will normally be required to use an *open tender* for the *procurement*. There are only very limited circumstances in which a Defence *official* may decide to use a *limited tender*. These are set out in paragraph 10.3 of the CPRs. Of these, there are probably four main circumstances on which a Defence *official* may rely to conduct a *limited tender*.

39. First, there is the circumstance of ‘reasons of extreme urgency’ (paragraph 10.3b of the CPRs). A *limited tender* can be undertaken if there are reasons of extreme urgency that have been brought about by events unforeseen by Defence, such that the *goods* and services could not be obtained in time under *open tender*. A good example of where this provision might be used is where a natural disaster or other unexpected event has occurred and Government has directed Defence to procure *goods* or services in support of its emergency response.

40. However, paragraph 10.3b of the CPRs cannot validly be used in circumstances where Defence *officials* have not planned well enough in advance and now find themselves in a situation where they may not be able to undertake an *open tender* process in time to obtain the *goods* or services when they are needed. Defence *officials* cannot use poor *procurement* planning as a valid justification for running a *limited tender* process. The underlying principle is that the event giving rise to the need to undertake a *procurement* should have arisen at short notice and could not have reasonably been foreseen by Defence.

41. The second main circumstance is for ‘unsolicited innovative proposals’ where the *procurement* can be categorised as having been made under ‘exceptionally advantageous conditions that arise only in the very short term’ and which is not ‘routine *procurement* from regular *suppliers*’. (paragraph 10.3c of the CPRs). Sometimes industry will have an innovative idea that offers real value to Defence, even though it is not something that Defence has identified as a current need or priority. Paragraph 10.3c of the CPRs offers a mechanism for encouraging industry to put forward these ideas and, if Defence considers the idea of benefit, to procure directly from the relevant company without having to openly test the market.

42. However, Defence companies may sometimes seek to use this mechanism as a way of pitching their *goods* or services to Government without having to compete for a contract. If Defence *officials* act on these proposals without testing the market, then it may be unfair to other suppliers of similar *goods* or services, as well as being difficult to demonstrate value for money. Accordingly, Defence *officials* need to be cautious when using this circumstance to justify undertaking a *limited tender*. It is difficult to give definitive guidance about the kind of proposals that will meet this circumstance, however, as a general rule, it would cover most proposals that are unique or otherwise not readily obtainable in the market place. By contrast, the circumstance should not be used where the proposal is effectively an advance proposal for a requirement that Defence has already identified for *procurement* in the market. Defence *officials* should seek specialist contracting or legal advice before accepting an unsolicited proposal.

43. While Defence business units should be open to receiving and considering unsolicited innovative proposals from industry, Defence has also put in place a formal mechanism to manage these kinds of proposals from industry. This is the Centre for Defence Industry Capability (CDIC) which hosts the Defence Innovation Portal, the primary gateway for companies seeking to submit innovation proposals or ideas to the Defence Innovation Hub and Next Generation Technology Fund.

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For further information about the CDIC and the Defence Innovation Hub, Defence *officials* should refer to www.business.gov.au/cdic.

44. The third main circumstance is where there is no real alternative because of an 'absence of competition for technical reasons' (Paragraph 10.3d of the CPRs). Normally, this circumstance is used where only one *supplier* can provide the relevant *goods* or services because of intellectual property or other restrictions. This circumstance cannot validly be used by a Defence *official* based simply on the *official's* perceived overall knowledge of the market. An 'absence of competition for technical reasons' has to be something more than an *official's* mere assertion that there is only one *supplier* in the market who is capable of providing the *goods* or services. It requires objective, demonstrable evidence. An example could be a situation where Defence is seeking to procure specialised medical equipment, and there are only two manufacturers of the equipment in the world because of its specialised nature. Defence could defensibly undertake a *limited tender* between the two manufacturers because there would be an absence of competition for technical reasons.

45. The fourth main circumstance is for additional deliveries of *goods* and services by the original *supplier* or authorised representative that are for replacement parts or continuing services for existing equipment, software, services or installations, when a change of *supplier* would mean the *goods* or services would be incompatible with the existing equipment or services' (Paragraph 10.3e of the CPRs). This circumstance is often used in the context of ICT *procurements* where Defence needs spare parts for the installed ICT system, or wants to upgrade the system. The parts or upgrades may be available only from the original *supplier* of the system. The underlying matters giving rise to this circumstance will often also support the circumstance discussed above dealing with an absence of competition for technical reasons.

46. Defence *officials* may sometimes seek to use this circumstance to justify the extension or continuation of consultancy or other professional services, whether or not related to ICT systems, equipment, software or support services. As a general rule, this would normally not be a valid use of this circumstance to justify (as a *limited tender*) the extension or continuation of these kinds of services, and would be an example of where the relevant Defence *officials* have not planned their procurement well enough in advance. For instance, *officials* should have built into the original *approach to market* the necessary options to extend the service period, or for the contractor to provide additional services. As noted above, Defence *officials* cannot use poor *procurement* planning as a valid justification for running a *limited tender* process.

47. Justifications for using a *limited tender procurement* method will be reported on AusTender, and made publically available in accordance with Defence's AusTender reporting requirements. Consequently, Defence *officials* should ensure that the decision to use a *limited tender procurement* method complies with the CPRs, is approved by an appropriate delegate, is defensible and the justification is recorded²⁴.

Government Procurement (Judicial Review) Act 2018

48. The *Government Procurement (Judicial Review) Act 2018* (JR Act) was introduced to address obligations under relevant free trade agreements and establishes a statutory framework for suppliers (being one or more persons who supplies or could supply, goods or services and would include potential suppliers or tenderers)²⁵ to make complaints to Defence about non-compliance with specific provisions of the CPRs. These complaints are managed through the Defence Procurement Complaints Scheme (DPCS). In broad terms, a valid complaint under the JR Act requires Defence to suspend the relevant procurement (except where a public interest certificate (PIC) has been issued) and to investigate and report on the complaint. If the complaint is not considered resolved or otherwise withdrawn by the supplier, the supplier may seek an injunction in the Federal Circuit Court or the Federal Court of Australia.

49. Procurements are subject to the JR Act if they are 'covered procurements'. A 'covered procurement', for the purposes of the JR Act, is a procurement:

- to which both Divisions 1 and 2 of the CPRs apply (ie, they are above the relevant procurement thresholds);
- to which no exemption has been applied; and

²⁴ The choice to use a limited tender method may be subject to a complaint under the JR Act.

²⁵ The JR Act uses the term 'supplier' which has a broader meaning than the definition provided in the CPRs.

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- not included in a class of procurements specified in a determination under s5(2) of the JR Act²⁶.
50. A complaint is a valid complaint under the JR Act if:
- it is made by a supplier;
 - it is in writing;
 - it relates to a covered procurement;
 - it relates to a contravention of the CPRs (Division 2 or nominated Division 1 requirement); and
 - the supplier's interests have been affected by the contravention of the CPRs.

51. Chapters 3 and 4 of the DPPM provide further information relating to the specific CPRs that are subject to the JR Act. The [Defence Procurement Complaints Scheme – Complaints Management Guide](#) and the Department of Finance's *Resource Management Guide 422 – Handling complaints under the Government Procurement (Judicial Review) Act 2018* contain additional information relating to the JR Act.

Defence Procurement Complaints Scheme

52. The DPCS has been established in Defence to manage the administration and investigation of all procurement complaints, including those submitted under the JR Act. The DPCS meets the requirement under the CPRs to apply timely, equitable and non-discriminatory complaint handling procedures²⁷. In accordance with Defence Procurement Policy Directive D20, all procurement complaints must be submitted to the [procurement complaints mailbox](#) which is managed by the Central Procurement Complaints Function. Further information on the DPCS can be obtained on the [DPCS intranet page](#).

The procurement life cycle - core principles

53. The CPRs have some core principles that Defence *officials* need to consider when planning and undertaking their *procurement* activities. These are discussed below.

Value for money

54. As noted above, value for money does not necessarily mean the lowest price. In most Defence *procurements* of any complexity, determining value for money will mean assessing tenders against all the *evaluation criteria* stated in the *request documentation* and determining on the balance of all the assessments which one delivers best value for the Commonwealth. In undertaking this assessment, *officials* need to look at the total cost of ownership of the solutions. Value for money is about getting the best possible outcome over the whole-of-life of the *goods* or *services*.²⁸

55. The standard conditions of tender in the [endorsed Defence contracting templates](#) include *evaluation criteria* that meet the requirements of the CPRs for determining value for money, and in particular enable Defence *officials* to properly consider the relevant financial and non-financial costs and benefits of tenders. In major Defence *procurements*, particularly materiel *procurements*, one of the criteria to be considered in determining value for money is Australian Industry Capability (AIC). This is an explicit criterion in ASDFCON tendering and contracting templates. The ability for the Australian Government to maintain an AIC program is provided for under our free trade agreements as an express exception to the non-discrimination principle (which is discussed below). Indeed, even before Defence releases *request documentation*, Defence *officials* will consider during the planning stage of the *procurement* the requirement or potential for Australian industry involvement in the *procurement*, consistent with the Government's defence and industry policy.

56. During the evaluation stage of a *procurement*, Defence *officials* will evaluate tenders against the stated *evaluation criteria* in accordance with the process and methodology set out in the tender evaluation plan. If the assessment of tenders against the non-price *evaluation criteria* leaves little or no discrimination between the tenders, then it is likely that the lowest priced tender will be the best

²⁶ At this stage (20 April 2019), no determination has been made under s5(2) of the JR Act. This document will be updated if a determination is made.

²⁷ See paragraph 6.8 of the CPRs.

²⁸ See paragraphs 4.5 and 4.6 of the CPRs.

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value for money. However, the assessment of value for money can become more difficult where, for example, one *tenderer* offers a high level of capability or performance at a higher price, than other tenders which meet the minimum requirements but offer a lower level of capability or performance at a lower price. Effectively, the question for Defence *officials* becomes whether the higher level of capability or performance at the higher price is 'worth' more or less to Defence than the lower level of capability or performance at the lower price. This is a subjective assessment and *officials* need to make sure that they can properly articulate the reasons for why they make their decision. As long as the reasons are sensible and logical and in accordance with the PGPA Act framework requirements and duties, then the decision itself will be defensible.

57. Defence *officials* also need to make sure that when making these decisions, they are comparing 'apples with apples'. *Officials* need to ensure that all omissions and risks relating to a tender have been properly understood, considered, and if necessary quantified and 'priced in' to that tender, so as to ensure that when comparing with another tender that does not have those omissions or risks, the comparison is being done on an equivalent basis. For more guidance about how to undertake tender evaluation, Defence *officials* should refer to the [Complex Procurement Guide](#)²⁹.

58. Selecting the most appropriate *procurement* process that is commensurate with the scope, scale and risk of the *procurement* will also help Defence *officials* achieve value for money. This will normally involve some form of competition.

Competition

59. As paragraph 5.1 of the CPRs notes, competition is a key element of the Australian Government's *procurement* framework. A competitive *procurement* process is normally the mechanism by which Defence ensures that it is receiving value for money. Competition is important because time and again it has been shown to be the most effective motivator for industry to reduce costs and improve performance. Whilst early contractor selection and sole source *procurement* can also be an effective and efficient execution strategy in appropriate cases, it should not be used solely to avoid the need for competitive tendering, especially when a viable competition can be held. Sound commercial judgment, not convenience, should determine the right approach.

60. However, competition does not necessarily mean an *open tender*. Any process involving more than one *supplier* will be competitive. Accordingly, if an open competition is not feasible, Defence *officials* should explore opportunities for a limited competition (known under the CPRs as a *limited tender*). However, as discussed earlier in this Chapter, for a *procurement* that is subject to Division 2 of the CPRs, unless it is exempt, there are only very limited grounds on which Defence *officials* are permitted to conduct a *limited tender* (whether sole source or competitive).³⁰

61. Competition is important as under competitive processes (whether *open tender* or *limited tender*), *suppliers* put forward their best solution and price. *Suppliers* know that if they don't do so then it is likely that one of their competitors will win the work instead. Effective competition creates the incentive for *suppliers* to deliver quality *goods* or services at more competitive prices. In other words, value for money is driven by the market.

62. This is so even when Defence *officials* are procuring from *standing offer* panel arrangements. If the *standing offer* is established through an *open tender* process, then Defence *officials* may procure from the panel by approaching one, some or all of the *suppliers* on the panel for a quote or proposal. It is often tempting for Defence *officials* to seek a quote from just one panellist, particularly if the panellist is known to them. However, it is also important to provide opportunities for all capable *suppliers*, particularly small to medium enterprises, as this helps maintain a strong Defence industrial base, as well as incentivising best value performance. Accordingly, the right approach to procuring from a panel will depend on the circumstances of each case. For more information about establishing and using *standing offer* panel arrangements, Defence *officials* should refer to the factsheet on the [Commercial Division Fact Sheets and Guidance](#) intranet page.

63. Also, the Defence panel manager will usually have established the business rules for the panel to ensure that it is accessed and used appropriately, *suppliers* on the panel have a fair and equitable chance of being engaged through the arrangement, and Defence is able to demonstrate the panel is delivering value for money. Defence *officials* should make themselves aware of and comply with these business rules to ensure that Defence panels are used appropriately.

²⁹ See Chapter 5 of the Guide.

³⁰ See paragraph 10.3 of the CPRs.

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64. While awarding *contracts* through full and open competition is key to ensuring that the Government efficiently acquires *goods* and services to best meet its needs, there are certain circumstances when competition may not be practical. This can especially be the case given the nature of major Defence *procurement*, and particularly (but not exclusively) in complex materiel related *procurements*. For instance, a competitive process will be unable to be undertaken if Defence requires a unique product or service such that there is only one *supplier* that offers the required capability or solution. This will be the case where, for example, a *supplier* has the patent for a particular product, or because of other intellectual property rights a *supplier* is the only one that is able to install or maintain a particular system or network.

65. A sole source *procurement* may also arise because it is a follow-on *contract* and only the incumbent contractor can continue the work due to intellectual property restrictions or because the contractor is the only one with the necessary skills and expertise. This kind of ‘*supplier* lock in’ may be able to be avoided if Defence has acquired sufficient technical data and associated intellectual property rights to enable a competition to be undertaken. Avoiding ‘*supplier* lock in’ promotes value for money by establishing competitive tension across the lifecycle of the procured *goods* or services.

66. Accordingly, Defence *officials* should consider during the planning stage of the *procurement* how to maintain the competitive environment not only at the outset of the *procurement*, but over the life of the program or activity. Conducting market research to understand the market and the scope for competition is critical. In addition, early and ongoing engagement with industry around Defence’s requirements is also important, particularly as this may allow new entrants to enter the market in time to meet those requirements. The importance of market research and ongoing industry engagement is discussed in the Complex Procurement Guide.³¹

67. For major Defence *procurements*, a key to being able to avoid *supplier* lock in of the kind mentioned above and to remove barriers to future competition, is for Defence *officials* to have an effective intellectual property and technical data strategy that covers the whole of the lifecycle of the *goods* being procured. For example, for a major ICT project or major materiel acquisition, securing the necessary technical data and associated intellectual property rights (in particular, the ability to licence to third parties) in the initial *procurement* process will maximise competitive alternatives across the whole of life of the capability, including future *procurement* of additional systems or spares, operation and training, maintenance and repair, integration with other systems, and future updates, upgrades or modifications.

68. If proposing to undertake a sole source *procurement*, Defence *officials* will need to justify this in their *procurement* plan or Endorsement to Proceed, noting that the Commitment Approval delegate (see section 23(3) of the PGPA Act) will also need to be satisfied as to the *procurement* method (which would be a *limited tender*). Defence *officials* should consider what mechanisms are available to drive value for money outcomes from their engagement with industry, especially if this is done in a non-competitive environment. In particular, in this context Defence *officials* will need to be able to demonstrate how the price has been determined to be fair and reasonable for the required *goods* or services, and should consider seeking [specialist financial advice](#) to determine this.

69. Achieving value for money in a non-competitive environment can be particularly challenging, and [specialist procurement advice](#) should be sought to develop appropriate sourcing strategies to achieve a value for money outcome across the life of the *goods* or services being procured.

Non-discrimination

70. Effective competition also requires non-discrimination.³² This principle means that Defence is normally unable to require in its *request documentation* that particular work be done in Australia, or done by Australian based *suppliers*, or that *suppliers* use Australian materials, and this is consistent with Australia’s FTA obligations³³. The intent behind the principle is that the market will work out how best to meet the requirement being sought by Defence. In many cases, the work will need to be performed in Australia, and indeed at particular locations in Australia, however, this should not prevent foreign companies from being able to bid to undertake the work as long as they are able to meet Defence’s service delivery requirements in those locations.

³¹ See Chapter 2 of the Guide. See also the Early Industry Engagement Better Practice Guide.

³² See paragraph 5.1 of the CPRs.

³³ Paragraph 5.4 of the CPRs is subject to the JR Act, For further information regarding the JR Act, Defence officials should refer to Chapter 2 paragraphs 48 – 51 of the DPPM.

71. Specific exemptions can be sought from the non-discrimination principle in appropriate cases (for example, through a measure under paragraph 2.6 of the CPRs), or through other mechanisms such as the AIC policy (mentioned above), or other specific Government policy decisions. These exemptions are most likely to be found in major capital equipment acquisition decisions (for example, naval shipbuilding).³⁴ Defence Procurement Policy Directive D15 requires Defence *officials* to comply with the Defence AIC policy (see also the Note following paragraph 5.7 of the CPRs). Importantly, these exemptions have to be consistent with Australia's obligations under its FTAs.³⁵

Ethical behaviour – the balance between probity and industry engagement

72. Section 6 of the CPRs (see Chapter 4 of the DPPM) sets out the requirement for Defence *officials* to properly use and manage *public resources*. 'Proper' means efficient, effective, economical and ethical.³⁶

73. Attention to probity is integral to ensuring the defensibility, transparency and success of Defence *procurements*. Defence *procurements*, particularly those relating to major capital acquisitions, ICT projects and major facilities, are under increasing scrutiny by *tenderers*, the Australian National Audit Office, Senate Estimates and other Parliamentary Committees, and the media.

74. Probity is the evidence of ethical behaviour, and can be defined as complete and confirmed integrity, uprightness and honesty in a particular process. The [Department of Finance website](#) lists a number of principles which underpin ethics and probity in Australian Government *procurement*.

75. Defence *officials* need to put in place appropriate and sensible mechanisms to assure the probity of Defence *procurement* processes in line with the scope, scale, risk and sensitivity of the particular *procurement*. External legal process or probity advisers can be engaged when necessary. Occasionally, Defence may also wish to appoint an external probity auditor, either at the conclusion of the *procurement* process or at a key point during the process, to audit whether Defence *officials* followed the process and probity requirements set out in the documentation governing the *procurement*.

76. However, it is very important that Defence *officials* do not use probity as a reason or excuse not to engage appropriately with the market or *tenderers* throughout a *procurement* process. As long as it is done fairly and consistently, there is no reason why a *procurement* process cannot build in mechanisms (in the *request documentation*) for ongoing engagement with industry and *tenderers* throughout a *procurement* process. This might include engagement before tender release around Defence's requirements or to understand the market's capacity or capability, or engagement during the tender process, such as through *tenderer* clarification activities or mechanisms to allow *tenderers* to update and improve their offers (sometimes called 'offer definition and improvement activities').

77. A key factor in delivering good *procurement* outcomes is early market engagement and continued open dialogue with *suppliers* throughout the *procurement* process. Understanding *suppliers* and the market is part of the planning necessary to develop the right *approach to market*. Defence *procurement* should be supported by robust *procurement* plans that have a level of detail commensurate with the scope, scale and risk of the *procurement*. This is the first stage of the *procurement* life cycle.³⁷ Good *procurement* also results from proactively managing *supplier* and other key stakeholder relationships throughout the *procurement* process and for the duration of the *contract*.

78. Defence *officials* may sometimes be approached by *tenderers* or contractors to sign a confidentiality agreement or deed (sometimes called a Non-Disclosure Agreement) either on behalf of the Commonwealth or in their personal capacity prior to receiving information from the *tenderer* or contractor. Defence *officials* are already subject to legal obligations to protect and not misuse information obtained as a result of their employment with Defence (for example, under the *Public Service Act 1999*; see also PGPA Act, section 28). Therefore, Defence *officials* are under no obligation to sign such agreements and should not do so without first seeking legal advice from Defence Legal. In particular, *officials* should be aware that confidentiality agreements will often contain an indemnity from the *official* (or Commonwealth) in favour of the person disclosing the information.

³⁴ As noted in Chapter 1 of the DPPM, specific Government policy decisions may be found in Cabinet decisions, or other Government approvals relevant to a commitment of relevant money, to the extent that the decision or approval establishes a course or line of action.

³⁵ This is why paragraph 4.8 of the CPRs provides that the economic benefit requirement set out in paragraph 4.7 of the CPRs has to operate 'within the context of' (that is, subject to) Australia's FTAs.

³⁶ See paragraph 6.1 of the CPRs.

³⁷ More guidance on industry engagement and *procurement* planning is set out in Chapter 2 of the Complex Procurement Guide and the Early Industry Engagement Better Practice Guide.

79. As part of Defence's probity framework for major *procurement* processes, Defence *officials* may be requested (for example, by the legal process or probity adviser) to sign a statement confirming that they are aware of their legislative and policy obligations to properly protect confidential information (and to declare any actual or perceived conflicts of interests). It is appropriate for Defence *officials* to sign such a confirmation in these circumstances, noting that the statement does not constitute a formal agreement.

80. There are some senior Defence officials who will have regular access to sensitive information related to Defence *procurements*, in particular the members of the Defence Committee, Investment Committee and Enterprise Business Committee. In addition, Defence's Contestability organisation may also be required to have access to this information to perform its function. As part of Defence's probity framework, members of these Committees and the Contestability organisation acknowledge under their respective business rules the legislative and policy obligations that apply in relation to confidential information and conflicts of interests. Accordingly, these Defence *officials* are not required to receive *procurement* specific probity briefings or sign individual probity statements.

81. The legislative and policy obligations related to probity include:

- the general duties of *officials* set out in sections 25 to 29 of the PGPA Act (dealing with due care, diligence, good faith, declaring interests etc);
- the APS Values and APS Code of Conduct (see *Public Service Act 1999*, sections 10 and 13);
- Defence Instruction (General) - PERS 25-4 - *Notification of Post Separation Employment*;
- Defence Instruction (General) - PERS 25-6 - *Conflicts of Interest and declarations of interests*; and
- Defence Instruction (General) - PERS 25-7 - *Gifts, Hospitality and Sponsorship* (see also AAI 10 - Managing Relevant Property).

82. Legal process and probity advisers can be engaged to help ensure that the processes, procedures and documentation used in implementing a major Defence *procurement* are robust, transparent and capable of external audit. However, there is no requirement for Defence *officials* to engage an external probity or process adviser, or that they be independent of another adviser (for example, the legal adviser). Depending on the nature of the *procurement*, internal personnel (for example, contracting officers or Defence Legal officers) can potentially perform the role of a probity adviser for a Defence *procurement*.

83. In relation to 'high risk' *procurements*, the Australian National Audit Office takes the view that a probity adviser should not have any actual or perceived conflicts of interest that could compromise their duty to give candid advice about the probity aspects of the project. A perceived conflict could include simultaneously serving as both probity and legal adviser. The decision about whether to have an independent probity or legal process adviser should be made based on the individual circumstances of the case, and in particular, whether the *procurement* is likely to be high profile, high value, controversial or sensitive.

84. The main reason to have a 'legal process adviser' as opposed to a 'probity adviser' is to maintain legal professional privilege in relation to the 'probity' advice. Non-lawyers cannot provide legal advice, so no legal professional privilege would apply to their advice if there is a challenge to the *procurement* process. Advice from a lawyer in relation to probity/process would be covered by the same rules as other legal advice.³⁸

85. A template probity/legal process plan can be found on the Commercial Division [Tools and Templates](#) intranet page.

³⁸ For more information about legal professional privilege (LPP), Defence *officials* should refer to the [Defence Legal LPP Fact Sheet](#).

Risk management

86. A key principle of the CPRs is risk management, and in particular that risks should be borne by the party best placed to manage them.³⁹ Depending on the nature of the *procurement*, the risks that may need to be considered could include technical, operational, industrial, managerial, work health and safety, financial, legal, commercial, or probity risks. These risks need to be considered across the *procurement* lifecycle. For instance, the Complex Procurement Guide discusses the importance of risk identification and management in the planning stage of the *procurement* life cycle, as well as risk assessment during the tender evaluation stage.⁴⁰

87. In the planning stage, Defence *officials* will consider the risks relating to the conduct of the *procurement* process itself and what is being procured, and how these can be addressed through the *procurement* strategy. During evaluation and *contract* negotiation, Defence *officials* will be more focussed on assessing and addressing the risks in relation to the requirements of the *contract*, and the allocation of commercial and other risk under the *contract*, and considering how these risks can best be managed through setting up the contract management arrangements for the *contract*.⁴¹

88. In relation to *procurements* that are required to be considered by the Defence Investment Committee (for example, Major Capital Equipment, and major ICT and infrastructure procurements), the [‘Smart Buyer’ framework](#) sets out various risk categories that should be considered when developing the Project Execution Strategy and the *procurement* and contracting strategies for the *procurement*.

89. Defence also has formalised policy and processes for the assessment and management of risk in the Defence environment. For instance, in relation to materiel *procurement*, Defence *officials* should follow the [Defence Materiel Manual \(PROJ\) \(DMM\(PROJ\)\) – 11-0-002- CASG Project Risk Management Manual](#) and [DMM\(LOG\)-04-0- 001- DMO Materiel Logistics Manual](#).

90. The endorsed Defence contracting templates set out the standard Defence approach to risk allocation between the Commonwealth and its contractors. The templates have been drafted in accordance with the above principle that risks should be borne by the party best placed to manage them. In many cases, this will be the contractor, noting that companies are able to take out insurance (or self-insure) for most *contract* related risks.

91. However, given the scope, scale, value and risk of many Defence contracts, it is not unusual for contractors to seek to limit their liability, particularly under ICT *contracts*, and *contracts* for the acquisition or sustainment of major capital equipment. In these circumstances, Defence *officials* need to undertake a risk assessment in relation to the proposed limitation of liability to understand the implications for the Commonwealth and to quantify any potential exposure. For instance, the limitation may mean that the Commonwealth will be unable to sue the contractor for its normal entitlement to damages for breach of *contract*. The Defence contracting templates make clear which categories of liability the Commonwealth may consider limiting and by contrast those categories in relation to which it will not consider limiting the contractor’s liability (for example, personal injury or death).

92. Defence has developed tools and guidance to assist Defence *officials* with the conduct of [liability risk assessments](#).

93. The [endorsed Defence contracting templates](#) also contain provisions requiring contractors to take out necessary insurances to cover their work for Defence. Again, depending on the nature of the Defence *contract*, the contractor’s insurance arrangements can be both complex and costly (noting that the costs will be passed on to Defence through the *contract* price). Defence has developed tools and guidance to assist Defence *officials* with determining and managing *contract* insurance requirements which can be found on the Commercial Division [Approved Contractor Insurance Program Initiative](#) intranet page.

94. In relation to materiel *procurement*, Defence has established the Approved Contractor Insurance Program (ACIP) as a joint Defence and Industry *procurement* reform initiative that involves a periodic centralised review of participating Defence companies’ global/group and local insurance programs. The purpose of the review is to pre-qualify a participating company’s insurance program, if

³⁹ See section 8 of the CPRs (in Chapter 3 of the DPPM).

⁴⁰ See Chapters 2 and 5 of the Complex Procurement Guide.

⁴¹ See the [Defence Contract Management Framework](#). For further guidance on the contract management stage of the procurement lifecycle, Defence *officials* should refer to Chapter 7 of the Complex Procurement Guide and the Defence Contract Management Handbook.

Defence is satisfied with the company's insurances. This helps to reduce the costs of tendering for both industry and Defence as well as improve risk management within Defence in respect of insurable risks that arise in connection with the performance of major Defence *contracts*. Companies granted ACIP status are taken to comply with insurance requirements in individual *contracts* and do not have to provide evidence about their insurances during tendering and *contract* management phases of a *procurement*. The ACIP initiative is open to the 'top' 6-7 major Defence companies and participation by the companies is voluntary. The ACIP Register lists those companies currently holding ACIP status. For more information see the Commercial Division [Risk Assessments and Liabilities intranet page](#).

Accountability and transparency

95. The Australian Government is committed to ensuring accountability and transparency in its *procurement* activities. Accountability involves Defence *officials* being responsible for their *procurement* actions and decisions and related outcomes, while transparency involves Defence enabling appropriate scrutiny of its *procurement* activities.⁴² Accordingly, the CPRs require Defence *officials* to meet certain record-keeping, reporting and other requirements before and after entering into a *contract* with a supplier, including documenting relevant approvals and other *procurement* related decisions and actions, and *AusTender* and other reporting requirements. *AusTender* is the Australian Government's *procurement* information system.

96. Complaints may be made by suppliers under the JR Act for breach of the CPR requirement regarding the level of documentation maintained for a covered procurement.⁴³ The [Complex Procurement Guide](#) provides guidance for Defence *officials* about how they can meet their accountability and transparency requirements as they progress through the *procurement* life cycle.

The procurement life cycle – overview of how to plan and undertake a procurement

Introduction

97. Good *procurement* practice is not about just mechanically applying the CPRs or the additional Defence Procurement Policy Directives in the DPPM. It is about developing a strong understanding of all aspects of the *procurement* lifecycle and using judgement to apply this understanding in each case to deliver the best outcomes. While Defence *officials* need to comply with the CPRs and the DPPM, *officials* should design each *procurement* process in a way that is commensurate with the scope, scale and risk of the relevant *procurement*. Application of sound judgement when applying the CPRs and designing a *procurement* process that complies with the CPRs is important for all *procurements*, and failure to do so for *procurements* subject to the JR Act has the potential for consequences such as suspension of a *procurement* process or the grant of an injunction or the award of compensation by the Federal Court.

98. So, for instance, *procurements* that are valued below the relevant *procurement threshold* will normally be low risk, routine *procurements* of *goods* or services. They are often called 'simple *procurements*' in Defence. However, many *procurements* valued at or above the relevant *procurement threshold* may also be simple in nature. For example, a *procurement* of more spare parts from an existing *supplier* may be valued at a lot higher than the *procurement threshold*, but would normally be a simple purchasing exercise. Accordingly, using a *procurement* process that involves significant cost, time and resources for both Defence and *suppliers* would not be sensible or represent value for money for these kinds of *procurements*. The concept of value for money is not limited to the *procurement* outcome, but is also a consideration when designing a *procurement* process.

99. By contrast, many Defence *procurements* are highly complex undertakings because of the nature of the *goods*, works or services being sought. The process for these *procurements* needs to be designed and undertaken in light of the scope, scale and risk of what is being procured.

100. The Complex Procurement Guide provides more in-depth guidance about how these kinds of *procurements* should be planned and executed across the life cycle. The following discussion provides an overview of the guidance for undertaking a *procurement* process.

⁴² See section 7 of the CPRs (in Chapter 3 of the DPPM).

⁴³ Paragraph 7.2 of the CPRs is subject to the JR Act. For further information regarding the JR Act, Defence officials should refer to Chapter 2 paragraphs 48 – 51 of the DPPM.

Guidance overview

101. For more complex *procurements*, Defence *officials* will normally be required to prepare three main documents:

- a *procurement* plan;
- *request documentation*; and
- an evaluation plan.

102. The *procurement* plan details the process that will be undertaken. It differs from a business case in that the business case explains why a *procurement* is being undertaken, including its value proposition, while the *procurement* plan explains how the *procurement* is to be undertaken. However, for convenience, and depending on the scope, scale and risk of the particular *procurement*, Defence *officials* may sometimes include the *procurement* plan as part of, or as an attachment to, the business case.

103. The *procurement* plan will normally cover the following:

- a description of the *procurement*;
- consideration of how the procurement will comply with the CPRs including the selection and justification of the *procurement* method to be used (for example, *open tender*, *limited tender*);
- proposed probity arrangements;
- proposed governance arrangements, such as the need for a steering committee;
- the *procurement* risk assessment; and
- indicative time-lines and resources (including budgeting of funds to support the procurement).

104. The level of detail in the procurement plan should reflect the scope, scale and risk of the *procurement*. For less complex *procurements*, the Endorsement to Proceed document may be sufficient to serve as the procurement plan. For *procurements* that are required to be considered by the Defence Investment Committee (for example, Major Capital Equipment, and major ICT and infrastructure procurements), the procurement plan will be informed by the [Smart Buyer Project Execution Strategy](#).

105. The *request documentation* sets out the rules for the *procurement*. It describes to *potential suppliers*, the specifics of the *procurement*, the manner in which *submissions* are to be forwarded to Defence (for instance, through *AusTender*) and how *submissions* will be evaluated. If there is a possibility that other agencies will access the resulting *contract* (for example, a *standing offer* arrangement), Defence *officials* need to ensure the *request documentation* includes a statement to that effect.

106. The *request documentation* will usually be the primary information source used by *potential suppliers* when developing a *submission*. After reviewing the *request documentation*, the *potential suppliers* should be able to understand Defence's requirements and how the *procurement* is to provide value for money. This is why the CPRs, in effect, require that *request documentation* include all information necessary to permit *suppliers* to prepare and lodge responsive *submissions*.⁴⁴

107. *Request documentation* will normally include:

- a description of the requirement (for example, the statement of work), including any essential requirements;
- any *conditions for participation* or *minimum content and format requirements*;
- *evaluation criteria* and methodology;
- the other rules of the process; and
- the draft *contract*.

⁴⁴ While this discussion about *request documentation* applies to *procurements* to which the additional rules in Division 2 of the CPRs apply, it is also good practice for all *procurements*.

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108. The statement of work should describe:

- the nature, scope and, where known, quantity of the *goods*, works or services required;
- specific requirements to be fulfilled or provided, including certification, test and evaluation, plans, drawings and training materials;
- any applicable technical *specifications* (in which case, these should be described in terms of function and performance requirements, rather than specific designs, trademarks, or product descriptions) and the related standards on which the *specifications are based*;⁴⁵
- whether any of the requirements are 'essential requirements' (in which case, if *suppliers* are not able to meet the requirements, they will be excluded from consideration);
- the timeframes expected for the delivery of the required *goods*, works or services.

109. *Conditions for participation*⁴⁶ are mandatory requirements which describe minimum standards or essential characteristics that *potential suppliers* have to meet for their *submissions* to be considered. Defence *officials* should take great care when deciding whether to include *conditions for participation* and what these might be, as the CPRs require that where the procurement is subject to the additional rules in Division 2 of the CPRs, any *submission* that does not meet the *conditions for participation* be rejected by Defence. *Conditions for participation* are limited to those assuring the legal, financial, technical or commercial capabilities of the *supplier* to meet the particular requirements of the *procurement*.

110. Defence *officials* may also decide to set out *minimum content and format requirements*⁴⁷ in their *request documentation*, for example:

- in relation to minimum content – Defence may require the *tenderer* to provide a certificate of insurance or a particular licence to support the *submission*; or
- in relation to formatting – Defence may require *submissions* to be submitted electronically through *AusTender*.

111. If the *tenderer's submission* for a procurement which is subject to the additional rules in Division 2 of the CPRs does not meet the *minimum content and format requirements*, Defence *officials* will normally be required to exclude the *submission* from further consideration, unless the *officials* consider that the failure to meet the requirement has been due to an unintentional error of form in the *submission*. If so, Defence *officials* have the discretion to allow the *submission* to be corrected, subject to ensuring that all *tenderers* are treated fairly and equitably.

112. The *request documentation* will also set out the *evaluation criteria*. These set the foundation for a fair and equitable assessment of *submissions*. What the appropriate criteria are depends on the nature of the particular *procurement* and should flow from the planning stage.

113. Evaluation of *tenderers* should be based on a balance of all the criteria, or if a weighting methodology is used, on the relative importance of each criterion. If a weighting methodology is used, Defence *officials* should consider setting this out in the *request documentation* so that *potential suppliers* can appropriately focus their responses. This will make the process more transparent, which should limit misunderstandings that may result in complaints.

114. The *request documentation* should also set out the rules around lodgement of *submissions*, whether this is through *AusTender* or other means, including the closing time for *submissions*. Adherence to deadlines is important in maintaining the integrity and probity of the tender process. Therefore, Defence *officials* are not normally able to accept late *submissions*, unless there has clearly been a mishandling of the *submission* by Defence.

115. During the time that the tender process is open, Defence *officials* will need to be in a position to answer queries on the *procurement*. This needs to be done fairly and impartially in a manner that does not create an unfair advantage for any *potential supplier*. Therefore, the *request documentation* should explain the rules for answering questions and distributing responses.

⁴⁵ In relation to specifications and standards, see paragraphs 7.26, 10.9, 10.10, 10.11, and 10.12 of the CPRs

⁴⁶ While this discussion about *conditions for participation* applies to *procurements* to which the additional rules in Division 2 of the CPRs apply, it is also good practice for all *procurements*.

⁴⁷ While this discussion about *minimum content and format requirements* applies to *procurements* to which the additional rules in Division 2 of the CPRs apply, it is also good practice for all *procurements*.

116. At least in request for tender processes, Defence normally requires *tenderers* to indicate their compliance (or non-compliance) with a draft *contract* which contains the terms and conditions on which Defence is willing to enter into a *contract* for the requirement. Defence *officials* should assess the risk with the *tenderers'* non-compliances with the draft *contract* to enable *tenderers* to be evaluated against a common baseline.

117. The evaluation plan is an internal Defence document that sets out the methodology and processes to be followed by Defence when evaluating *submissions*. To reduce the risks of a perceived or actual bias in the *procurement* process, Defence *officials* should preferably develop and finalise the plan before an approach is made to the market, but in any event before *submissions* are opened.⁴⁸ The Complex Procurement Guide provides guidance about the contents of an evaluation plan.⁴⁹

118. The evaluation plan will normally identify the organisation that is responsible for the evaluation, and recommend a preferred *supplier* (or a shortlist of *potential suppliers*). Depending on the nature and complexity of the evaluation, the evaluation organisation may comprise a steering committee, an evaluation board or team and subordinate evaluation working groups. The evaluation organisation may also include internal or external advisers or experts to assist with elements of the evaluation, for example, the technical requirements, financial viability or price.

119. When receiving *submissions*, Defence *officials* need to use a mechanism that assures fairness and impartiality of the *procurement* process. *Submissions* should only be received into a secure environment. This can be through *AusTender* or other secure electronic system, or a physical tender box or tender room. Any *submissions* received after the closing time should be considered late and should generally not be accepted (see paragraph 114 above).

120. The evaluation committee should first check the *submissions* to make sure they satisfy any mandatory requirements, such as *minimum content and format requirements* and *conditions for participation*, and should then proceed to undertake the detailed evaluation of *submissions* against the *evaluation criteria*.

121. The evaluation of *submissions* is the most important aspect of determining value for money in a *procurement*. When evaluating *submissions*, the evaluation committee needs to make sure that it faithfully applies the *evaluation criteria*, methodology and procedures that have been set out in the *request documentation* and the evaluation plan. If the committee does not then this could compromise the evaluation outcome and give rise to a complaint or legal action by an affected *tenderer*, and require Defence to set aside the evaluation and possibly the whole *procurement* process, as well as incurring additional costs in dealing with the complaint.

122. The CPRs⁵⁰ require Defence *officials* to maintain appropriate documentation of the decision-making process for each *procurement*. Therefore, the evaluation committee should be accurate and scrupulous in recording the evaluation and the reasons underlying its decisions. As a general rule, officials should ensure that there is sufficient documentation to provide an understanding of why the *procurement* was necessary, the process that was followed and all relevant decisions made, including approvals, and the basis of those decisions.

123. The evaluation committee should therefore prepare an evaluation report to document the evaluation process and the recommendation of a preferred *tenderer* (or shortlist of *tenderers*). The report can also assist in the future when providing feedback to *tenderers* through the debriefing process.

124. The evaluation report will normally contain:

- a summary of the evaluation process;
- a summary of the assessment of each *submission*;
- reasons for the exclusion of a *submission* from further consideration;
- recommendations concerning the preferred *tenderer(s)* based on value for money;⁵¹ and

⁴⁸ See Defence Procurement Policy Directive D46.

⁴⁹ See Chapters 3 and 5 of the Guide.

⁵⁰ Paragraph 7.2 of the CPRs. This paragraph is subject to the JR Act, For further information regarding the JR Act, Defence officials should refer to Chapter 2 paragraphs 48 – 51 of the DPPM.

⁵¹ For *procurements* to which the additional rules in Division 2 of the CPRs apply, Defence *officials* are required to award the *contract* to the *tenderer* that is assessed to provide the best value for money in accordance with the *request documentation*, including compliance with any *conditions for participation* and essential requirements. (See CPRs, paragraph 10.32 to 10.36).

- details of any issues which need resolution during subsequent contract negotiations.

125. The evaluation committee members will normally sign the report and submit this for endorsement by the relevant delegate.

126. The CPRs require Defence *officials* to notify affected *tenderers* promptly of the rejection of their *submission* or the award of a *contract*, and if requested, provide a debrief to the *tenderers* (both successful and unsuccessful *tenderers*).⁵² A debrief (whether verbal or written) should include, as appropriate:

- an explanation of why the *submission* was unsuccessful (or successful);
- areas of weakness or non-compliance in the offer;
- suggestions as to how future *submissions* can be improved; and
- in the case of unsuccessful *tenderers*, if the *contract* has already been successfully negotiated, the name of the successful *supplier* and total *contract* price (noting that this needs to be reported on *AusTender* in any event, if valued at or above \$10,000).

127. Defence *officials* should keep a written record of the debriefing.

128. The final stage in the *procurement* process itself relates to the negotiation and award of the *contract* with the preferred *tenderer*. During *contract* negotiations, Defence *officials* should seek to resolve any issues that were identified during the evaluation.

129. At any time during the *procurement* process, Defence can determine that awarding a *contract* is not in the public interest.⁵³ Public interest grounds generally arise in response to new information or unforeseen events which materially affect the objectives or reasons underlying the original *procurement* requirement as specified in the *request documentation*. Examples of situations in which it may not be in the public interest to award the *contract* could include:

- a Government decision to cancel or vary the program to which the *procurement* relates;
- unforeseen technological or environmental changes affecting the business case for the *procurement*;
- discovery of new information materially affecting the policy behind or operational effectiveness of the project or *procurement*.

130. However, termination of a *procurement* process is a serious step with potential legal and management risks that should be considered and addressed before any decision is made. At the least, it can harm Defence's credibility with *suppliers* that, in turn, may discourage *suppliers'* participation in future *procurements*. On the other hand, termination may be compelled in order to protect the integrity of the *procurement* process and avoid the awarding of a *contract* in a manner inconsistent with the stated evaluation process.

131. Defence *officials* cannot terminate a *procurement* process simply because they may be dissatisfied with the outcome of the evaluation conducted in accordance with the stated rules, conditions and criteria set out in the *request documentation* and evaluation plan.

132. If Defence cancels a *procurement* on the basis that it is not in the public interest to award a *contract*, it should normally provide *potential suppliers* with reasons. In any case, prior to cancelling a *procurement*, Defence *officials* should seek specialist legal or contracting advice.

133. Once Defence has entered into a *contract*, Defence *officials* need to ensure that they manage the *contract* effectively so that all parties to the *contract* (including Defence) fully meet their respective obligations as efficiently and effectively as possible, and to deliver the business and operation objectives required by the parties. Effective contract management is a key enabler to delivering value for money, as well as supporting proper governance and risk management across the life of the *contract*. Defence *officials* should refer to the Defence Contract Management Framework and the Defence Contract Management Handbook to support them achieving best practice contract management. The Framework brings together the underpinning principles, policies, tools, templates, guidance and competencies required to support more collaborative business relationships with

⁵² CPRs, paragraph 7.17.

⁵³ For *procurements* to which the additional rules in Division 2 of the CPRs apply, this is the only ground on which a Defence *official* can decide not to award a *contract* in relation to the *procurement*. (See CPRs, paragraphs 10.35 and 10.36).

industry and deliver more effective contract outcomes. Defence *officials* should apply the Framework and use the Handbook when undertaking contract management.

The procurement life cycle – procurement complaints

134. Procurement complaints can be made at any stage of the procurement life cycle, and will be categorised as either a general procurement complaint or a JR Act complaint. In Defence, all procurement complaints must be managed under the DPCS. Compliance with the processes set out in the CPRs and the DPPM will minimise the risks associated with procurement complaints. See paragraphs 48 to 52 above for further information.

Appendix A

CPR Paragraphs subject to the Government Procurement (Judicial Review) Act 2018

Section	CPRs Paragraphs
Division 1	
4. Value for money	
Third-party procurement	4.18
5. Encouraging competition	
Non-discrimination	5.4
7. Accountability and transparency in procurement	
Records	7.2
Notifications to the market	7.10, 7.13 – 7.15
Providing information	7.16 – 7.17
Reporting arrangements	7.18, 7.20
9. Procurement method	
Requirement to estimate value of procurement	9.3 – 9.6
Division 2	
10. Additional Rules	
Additional Rules	10.1 – 10.2
Conditions of limited tender	10.3 – 10.5
Request documentation	10.6 – 10.8
Specifications	10.9 – 10.13
Modification of evaluation criteria or specifications	10.14
Conditions for participation	10.15 – 10.19
Minimum time limits	10.20 – 10.27
Late submissions	10.28 – 10.31
Receipt and opening of submissions	10.32 – 10.34
Awarding contracts	10.35 – 10.36

Chapter 3

The procurement framework

2. Procurement framework

CPR 2.1 – 2.6

Procurement framework

- 2.1 The Commonwealth *Procurement Rules* (CPRs) are issued by the Minister for Finance (Finance Minister) under section 105B(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).
- 2.2 Officials from non-Corporate Commonwealth entities and prescribed corporate Commonwealth entities listed in section 30 of the Public Governance, Performance and Accountability Rule 2014 **must** comply with the CPRs when performing duties related to procurement. These entities will collectively be referred to as relevant entities throughout the CPRs.
- 2.3 Rules that **must** be complied with in undertaking *procurement* are denoted by the term '**must**'. *Non-corporate Commonwealth entities must* report non-compliance with the rules of the CPRs through the Commonwealth's compliance reporting process. The term 'should' indicates good practice.
- 2.4 The CPRs are the core of the *procurement* framework, which also includes:
 - a. [web-based guidance](#), developed by the Department of Finance (Finance) to assist entities to implement the *procurement* framework;
 - b. [Resource Management Guides](#), which advise of key changes and developments in the *procurement* framework; and
 - c. templates, such as the Commonwealth Contracting Suite, which simplify and streamline processes, creating uniformity across Commonwealth contracts to reduce the burden on businesses when contracting with the Commonwealth.
- 2.5 An *Accountable Authority* may use [Accountable Authority Instructions](#) to set out entity-specific operational rules to ensure compliance with the rules of the *procurement* framework.

Note: As the Defence *Accountable Authority*, the Secretary has issued Defence's AAs. The AAs set out specific operational rules dealing with *procurement*.

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

Note: The CPRs state in a footnote to paragraph 2.6 that "Where such measures are applied, because Divisions 1 and 2 do not apply in full to the *procurement*, this has the effect that the *procurement* is not covered procurement under the *Government Procurement (Judicial Review) Act 2018*; see section 5".

Defence Procurement Policy Directives

- D2. For paragraph 2.6 of the CPRs, the Secretary has determined that the procurement of the *goods* and services listed in Table 1 below are exempt from the operation of Division 2 of the CPRs.
- D3. If a Defence *official* determines that an exemption given under paragraph 2.6 of the CPRs applies to a *procurement*, the *official must* ensure that the reasons supporting that

determination are appropriately documented.

D4. If a Defence official seeks to exempt a particular *procurement* (not otherwise covered by an existing exemption) from all or part of the CPRs, the *official must* seek the Secretary's written approval.

Table 1

<p>Goods</p> <p>The <i>procurement</i> of goods that fall within the following US Federal Supply Codes (FSC):</p>	<ul style="list-style-type: none"> - FSC 10 Weapons; - FSC 12 Fire Control Equipment; - FSC 13 Ammunition and Explosives; - FSC 14 Guided Missiles; - FSC 15 Aircraft and Airframe Structural Components; - FSC 16 Aircraft Components and Accessories; - FSC 17 Aircraft Launching, Landing, and Ground Handling Equipment; - FSC 18 Space Vehicles; - FSC 19 Ships, Small Craft, Pontoons and Floating Docks; - FSC 20 Ships and Marine Equipment; - FSC 23 Ground Effect Vehicles, Motor Vehicles, Trailers and Cycles; - FSC 28 Engines, Turbines, and Components; - FSC 29 Engine Accessories; - FSC 31 Bearings; - FSC 46 Water Purification and Sewage Treatment Equipment; - FSC 48 Valves; - FSC 49 Maintenance and Repair Shop Equipment; - FSC 54 Prefabricated Structures and Scaffolding; - FSC 58 Communication, Detection, and Coherent Radiation Equipment; - FSC 59 Electrical and Electronic Equipment Components; - FSC 60 Fibre Optics Materials, Components, Assemblies, and Accessories; - FSC 61 Electric Wire, and Power and Distribution Equipment; - FSC 63 Alarm, Signal and Security Detection Systems; - FSC 66 Instruments and Laboratory Equipment; and - No code - Specialty Metals.
<p>Services</p> <p>The <i>procurement</i> of the following kinds of services:</p>	<ul style="list-style-type: none"> - design, development, integration, test, evaluation, maintenance, repair, modification, rebuilding and installation of military systems and equipment; - operation of Government-owned facilities; - space services; and - services in support of military forces overseas.

Notes: Paragraph 2.6 of the CPRs allows the Secretary to determine that specific *procurements* should not be subject to all or part of the CPRs. Usually, a measure made under this paragraph will exempt a *procurement* from the rules in Division 2 of the CPRs (in particular, the obligation to undertake an *open tender* process). This exemption mechanism is provided for in the Australia-US Free Trade Agreement (AUSFTA), and is consistent with the market access arrangements agreed by Australia in its other FTAs.

In the case of Defence, the AUSFTA (Chapter 15, Annex A) specifically provides for various Defence *procurements* to be exempt from the operation of the *procurement* rules in Chapter 15 of the AUSFTA (which rules are now mainly in Division 2 of the CPRs, and which are consistent with the *procurement* rules agreed by Australia in its other FTAs). This exemption is permitted on the grounds of 'essential security' (Article 22.2 of the AUSFTA). To give effect to this exemption, the Secretary has made a measure under paragraph 2.6 of the CPRs to determine that the *procurement* of the various *goods* or *services* listed in Table 1 above are exempt from the operation of Division 2 of the CPRs. The list in Table 1 replicates the list in Chapter 15, Annex A of the AUSFTA. Further details of the FSC codes mentioned in Table 1 can be found in the [Exemptions Fact Sheet](#) on the Commercial Division intranet site.

Even if a *procurement* is exempt from Division 2 of the CPRs, Defence *officials* are still required to undertake their procurements in accordance with Division 1 of the CPRs. In addition, Defence *officials* are still required to comply with all applicable Defence Procurement Policy Directives contained in this manual (see Defence Procurement Policy Directive D42).

CPR 2.7 – 2.10

Procurement

- 2.7 *Procurement* is the process of acquiring *goods* and *services*. It begins when a need has been identified and a decision has been made on the *procurement* requirement. *Procurement* continues through the processes of risk assessment, seeking and evaluating alternative solutions, and the awarding and reporting of a *contract*.
- 2.8 In addition to the acquisition of *goods* and *services* by a *relevant entity* for its own use, *procurement* includes the acquisition of *goods* and *services* on behalf of another *relevant entity* or a third party.
- 2.9 *Procurement* does not include:
- grants (whether in the form of a *contract*, conditional gift or deed);
 - investments (or divestments);
 - sales by tender;
 - loans;
 - procurement* of *goods* and *services* for resale or *procurement* of *goods* and *services* used in the production of *goods* for resale;
 - any property right not acquired through the expenditure of *relevant money* (for example, a right to pursue a legal claim for negligence);
 - statutory appointments;
 - appointments made by a Minister using the executive power (for example, the appointment of a person to an advisory board); or
 - the engagement of employees, such as under the *Public Service Act 1999*, the *Parliamentary Services Act 1999*, a *relevant entity's* enabling legislation or the common law concept of employment.
- 2.10 Following the awarding of the *contract*, the delivery of and payment for the *goods* and *services* and, where relevant, the ongoing management of the *contract* and consideration of disposal of *goods*, are important elements in achieving the objectives of the *procurement*.

Notes: Paragraph 2.9a of the CPRs makes clear that grants are not *procurements*. Defence manages a number of grant programs and therefore these programs, and the individual grants made under them, are not *procurements* for the CPRs. For example, to give effect to the Australian Government's defence and industry policy, Defence undertakes various grants programs under which Defence companies and other entities receive payments. In undertaking these programs, Defence *officials* are required to comply with the [Commonwealth Grant Rules and Guidelines](#), rather than the CPRs and the Defence Procurement Policy Directives in the DPPM. Defence grant programs also have their own rules that govern their operation.

For guidance on contracting processes for disposals, including sale by tender (see paragraph 2.9c of the CPRs) and gifting or transfer by deed, Defence *officials* should refer to the [Materiel Logistics, Disposals and Sales Branch intranet page](#).

CPR 2.11 – 2.14

Resource management framework

- 2.11 *Relevant entities* and *officials* operate in an environment of legislation and Commonwealth policy. Within that broad context, the resource management framework consists of the legislation and policy governing the management of the Commonwealth's resources.
- 2.12 The *procurement* framework is a subset of the resource management framework related to the *procurement* of goods and services.
- 2.13 Section 16 of the PGPA Act outlines an *Accountable Authority's* duty to establish appropriate internal control systems for their *relevant entity*. The CPRs provide the necessary framework for Accountable Authorities when issuing Accountable Authority Instructions and operational requirements in relation to *procurement*. In the area of *procurement*, an *Accountable Authority* should provide a mechanism to:
- a. apply the principles and requirements of the resource management and *procurement* frameworks, focusing on the *relevant entity's* operations; and
 - b. provide primary operational instructions to *relevant entity officials* in carrying out their duties related to *procurement*, in a way that is tailored to a *relevant entity's* particular circumstances and needs.
- 2.14 Non-compliance with the requirements of the resource management framework, including in relation to *procurement*, may attract a range of criminal, civil or administrative remedies including under the *Public Service Act 1999* and the *Crimes Act 1914*.

Defence Procurement Policy Directives

- D5. When conducting a *procurement*, Defence *officials* **must** ensure that the following two delegations are exercised in the following order, unless the *procurement* does not involve the commitment of *relevant money* (for example, a 'nil-cost' contract change) in which case only the FINMAN 2 Schedule 2 -Enter into an Arrangement delegation is required:
- FINMAN 2 Schedule 1 (Section 23(3) of the PGPA Act) – To Approve the Commitment of Relevant Money (Commitment Approval): a Defence official must exercise this delegation before the Commonwealth enters into the arrangement that commits *relevant money*; and
 - FINMAN 2 Schedule 2 (Section 23(1) of the PGPA Act) – To Enter into an Arrangement: a Defence *official* **must not** exercise this delegation (Enter into an Arrangement) unless a Commitment Approval delegation has been exercised for the *procurement* to which the arrangement relates.
- D6. Prior to agreeing to a contingent liability in favour of a third party (for example, granting an indemnity, guarantee or warranty), Defence *officials* **must**:
- undertake a liability risk assessment in relation to the contingent liability, including considering the full potential cost of the liability to the Commonwealth; and
 - ensure that the relevant delegate (Under FINMAN 2 Schedule 1 or FINMAN 2 Schedule 1A) (or the Finance Minister, if necessary) authorises the contingent liability under section 60 of the PGPA Act.

Notes: Chapter 1 of the DPPM discusses the resource management framework in more detail.

If a *procurement* includes a contingent liability, the effect of Defence Procurement Policy Directive D6 is that the relevant delegate must authorise the granting of the contingent liability for the purposes of section 60 PGPA Act. In Defence (apart from CASG), the Commitment Approval delegate may do this as part of exercising this delegation. In CASG, a separate delegation is required in addition to the Commitment Approval delegation, both of which must be exercised before the exercise of the Enter into an Arrangement delegation.

If a *procurement* is being undertaken through the Foreign Military Sales (FMS) system, the standard FMS conditions require the Commonwealth to grant an indemnity to the US Government. Accordingly, Defence Procurement Policy Directive D6 dealing with contingent liabilities applies to each FMS case. For guidance on conducting liability risk assessments for FMS cases see the Commercial Division [Risk Assessments and Liabilities intranet page](#).

Agreeing to a contingent liability in favour of a third party is one kind of limitation of liability. The Commonwealth may also limit a third party's liability in other ways, for instance, by agreeing to one or more financial caps on different heads of loss or damage that a contractor may be exposed to under a contract (for example, for personal injury, property damage, delay or other contractual non-performance). Accordingly, in addition to the requirement under Defence Procurement Policy Directive D6 to undertake a liability risk assessment in relation to contingent liabilities, Defence Procurement Policy Directive D27 requires Defence *officials* to undertake a liability risk assessment prior to agreeing to any limitation on a third party's liability under a *contract*. Defence has developed [guidance and tools](#) to assist Defence *officials* with the conduct of liability risk assessments.

The Department of Finance's [Resource Management Guide \(RMG\) No 414](#), together with [Defence AAI 2.6](#) and [FINMAN 2](#), set out Commonwealth and Defence policy in relation to indemnities, guarantees and warranties that give rise to 'contingent liabilities'. Consistently with RMG 414 and AAI 2.6, Defence has developed streamlined processes for undertaking liability risk assessments for certain kinds of contingent liabilities, namely indemnities contained in FMS cases and venue hire agreements. Defence *officials* should refer to the liability risk assessment [guidance and tools](#) for these streamlined processes.

CPR 2.15

International obligations

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

Note: Paragraph 2.15 of the CPRs means that Defence *officials* can refer to the CPRs as the single source of Australia's international commitments on government *procurement* and do not need to refer directly to the various treaties and other agreements. See also the Notes following paragraph 2.6 of the CPRs.

3. How to use the Commonwealth Procurement Rules

CPR 3.1 – 3.4

How to use the Commonwealth Procurement Rules

- 3.1 The CPRs set out the rules that *officials* **must** comply with when they procure *goods* and services. The CPRs also indicate good practice. The CPRs have been designed to provide *officials* with flexibility in developing and implementing *procurement* processes that reflect their *relevant entity's* needs.
- 3.2 Achieving value for money is the core rule of the CPRs. This requires the consideration of the financial and non-financial costs and benefits associated with *procurement*.
- 3.3 Further information and guidance on applying the CPRs are available on Finance's *procurement* policy website at www.finance.gov.au/procurement.

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

Note: For paragraph 3.4 of the CPRs, the DPPM sets out 'additional rules' in relation to the conduct of Defence *procurement* that Defence *officials* **must** comply with when they procure *goods* and services for Defence. These additional rules are set out under the heading 'Defence Procurement Policy Directives' in the DPPM. The DPPM also refers to guidance, templates, tools and other resources to further assist Defence *officials* undertaking *procurement*. Defence *officials* should have regard to these resources when undertaking *procurement*.

CPR 3.5 – 3.8

Compliance with the two divisions of the CPRs

- 3.5 *Officials of non-corporate Commonwealth entities* **must** comply with the 'rules for all *procurements*' listed in Division 1, regardless of the *procurement* value. *Officials* **must** also comply with the 'additional rules' listed in Division 2 when the estimated value of the *procurement* is at or above the relevant *procurement threshold* and when an Appendix A exemption does not apply.
- 3.6 *Officials of corporate Commonwealth entities* prescribed in section 30 of the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) as having to comply with the CPRs **must** comply with the 'rules for all *procurements*' listed in Division 1 and the 'additional rules' listed in Division 2 when the expected value of the *procurement* is at or above the relevant *procurement threshold* and when an Appendix A exemption has not been utilised.
- 3.7 Despite being prescribed *corporate Commonwealth entities*, Australian Digital Health Agency, Australian Human Rights Commission, National Portrait Gallery of Australia, Old Parliament House and Regional Investment Corporation **must** apply a *procurement threshold* and *reporting threshold* of \$80,000 for *procurements* other than the procurement of *construction services*. They may opt-in to coordinated procurements and must only comply with those policies of the Commonwealth that specify compliance by *corporate Commonwealth entities*.
- 3.8 Despite being a corporate *Commonwealth entity*, paragraph 3.7 also applies to the Commonwealth Superannuation Corporation in regards to its administrative functions only.

Note: The Department of Defence ('Defence') is a *non-corporate Commonwealth entity*. Hence, paragraph 3.5 of the CPRs applies to Defence *officials* (including a contractor who is prescribed as a Defence *official*). In addition to an Appendix A exemption referred to in paragraph 3.5 of the CPRs, a Defence specific exemption may also be utilised (See Defence Procurement Policy Directives D2 and D4).

CPR 3.9

Using an Appendix A exemption

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

Defence Procurement Policy Directive

- D7. If a Defence *official* determines that an exemption under Appendix A of the CPRs applies to a *procurement*, the *official* **must** ensure that the reasons supporting that determination are appropriately documented.

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Notes: Items 16 and 17 of Appendix A permit Defence *officials* to procure directly from disability businesses and indigenous businesses, respectively. See further Chapter 2 of the DPPM, and Defence Procurement Policy Directive D13 (and the related Notes).

In addition to the exemptions provided for in Appendix A, various other kinds of Defence related *procurements* may be exempt from Division 2 of the CPRs. In particular, see Defence Procurement Policy Directives D2 and D4 (and the related Table 1 for a list of Defence *goods* and services that are exempt).

Chapter 4

Achieving value for money in procurement

Note: Chapter 4 of the DPPM incorporates all the rules from Division 1 of the CPRs.

4. Value for Money

CPR 4.1 – 4.3

Considering value for money

- 4.1 A thorough consideration of value for money begins by *officials* clearly understanding and expressing the goals and purpose of the *procurement*.
- 4.2 When a business requirement arises, *officials* should consider whether a *procurement* will deliver the best value for money. It is important to take into consideration:
 - a. stakeholder input;
 - b. the scale and scope of the business requirement;
 - c. the *relevant entity's* resourcing and budget;
 - d. obligations and opportunities under other existing arrangements;
 - e. relevant Commonwealth policies; and
 - f. the market's capacity to competitively respond to a *procurement*.

Notes: Defence officials should refer to Chapter 2 of the DPPM, and the Complex Procurement Guide, for more guidance about value for money.

Defence *officials* should be aware that 'Commonwealth policies' (paragraph 4.2e.) may include Cabinet decisions and other formal directions issued by the Government (whether through the Minister for Defence or otherwise).

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

Defence Procurement Policy Directives

- D8. Defence *officials* undertaking *procurement* valued at or above \$200,000 (including GST) **must** develop a written *procurement* plan for the *procurement* commensurate with its scale, scope and risk, and which takes account of the *procurement* life cycle, including cost of ownership and disposal considerations.
- D9. Defence *officials* **must** obtain an 'Endorsement to Proceed' prior to approaching the market for *procurements* to establish a *standing offer* arrangement, and all other *procurements* that are valued at or above \$200,000 (including GST).
- D10. Prior to approaching the market to procure a Contractor, Consultant or Outsourced Service Provider, Defence officials **must**:
 - obtain Senior Executive Service (SES) Band 1 or 1 Star Officer or above approval that the procurement is justified; and
 - advise the Secretary when the daily rate of the Contractor, Consultant or Outsourced Service Provider is at or above \$4,500 (including GST).
- D11. Prior to approaching the market to establish a strategic standing offer panel, Defence officials **must**:
 - obtain written endorsement of the business need from First Assistant Secretary Procurement and Contracting; then
 - obtain written approval to establish the strategic standing offer panel from the Enterprise Business Committee.

Notes: See paragraphs 102 to 104 in Chapter 2 of the DPPM for guidance about *procurement* plans, including that the Endorsement to Proceed document may be sufficient to serve as the *procurement* plan for less complex *procurements*. More detailed guidance is set out in Chapter 2 of the Complex Procurement Guide.

Defence *officials* should refer to paragraphs 9.2 – 9.6 of the CPRs in relation to estimating the value of a *procurement*.

An Endorsement to Proceed may also be required to place an order under a *standing offer*. Defence *officials* should refer to the [Endorsement to Proceed Fact Sheet](#).

Defence *officials* should refer to [Defence Instruction Administrative Policy](#) for the definition of Contractors, Consultants and Outsourced Service Providers. Defence *officials* should refer to the [Engaging Contractors, Consultants and Outsourced Service Providers – Decision Making Governance Fact Sheet](#) for further guidance on the evidence required to justify the procurement of Contractors, Consultants or Outsourced Service Providers.

The [Establishing and Using Standing Offers Fact Sheet](#) contains further guidance on the establishment of strategic standing offer panels.

CPR 4.4 – 4.6

Achieving value for money

- 4.4 Achieving value for money is the core rule of the CPRs. *Officials* responsible for a *procurement* **must** be satisfied, after reasonable enquires, that the *procurement* achieves a value for money outcome. *Procurements* should:
- a. encourage competition and be non-discriminatory;
 - b. use *public resources* in an efficient, effective, economical and ethical manner that is not inconsistent with the policies of the Commonwealth;
 - c. facilitate accountable and transparent decision making;
 - d. encourage appropriate engagement with risk; and
 - e. be commensurate with the scale and scope of the business requirement.
- 4.5 Price is not the sole factor when assessing value for money. When conducting a *procurement*, an *official* **must** consider the relevant financial and non-financial costs and benefits of each *submission* including, but not limited to:
- a. the quality of the *goods* and services;
 - b. fitness for purpose of the proposal;
 - c. the *potential supplier's* relevant experience and performance history;
 - d. flexibility of the proposal (including innovation and adaptability over the lifecycle of the *procurement*);
 - e. environmental sustainability of the proposed *goods* and services (such as energy efficiency, environmental impact and use of recycled products); and
 - f. whole-of-life costs.
- 4.6 Whole-of-life costs could include:
- a. the initial purchase price of the *goods* and services;
 - b. maintenance and operating costs;
 - c. transition out costs;
 - d. licensing costs (when applicable);
 - e. the cost of additional features procured after the initial *procurement*;
 - f. consumable costs; and
 - g. disposal costs.

CPR 4.7 – 4.8**Broader benefits to the Australian economy**

- 4.7 In addition to the value for money considerations at paragraphs 4.4 – 4.6, for *procurements* above \$4 million (or \$7.5 million for *construction services*) (except *procurements* covered by Appendix A and *procurements* from *standing offers*), *officials* are required to consider the economic benefit of the *procurement* to the Australian economy.
- 4.8 The policy operates within the context of relevant national and international agreements and *procurement* policies to which Australia is a signatory, including free trade agreements and the Australia and New Zealand Government Procurement Agreement.

Note: Defence *officials* should refer to paragraph 8 in Chapter 2 of the DPPM for guidance about the application of the ‘economic benefit’ requirement in relation to Defence *procurement*. The Department of Finance has also released guidance on the consideration of economic benefit on the [Department of Finance webpage](#).

CPR 4.9 – 4.10**Procurement-connected policies**

- 4.9 *Procurement*-connected policies are policies of the Commonwealth for which *procurement* has been identified as a means of delivery. To assist *relevant entities* in complying with policies of the Commonwealth, Finance maintains a list of procurement-connected policies, which can be found at www.finance.gov.au/procurement.
- 4.10 Generally, procurement-connected policies are the responsibility of entities other than Finance. The relevant policy-owning entity is responsible for administering, reviewing and providing information on the policy as required.

Notes: Defence contracting templates are drafted and regularly updated to give effect to applicable Commonwealth legislation and policy (including the CPRs), and applicable Defence policy. If using an endorsed Defence contracting template (for example, ASDEFCON, the Defence Facilities and Infrastructure Suite of Contracts or the Commonwealth Contracting Suite) for a *procurement* for which the template is intended, Defence *officials* may rely on the template as meeting applicable legislation and policy requirements. The endorsed Defence contracting templates may be found on the Commercial Division [Tools and Templates intranet page](#).

Defence has numerous business policy owners that are responsible for ensuring Defence complies with applicable Commonwealth legislation and policy requirements, as well as with particular State and Territory legislation that may also apply to Defence activities. This legislation and policy often interacts with Defence *procurement* and in many cases is given effect to through *contracts*. There are many policy or support areas in Defence that that can assist in relation to this legislation and policy that intersects with *procurement* (eg contracting, legal, finance, environment, work health and safety, security, technical regulatory frameworks etc). These resources can be found on the procurement support areas link on the [Commercial Division Help Desk Kiosk](#) intranet page.

Defence Procurement Policy Directives

Trade sanctions

D12. Defence *officials* undertaking a *procurement* **must** ensure that the *procurement* does not breach any current [Australian Government trade sanctions](#).

Indigenous Procurement Policy

D13. Prior to approaching the market, Defence *officials* must determine whether the Indigenous Procurement Policy (IPP) applies to the *procurement* and if so comply with the IPP (see also Appendix A, item 16 of the CPRs).

Notes: The IPP is a procurement connected policy.

In addition, while not a Defence Procurement Policy Directive, Defence *officials* should also determine whether a disability business could deliver the required *goods* or services on a value for money basis before making any *approach to market*. If satisfied that value for money can be achieved, then the Defence *official* should procure the *goods* or services from the disability business (as permitted by Appendix A of the CPRs, item 15). If not, then the Defence *official* may procure through normal means. A list of Australian disability businesses can be found at the Australian Disability Enterprises website www.ade.org.au.

See Chapter 2 of the DPPM for more information about the IPP and the disability business exemption.

Workplace gender equality

D14. Defence *officials* undertaking a *procurement* at or above the relevant *procurement threshold* **must not** purchase *goods* or services from [contractors that do not comply](#) with the *Workplace Gender Equality Act 2012*.

Note: Workplace gender equality is a procurement connected policy.

Australian Industry Capability (AIC)

D15. Defence *officials* **must** comply with the Defence Australian Industry Capability (AIC) policy for materiel *procurements* valued at or above \$20 million (including GST), and in particular ensure that the successful *supplier* in the *procurement* implements an AIC plan.

Note: Currently, only the ASDEFCON contracting templates incorporate provisions that give effect to the AIC program, including requiring *tenderers* to submit AIC plans as part of the tender process. The successful *tenderer* is required to give effect to the agreed AIC plan under the *contract*. The AIC program is currently being updated following the [Defence Industry Policy Statement 2016](#). For further information about the AIC program, Defence *officials* should refer to the [Defence Industry Policy Division intranet page](#). Australian Industry Participation Plans (AIP) for Government Procurement is a procurement connected policy, which was developed in accordance with the AIP National Framework. The AIP National Framework is available at www.industry.gov.au/aip. The Department of Industry, Innovation and Science's User Guide for AIP Plans states that the AIP policy 'may also be applied to Department of Defence non-materiel procurement'.

Code for the Tendering and Performance of Building Work 2016

D16. Defence *officials* **must** comply with the Code for the Tendering and Performance of Building Work 2016 (Building Work Code) when undertaking *procurements* for building work to which the Building Work Code applies.

Note: The Building Work Code is a procurement connected policy. In summary, the Building Work Code prevents Commonwealth agencies such as Defence from permitting companies to tender or enter into *contracts* for Commonwealth funded building work, unless the companies meet the requirements of the Building Work Code. In Defence, *procurements* for building work are normally managed by the Defence Estate and Infrastructure Group. The Defence Facilities and Infrastructure Suite of Contracts include provisions to ensure that Defence complies with the Building Work Code.

Public-private partnerships (PPP) policyD17. Defence *officials must*:

- consider using a public-private partnership (PPP) for all project proposals having an estimated capital cost over \$50 million where there is an opportunity to enter into a long term *contract* (for example, 15-30 years) with a focus on the delivery of services to government (for example, making materiel or facilities available for use by Defence); and
- comply with the [National PPP Policy and Guidelines](#) (December 2008), and complete a [PPP Suitability Checklist](#).

Note: More guidance on PPPs is set out in the [Procurement Delivery Models Better Practice Guide](#). PPPs (or Private Finance Initiatives or 'PFIs') involve the creation of an asset through financing and ownership control by a private party and private sector delivery of related services that may normally have been provided by the Commonwealth. The Commonwealth may contribute to establishing the infrastructure, for example through land, capital works or risk sharing. The service delivered may be paid for by the Commonwealth or directly by the end user. Defence *officials* should consult with the [Public Private Partnership Centre of Expertise](#), and engage the Resource Assurance and Analysis Branch, in Chief Finance Officer Group (CFOG) for an independent review of financial and budgetary impact. Building work that involves a PPP or PFI for the delivery of functions or services of the Commonwealth is also subject to the Building Work Code (see Defence Procurement Policy Directive D16).

CPR 4.11 – 4.12Coordinated procurement

- 4.11 Coordinated *procurement* refers to whole-of-government arrangements for procuring *goods* and services. A list of coordinated *procurements* can be found at www.finance.gov.au/procurement.
- 4.12 *Non-corporate Commonwealth entities must* use coordinated *procurements*. Exemptions from coordinated *procurements* can only be granted jointly by the requesting *non-corporate Commonwealth entity's* Portfolio Minister and the Finance Minister when a *non-corporate Commonwealth entity* can demonstrate a special need for an alternative arrangement. Prescribed *Corporate Commonwealth entities* may opt-in to coordinated *procurements*.

Defence Procurement Policy Directives

- D18. Prior to selecting a *procurement* method, Defence *officials must* determine whether a coordinated *procurement* arrangement has been established for the *goods* or services to be procured.
- D19. If a coordinated *procurement* arrangement has been established for *goods* or services, Defence *officials must* use the arrangement when procuring relevant *goods* or services unless an exemption is in place.

Notes: The Department of Finance has established several whole of government coordinated *procurement* arrangements for various *goods* and services, for example, ICT, telecommunications, stationery and office supplies, and airline travel. Defence *officials* can find more details at www.finance.gov.au/procurement.

Specialised military and classified telecommunications products and services (for military or intelligence agencies) fall outside the operation of the telecommunications coordinated *procurement* arrangements. For information about these exemptions Defence *officials* should refer to [CIOG Non Materiel Procurement Services](#).

CPR 4.13 – 4.15Cooperative procurement

- 4.13 Cooperative *procurements* involve more than one *relevant entity* as the buyer. *Relevant entities* can procure cooperatively by approaching the market together or by joining an existing *contract* of another *relevant entity*.
- 4.14 If a *relevant entity* intends to join an existing *contract* of another *relevant entity*, the initial *request documentation* and the *contract* **must** have already specified potential use by other *relevant entities*.
- 4.15 *Relevant entities* joining an existing *contract* **must** ensure that:
- value for money is achieved;
 - the *goods* and services being procured are the same as provided for within the contract; and
 - the terms and conditions of the *contract* are not being materially altered.

Notes: The Defence Support Services panel (DSS Panel) is an example of a cooperative *procurement*. The panel was established so as to be able to be accessed by other Commonwealth agencies, and as a result many agencies have used and continue to use this panel for a range of support services.

Defence *officials* who are planning to establish a new *standing offer* arrangement with multiple *suppliers* should consider whether it would be appropriate for other Commonwealth agencies to be able to use the proposed panel for their needs. If so, the *approach to market* for the panel (and the panel deed) will need to expressly advise the *potential suppliers* that the panel may be used not only by Defence, but also by other agencies. However, in such circumstances, Defence *officials* will also need to consider the administrative arrangements for how the panel may be used, the extent to which this will impose an additional resource burden on Defence, and whether there will be any administrative fee charged to other agencies to cover Defence's costs of managing the panel.

CPR 4.16 – 4.18Contract end dates

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

Third-party procurement

- 4.17 *Procurement* by third parties on behalf of a *relevant entity* can be a valid way to procure *goods* and services, provided it achieves value for money.
- 4.18 *Relevant entities* **must** not use third-party arrangements to avoid the rules in the CPRs when procuring *goods* and services.

Note: Under Defence *contracts*, it is not unusual for contractors to be required to undertake *procurements* on behalf of Defence. In many cases, this is simply part of the contractor's overall contracted responsibility to deliver a particular capability or outcome to Defence. In these cases, Defence does not usually intervene to specify that the contractors comply with CPR requirements, although Defence may wish to approve or specify under the *contract* the key subcontractors that the contractor will use, and further impose obligations on the contractor to ensure value for money is obtained, for example, by requiring the contractor to undertake competitive *procurements*. In other cases, the Commonwealth may task a contractor to undertake *procurement* activity that Defence *officials* might normally undertake themselves; that is, Defence is outsourcing the *procurement* function itself. In these cases, it may be appropriate to require the contractor to comply with the CPRs as if they were bound by them. If not, it could be argued that Defence was outsourcing the *procurement* function simply to avoid the operation of the CPRs. Defence is always under an obligation to ensure that its *procurement* activities (whether outsourced or not) deliver value for money to the Commonwealth.

5. Encouraging Competition

CPR 5.1 – 5.2

Encouraging competition

- 5.1 Competition is a key element of the Australian Government's *procurement* framework. Effective competition requires non-discrimination and the use of competitive *procurement* processes.
- 5.2 Participation in *procurement* imposes costs on relevant entities and *potential suppliers*. Those costs should be considered when designing a process that is commensurate with the scale, scope and risk of the proposed *procurement*.

Note: Chapter 2 of the DPPM discusses the importance of competition and selecting an appropriate *procurement* process to achieve value for money outcomes.

CPR 5.3 – 5.4

Non-discrimination

- 5.3 The Australian Government's *procurement* framework is non-discriminatory.
- 5.4 All *potential suppliers* to government **must**, subject to these CPRs, be treated equitably based on their commercial, legal, technical and financial abilities and not be discriminated against due to their size, degree of foreign affiliation or ownership, location, or the origin of their *goods* and services.

Note: See Chapter 2 of the DPPM for more information about the non-discrimination principle.

CPR 5.5 – 5.6

Small and Medium Enterprises

- 5.5 To ensure that *Small and Medium Enterprises* (SMEs) can engage in fair competition for Australian Government business, *officials* should apply *procurement* practices that do not unfairly discriminate against SMEs and provide appropriate opportunities for SMEs to compete. *Officials* should consider, in the context of value for money:
 - a. the benefits of doing business with competitive SMEs when specifying requirements and evaluating value for money;
 - b. barriers to entry, such as costly preparation of *submissions*, that may prevent SMEs from competing;
 - c. SMEs' capabilities and their commitment to local or regional markets; and
 - d. the potential benefits of having a larger, more competitive *supplier* base.
- 5.6 The Australian Government is committed to *non-corporate Commonwealth entities* sourcing at least 10 per cent of *procurement* by value from SMEs.
- 5.7 In addition, the Government has a target of *non-corporate Commonwealth entities* procuring 35 per cent of *contracts* by volume, with a value of up to \$20 million, from *SMEs*.

Notes: In the Defence context, the Australian Government's policy relating to small to medium enterprises (SMEs) is given effect to through the Defence Industry Policy 2016, and in particular, the Australian Industry Capability (AIC) program. As noted in Chapter 2 of the DPPM, the AIC program is identified as a specific exemption from the 'non-discrimination' principle (reflected in paragraph 5.3 of the CPRs) in the Australia-US Free Trade Agreement (AUSFTA), and other FTAs to which Australia is a party. The AUSFTA (Chapter 15, Annex A) provides that 'the Australian Government reserves the right to maintain the Australian Industry Involvement program and its successor programs and policies.' The AIC program is a successor to the previous Australian Industry Involvement (All) program.

The ASDEFCON templates incorporate provisions that give effect to the AIC program, including requiring *tenderers* to submit AIC plans as part of the tender process. The successful *tenderer* is required to give effect to the agreed AIC plan under the *contract*. See also Defence Procurement Policy Directive D15 and the related note following.

6. Efficient, effective, economical and ethical procurement

CPR 6.1 – 6.9

Efficient, effective, economical and ethical procurement

- 6.1 The Australian Government promotes the proper use and management of *public resources*. Proper means efficient, effective, economical and ethical. For *non-corporate Commonwealth entities*, this would also include being not inconsistent with the policies of the Commonwealth.
- 6.2 Efficient relates to the achievement of the maximum value for the resources used. In *procurement*, it includes the selection of a *procurement* method that is the most appropriate for the *procurement* activity, given the scale, scope and risk of the *procurement*.
- 6.3 Effective relates to the extent to which intended outcomes or results are achieved. It concerns the immediate characteristics, especially price, quality and quantity, and the degree to which these contribute to specified outcomes.
- 6.4 Economical relates to minimising cost. It emphasises the requirement to avoid waste and sharpens the focus on the level of resources that the Commonwealth applies to achieve outcomes.
- 6.5 Ethical relates to honesty, integrity, probity, diligence, fairness and consistency. Ethical behaviour identifies and manages conflicts of interests, and does not make improper use of an individual's position.

Note: Chapter 2 of the DPPM, the Complex Procurement Guide, and the Early Industry Engagement Better Practice Guide provide more guidance about probity and effective industry engagement.

Ethical behaviour

- 6.6 In particular, *officials* undertaking *procurement* **must** act ethically throughout the *procurement*. Ethical behaviour includes:
 - a. recognising and dealing with actual, potential and perceived conflicts of interest;
 - b. dealing with *potential suppliers*, *tenderers* and *suppliers* equitably, including by:
 - i. seeking appropriate internal or external advice when probity issues arise, and
 - ii. not accepting inappropriate gifts or hospitality;
 - c. carefully considering the use of *public resources*; and
 - d. complying with all directions, including *relevant entity* requirements, in relation to gifts or hospitality, the Australian Privacy Principles of the *Privacy Act 1988* and the security provisions of the *Crimes Act 1914*.
- 6.7 Relevant entities **must** not seek to benefit from *supplier* practices that may be dishonest, unethical or unsafe. This includes not entering into *contracts* with *tenderers* who have had a judicial decision against them (not including decisions under appeal) relating to employee entitlements and who have not satisfied any resulting order. *Officials* should seek declarations from all *tenderers* confirming that they have no such unsettled orders against them.

Note: The [endorsed Defence contracting templates](#) contain the necessary provisions and form of statutory declaration to give effect to paragraph 6.7 of the CPRs.

- 6.8 If a complaint about *procurement* is received, relevant entities **must** apply timely, equitable and non-discriminatory complaint-handling procedures, including providing acknowledgment soon after the complaint has been received. Relevant entities should aim to manage the complaint process internally, when possible, through communication and conciliation.

Judicial Review

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

Defence Procurement Policy Directive

- D20. If a Defence *official* receives a *procurement* complaint from a supplier in relation to a Defence *procurement*, the *official* **must** direct the complaint to the [procurement complaints](mailto:procurement.complaints@defence.gov.au) mailbox (procurement.complaints@defence.gov.au).
- D21. Defence officials must comply with a notice from a *Government Procurement (Judicial Review) Act 2018* Section 19 Delegate to investigate a *procurement* complaint, and prepare a report on the investigation.
- D22. Defence officials must comply with a notice to suspend a relevant *procurement* from a *Government Procurement (Judicial Review) Act 2018* Section 20 Delegate.
- D23. PIC delegates must obtain legal advice from Defence Legal and commercial advice from the Commercial Division within CASG prior to issuing a Public Interest Certificate (PIC) under Section 22 of the *Government Procurement (Judicial Review) Act 2018*. PIC delegates must ensure that the PIC and the supporting submission are registered on the PIC Register.

Note: In Defence all procurement complaints including those made under the *Government Procurement (Judicial Review) Act 2018* (JR Act) are managed through the Defence Procurement Complaints Scheme. [JR Act delegations](#) have been issued by the Secretary to certain Defence officials to receive and investigate complaints, suspend procurements and issue Public Interest Certificates (PICs). The JR Act delegations can be found on the Commercial Function Defence Procurement Complaints Scheme intranet page.

The procurement complaints mailbox (procurement.complaints@defence.gov.au) is managed by the Central Procurement Complaints Function which is part of the Defence Procurement Complaints Scheme.

A PIC is a document issued by a PIC delegate that states that it is not in the public interest for a covered procurement process to be suspended while complaints made under the JR Act are investigated or applications for injunctions are being considered. The PIC Register and a template submission for a PIC (including the applicable considerations) can be found on the Commercial Function Defence Procurement Complaints Scheme intranet page.

A 'covered procurement' under the JR Act is a procurement to which the rules in Divisions 1 and 2 of the CPRs apply, and which is not included in a class of procurements specified by the Minister for Finance in a determination under section 5(2) of the JR Act. As at the date of this version of the DPPM, the Minister for Finance has not issued any determinations under section 5(2) of the JR Act.

Information regarding the Defence Procurement Complaints Scheme can be found on the Commercial Function [Defence Procurement Complaints Scheme intranet page](#).

7. Accountability and transparency

CPR 7.1 – 7.5

Accountability and transparency

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

Records

- 7.2 *Officials must* maintain a level of documentation commensurate with the scope, scale and risk for each *procurement*.
- 7.3 Documentation should provide accurate and concise information on:
- the requirement for the *procurement*;
 - the process that was followed;
 - how value for money was considered and achieved;
 - relevant approvals; and
 - relevant decisions and the basis of those decisions.
- 7.4 Relevant entities **must** have access to evidence of agreements with *suppliers*, in the form of one or a combination of the following documents: a written *contract*, a purchase order, an invoice or a receipt.
- 7.5 Documentation **must** be retained in accordance with the *Archives Act 1983*.

Note: For Defence policy in relation to record keeping, Defence *officials* should refer to the [Defence Records Management Manual](#) (RECMAN). RECMAN takes a principles based approach to records management and does not include information about practices and procedures – which are proposed to be set out in a Records Management Operations Guide (under development). For further information, Defence *officials* should contact Directorate of Records Management Policy at DRMP.Policy@defence.gov.au.

CPR 7.6 – 7.9

AusTender

- 7.6 *AusTender*, the Australian Government's *procurement* information system, is a centralised web-based facility that publishes a range of information, including relevant entities' planned *procurements*, *open tenders* and *contracts* awarded. It also supports secure electronic tendering to deliver integrity and efficiency for relevant entities and *potential suppliers*.
- 7.7 *AusTender* is the system used to enable relevant entities to meet their publishing obligations under the CPRs. It also enables relevant entities to monitor and review their *AusTender*-based *procurements*, including approaches to market, publication of *contracts*, and amendments to *contracts*.

Annual procurement plans

- 7.8 In order to draw the market's early attention to potential *procurement* opportunities, each *relevant entity must* maintain on *AusTender* a current *procurement* plan containing a short strategic *procurement* outlook.
- 7.9 The *annual procurement plan* should include the subject matter of any significant planned *procurement* and the estimated publication date of the *approach to market*. *Relevant entities* should update their plans regularly throughout the year.

Notes: The *Annual Procurement Plan* (APP) is a tool that facilitates early *procurement* planning and notifies *potential suppliers* to the planned Defence *procurements*. The APP includes a short strategic *procurement* outlook for Defence supported by details of any planned *procurements*. The APP includes only those opportunities that are planned as *open tender* as there are linkages between the APP and subsequent *approaches to market*.

For practical reasons (given the volume of Defence *procurement*), Defence includes in its APP only those *procurements* valued at or above \$1,000,000 (GST inclusive). *Procurements* of a lesser value can be included if advance notice to industry is desired, but this is not mandatory.

Details regarding the coordination and publication of Defence's APP can be found on the [AusTender Publishing intranet page](#). Defence *officials* should refer to the intranet page for more information about the APP process.

CPR 7.10 – 7.15Notifications to the market

- 7.10 Relevant entities **must** use *AusTender* to publish *open tenders* and, to the extent practicable, to make relevant *request documentation* available.
- 7.11 Relevant entities may use *AusTender* to publish limited tender approaches to market and make relevant request documentation available.

Note: All open *approaches to market* (*open tenders*) from Capability Acquisition and Sustainment Group (CASG) to be published on *AusTender* are managed centrally through the [CASG e-tendering service](#). Defence *officials* from other Groups and Services can submit requests for *AusTender* publication for open *approaches to market* to defence.procurement@defence.gov.au. For further information about *AusTender* publication, Defence *officials* should refer to the Commercial Division [AusTender intranet page](#).

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

Defence Procurement Policy Directive

D24. Defence *officials* undertaking a *procurement* **must** ensure that the *evaluation criteria* advertised in the *request documentation* are the criteria used for the evaluation of *submissions*.

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

Note: The [Department of Finance's Resource Management Guide No 407](#) sets out Commonwealth policy in relation to advertising open *approaches to market* in the media. As a general rule, such advertising is not permitted, although exemptions from the policy may be granted on a case by case basis.

- 7.14 When a *relevant entity* provides *request documentation* or any other document, already published on *AusTender* in any other form (for example, a printed version) that documentation **must** be the same as that published on *AusTender*.
- 7.15 The initial approach to market for a multi-stage procurement must include, for every stage, the criteria that will be used to select *potential suppliers*, and if applicable, any limitation on the number of *potential suppliers* that will be invited to make *submissions*.

CPR 7.16 – 7.17**Providing information**

- 7.16 *Officials* **must**, on request, promptly provide, to eligible *potential suppliers*, *request documentation* that includes all information necessary to permit the *potential supplier* to prepare and lodge *submissions*.
- 7.17 Following the rejection of a *submission* or the award of a *contract*, *officials* **must** promptly inform affected *tenderers* of the decision. Debriefings **must** be made available, on request, to unsuccessful *tenderers* outlining the reasons the *submission* was unsuccessful. Debriefings **must** also be made available, on request, to the successful *supplier(s)*.

Note: Defence *officials* should refer to Chapter 5 of the Complex Procurement Guide for guidance about when to inform an affected *tenderer* of a decision in relation to a *procurement* process.

CPR 7.18 – 7.20Reporting arrangements

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

- 7.19 The *reporting thresholds* (including *GST*) are:
- a. \$10,000 for *non-corporate Commonwealth entities*; and
 - b. for prescribed *corporate Commonwealth entities* ,
 - i. \$400,000 for procurements other than procurement of construction services, or
 - ii. \$7.5 million for procurement of construction services.
- 7.20 Regardless of value, *standing offers* must be reported on *AusTender* within 42 days of the *relevant entity* entering into or amending such arrangements. Relevant details in the *standing offer* notice, such as *supplier* details and the names of other relevant entities participating in the arrangement, must be reported and kept current.

Defence Procurement Policy Directive

D25. To enable Defence to meet its accountability and transparency requirements (including *AusTender* reporting), for all new *contracts* and *contract* amendments that meet the *AusTender reporting thresholds*, Defence *officials* **must** complete the AE643 Defence Purchasing form.

Notes: The reporting threshold in paragraph 7.19a of the CPRs applies to the Department of Defence as a *non-corporate Commonwealth entity*.

The CPR reporting requirements apply equally to *contract* changes (whether called a *contract* change, amendment or variation or some other terminology) that are valued at or above the relevant *reporting threshold* as they do to the original *contracts*. However, the reporting requirements do not apply to *contracts* or *contract* changes for *goods* or services procured outside Australia to be used completely outside of Australia.

To assist Defence to meet its *AusTender* reporting requirements, Defence has developed the [AE643 form](#) and related *AusTender* reporting procedure. The form and procedure covers the proper recording of *contracts* and amendments that may be undertaken or processed through ROMAN, MILIS and the CMS financial management system. Defence *officials* should refer to the Commercial Division [AusTender intranet page](#) for more information about *AusTender* reporting requirements, including in relation to *standing offer* notices.

For *procurement* of Contractors, Consultants or Outsourced Service Providers, the AE643 records that a Senior Executive Service (SES) Band 1 or a 1 Star Officer or above has endorsed the requirement in accordance with Defence Procurement Policy Directive D10.

CPR 7.21

Subcontractors

- 7.21 *Relevant entities* **must** make available on request, the names of any subcontractor(s) engaged by a contractor in respect of a *contract*.
- a. Relevant entities **must** require contractors to agree to the public disclosure of the names of any subcontractors engaged to perform services in relation to a *contract*.
 - b. Contractors **must** be required to inform relevant subcontractors that the subcontractor's participation in fulfilling a *contract* may be publicly disclosed.

Note: The [endorsed Defence contracting templates](#) contain the necessary provisions to give effect to paragraph 7.21 of the CPRs.

CPR 7.22 – 7.25

Treatment of confidential information

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

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- 7.23 *Submissions must* be treated as confidential before and after the award of a *contract*. Once a *contract* has been awarded the terms of the *contract*, including parts of the *contract* drawn from the *supplier's submission*, are not confidential unless the *relevant entity* has determined and identified in the *contract* that specific information is to be kept confidential in accordance with the 'confidentiality test' set out in the guidance on *Confidentiality Throughout the Procurement Cycle* at www.finance.gov.au/procurement.
- 7.24 The need to maintain the confidentiality of information should always be balanced against the public accountability and transparency requirements of the Australian Government. It is therefore important for *officials* to plan for, and facilitate, appropriate disclosure of *procurement* information. In particular, *officials* should:
- include provisions in *request documentation* and contracts that alert *potential suppliers* to the public accountability requirements of the Australian Government, including disclosure to the Parliament and its committees;
 - when relevant, include a provision in *contracts* to enable the Australian National Audit Office to access contractors' records and premises to carry out appropriate audits; and
 - consider, on a case-by-case basis, any request by a *supplier* for material to be treated confidentially after the award of a *contract*, and enter into commitments to maintain confidentiality only when such commitments are appropriate.
- 7.25 When confidential information is required to be disclosed, for example following a request from a parliamentary committee, reasonable notice in writing **must** be given to the party from whom the information originated.

Note: The [endorsed Defence contracting templates](#) contain the necessary provisions to give effect to the CPR requirements on treatment of confidential information. Defence *officials* should refer to the Commercial Policy [Fact Sheets and Guidance intranet page](#) for more guidance on how to determine what information is actually 'confidential' and the use of confidentiality provisions in Defence *contracts*.

CPR 7.26

Contract management/Standard verification

- 7.26 For *procurements* valued at or above the relevant *procurement threshold*, where applying a *standard* for *goods* or *services*, *relevant entities must* make reasonable enquiries to determine compliance with that *standard*:
- this includes gathering evidence of relevant certifications; and
 - periodic auditing of compliance by an independent assessor.

CPR 7.27

Other obligations

- 7.27 Other reporting and disclosure obligations apply to *officials* undertaking *procurement*, including:
- disclosure of *procurement* information for *relevant entity* annual reporting purposes;
 - disclosure of non-compliance with the CPRs through the Commonwealth's compliance reporting process;
 - disclosure to the Parliament and its committees, as appropriate, in line with the Government Guidelines for *Officials Witnesses before Parliamentary Committees and Related Matters*;
 - disclosure of information consistent with the *Freedom of Information Act 1982*; and
 - disclosure of discoverable information that is relevant to a case before a court.

8. Procurement risk

CPR 8.1 – 8.4

Procurement risk

- 8.1 Risk management comprises the activities and actions taken by a *relevant entity* to ensure that it is mindful of the risks it faces, that it makes informed decisions in managing these risks, and identifies and harnesses potential opportunities.
- 8.2 Relevant entities **must** establish processes for the identification, analysis, allocation and treatment of risk when conducting a *procurement*. The effort directed to risk assessment and management should be commensurate with the scale, scope and risk of the *procurement*. Relevant entities should consider risks and their potential impact when making decisions relating to value for money assessments, approvals of proposals to spend *relevant money* and the terms of the *contract*.
- 8.3 Relevant entities should consider and manage their procurement security risk in accordance with the *Australian Government's Protective Security Policy Framework*.
- 8.4 As a general principle, risks should be borne by the party best placed to manage them; that is, relevant entities should generally not accept risk which another party is better placed to manage. Similarly, when a *relevant entity* is best placed to manage a particular risk, it should not seek to inappropriately transfer that risk to the *supplier*.

Defence Procurement Policy Directives

D26. For all *procurements* at or above the relevant *procurement threshold*, Defence officials **must**:

- undertake a risk assessment so that they are properly informed about the risks associated with the *procurement*; and
- subject to the risk assessment, develop and implement a risk management plan to manage the risks.

D27. Defence officials **must** undertake a liability risk assessment prior to agreeing to limit a third party's liability under a *contract*.

Notes: Chapter 2 of the DPPM provides guidance on risk management. The endorsed Defence contracting templates enable Defence officials to allocate risks to the parties best placed to manage them.

The Commonwealth may limit a third party's (including a contractor's) liability in various ways, for instance, by agreeing to one or more financial caps on different heads of loss or damage that a contractor may be exposed to under a contract (for example, for personal injury, property damage, delay or other contractual non-performance). Defence has developed tools and guidance to assist Defence officials with undertaking [liability risk assessments](#). See also Defence Procurement Policy Directive D6 which requires Defence officials to undertake a liability risk assessment in relation to contingent liabilities.

9. Procurement method

CPR 9.1

Procurement method

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

Defence Procurement Policy Directives

- D28. In deciding on the *procurement* method for a *procurement*, Defence officials **must** ensure that the method is commensurate with the scope, scale, and risk of the *procurement* and is consistent with value for money.
- D29. Defence officials **must** ensure that all *procurement* method decisions are appropriately documented.

Note: For *procurements* valued at or above \$200,000 (GST inclusive), the Endorsement to Proceed template is normally the mechanism by which *procurement* method decisions are documented. The Commitment Approval delegate (see section 23(3) of the PGPA Act) would also confirm the *procurement* method decision as part of the exercise of their delegation.

CPR 9.2 – 9.7

Requirement to estimate value of procurement

- 9.2 The expected value of a *procurement* **must** be estimated before a decision on the *procurement* method is made. The expected value is the maximum value (including GST) of the proposed *contract*, including options, extensions, renewals or other mechanisms that may be executed over the life of the *contract*.
- 9.3 The maximum value of the *goods* and services being procured **must** include:
- all forms of remuneration, including any premiums, fees, commissions, interest, allowances and other revenue streams that may be provided for in the proposed *contract*;
 - the value of the *goods* and services being procured, including the value of any options in the proposed *contract*; and
 - any taxes or charges.
- 9.4 When a *procurement* is to be conducted in multiple parts with *contracts* awarded either at the same time or over a period of time, with one or more *suppliers*, the expected value of the *goods* and services being procured **must** include the maximum value of all of the *contracts*.
- 9.5 A *procurement* **must** not be divided into separate parts solely for the purpose of avoiding a relevant *procurement* threshold.
- 9.6 When the maximum value of a *procurement* over its entire duration cannot be estimated the *procurement* **must** be treated as being valued above the relevant *procurement* threshold.

Procurement thresholds

- 9.7 When the expected value of a *procurement* is at or above the relevant *procurement threshold* and an exemption in Appendix A is not utilised, the rules in Division 2 **must** also be followed. The *procurement thresholds* (including GST) are:
- for *non-corporate Commonwealth entities*, other than for *procurements of construction services*, the *procurement* threshold is \$80,000;
 - for prescribed *corporate Commonwealth entities*, other than for *procurements of construction services*, the *procurement* threshold is \$400,000; or
 - for *procurements of construction services* by relevant entities, the *procurement* threshold is \$7.5 million.

Defence Procurement Policy Directives

Procurements under \$10,000 (GST inclusive) - Defence Purchasing Card

- D30. For *procurements* valued under \$10,000 (GST inclusive), Defence *officials must* use the Defence Purchasing Card (DPC), unless there are valid reasons for not doing so.
- D31. Defence *officials must* not use the DPC for *procurements* made through MILIS (the core logistics management system in Defence).

Procurements under \$200,000 (GST inclusive) - Commonwealth Contracting Suite

- D32. For *procurements* valued under \$200,000 (GST inclusive), Defence *officials must* use the Department of Finance's Commonwealth Contracting Suite (CCS), unless the *procurement* has been assessed as exempt from this requirement by applying the Defence specific CCS Decision Tree.
- D33. If the *procurement* is exempt from using the CCS, the *official must* use an endorsed Defence contracting template.

Procurements valued at or above \$200,000 (GST inclusive)

- D34. For *procurements* valued between \$200,000 and \$1 million (GST inclusive), officials must consider using the CCS as the basis for the procurement. If the CCS is unsuitable or the procurement is valued at or above \$1 million (GST inclusive), if an endorsed Defence contracting template exists for the type of *procurement* being undertaken, Defence *officials must* use that template as the basis for the *procurement*.
- D35. If a Defence *official* intends to use a form of *contract* other than an endorsed Defence contracting template, the *official must* ensure the *contract* is appropriate for the requirement, and capable of achieving an appropriate risk allocation consistent with the Commonwealth resource management framework.

Procurements through the US Foreign Military Sales (FMS) system

- D36. If a Defence *official* is undertaking a *procurement* through the FMS system, the *official must* consult with the Office of the Counsellor Defence Materiel (Washington) (DEFMAT (W)) prior to establishing or amending the FMS case.

Notes: Defence *officials* should follow the [Simple Procurement Process](#) when undertaking low risk, low value (or 'simple') *procurements*.

For Defence Procurement Policy Directive D34, the Department of Finance's Commonwealth Contracting Suite (CCS) and the Defence specific CCS Decision Tree can be found at the Department of Finance's [Commonwealth Contracting Suite](#) webpage.

The endorsed Defence contracting templates and guidance on appropriate template selection can be found on the Commercial Policy [Tools and Templates](#) intranet page.

The US Foreign Military Sales (FMS) program is a form of security assistance authorised by the US Arms Export Control Act (AECA) and is part of US foreign policy. Under Section 3, of the AECA, the US may sell defence articles and services to foreign countries like Australia when to do so will strengthen the security of the US and promote world peace. For more information about the FMS system see the [Support Office Foreign Military Sales](#) intranet page.

The Capability Acquisition and Sustainment Group has a Washington office (CASG-W) which is the focal point for Defence materiel related activity in North America, providing acquisition and sustainment support to Defence and other Australian government agencies. DEFMAT (W) provides acquisition advice to the Head of Australian Defence Staff (Washington) (HADS(W)) and is the representative of Deputy Secretary CASG in North America. The office supports a range of activities, including FMS and direct commercial *procurements*. For more information and contact details see the [Support Office Foreign Military Sales](#) intranet page.

CPR 9.8**Procurement methods**Method 1 – Open tender

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

Defence Procurement Policy Directive

D37. Defence officials **must** use an *open tender* process for all *procurements* at or above the relevant *procurement threshold*, unless the conditions for a *limited tender* can be satisfied, or the *procurement* is otherwise exempt from this requirement.

Note: See Defence Procurement Policy Directive D2 (and the related Table 1) for Defence *procurements* that are exempt from the *open tender* requirement. Appendix A of the CPRs also sets out various kinds of *procurements* that do not require *open tender* processes.

See paragraphs 30 to 36 in Chapter 2 of the DPPM for guidance about *procurement* methods.

CPR 9.9 – 9.11Method 2 – Limited tender

- 9.9 *Limited tender* involves a *relevant entity* approaching one or more *potential suppliers* to make *submissions*, when the process does not meet the rules for *open tender*.
- 9.10 For *procurements* at or above the relevant *procurement threshold*, *limited tender* can only be conducted in accordance with paragraph 10.3, or when a *procurement* is exempt as detailed in Appendix A.
- 9.11 When conducting a limited tender in accordance with paragraph 9.10, the relevant exemption or limited tender condition **must** be reported on AusTender.

Defence Procurement Policy Directive

- D38. For *procurements* at or above the relevant *procurement threshold*, a Defence official **must not** use a *limited tender* process unless a circumstance in paragraph 10.3 of the CPRs applies, or the *procurement* is otherwise exempt from this requirement.
- D39. In undertaking a *limited tender*, Defence officials **must** ensure that, where practicable, the number of *potential suppliers* invited to participate in the process is sufficient to ensure a value for money outcome.

Notes: Many *procurements* related to the acquisition or sustainment of Defence major capital equipment are undertaken through *limited tender* processes, despite not meeting the requirements of paragraph 10.3 of the CPRs. Usually, this is because they are exempt *procurements* of goods or services (see Defence Procurement Policy Directives D2-D4).

A particular *procurement* may be categorised as a *limited tender*, irrespective whether or not a request for tender or similar *request documentation* is used to undertake the *procurement*. Further, a 'sole source' arrangement with a contractor constitutes a *limited tender* for the purposes of the CPRs. Similarly, each FMS case with the US Government constitutes a *limited tender*.

See paragraphs 37 to 47 in Chapter 2 of the DPPM for guidance about how the circumstances set out in paragraph 10.3 of the CPRs may apply so as to justify using a *limited tender* process.

Where a limited tender procurement method has been utilised for a procurement valued at or above the relevant procurement threshold, the Contract Notice published on AusTender will include either:

- the exemption from Division 2 of the CPRs; or
- the condition from paragraph 10.3 of the CPRs.

CPR 9.12 – 9.13**Procurement from existing arrangements**Procurements from standing offers

- 9.12 Procurements from an existing *standing offer* are not subject to the rules in Division 2 of these CPRs. However, these procurements **must** comply with the rules in Division 1.
- 9.13 *Officials* should report the original *procurement* method used to establish the *standing offer* when they report *procurements* from *standing offers*.

Defence Procurement Policy Directive

- D40. If a *standing offer* panel is established in Defence for *goods* or services, Defence *officials* **must** use the *standing offer* when procuring relevant *goods* or services, unless a Group Head has approved not doing so.
- D41. Defence *officials* **must not** use a *standing offer* panel to order *goods* or services that were not specified in the *request documentation* used to establish the arrangement, even if the relevant *supplier* may be able to provide the *goods* or services.

Notes: *Standing offer* panels provide an efficient and effective mechanism to enable Defence *officials* to procure relevant *goods* and services from industry. The benefit of these arrangements is eroded if *officials* seek to procure outside the panel, noting that panel members also have the reasonable expectation that Defence will use the panel rather than procure outside it. Nevertheless, there may be occasions when Defence *officials* may need to procure *goods* or services outside the panel, for example, where particular knowledge or expertise is required that is only available outside the panel. A valid reason could also include where a *standing offer* panel arrangement has been established by another Commonwealth agency which is able to be used by Defence and which offers better value for money than the corresponding Defence panel. For further information on *standing offers* and current Defence *standing offer* panel arrangements, Defence *officials* should refer to the factsheet on the Commercial Division [Fact Sheets and Guidance](#) intranet page and the Commercial Division Defence [Goods and Services Directory](#) intranet page.

The Department of Finance has established several whole of government coordinated *procurement* arrangements for various *goods* and services, for example, ICT, telecommunications, stationery and office supplies, and airline travel. Defence *officials* are required to use these arrangements unless specific exemptions apply (see paragraphs 4.9 and 4.10 of the CPRs and Defence Procurement Policy Directives D18 and D19 and related Notes). Defence *officials* can find more details at www.finance.gov.au/procurement

Chapter 5

Procurements valued at or above the procurement thresholds

Note: Chapter 5 of the DPPM incorporates all the rules from Division 2 of the CPRs.

Defence Procurement Policy Directive

D42. Defence *officials* **must** comply with the Defence Procurement Policy Directives in Chapter 5 of the DPPM (in addition to those in Chapters 1, 3 and 4) when undertaking *procurements* in Defence, if the *procurement* is valued at or above the relevant *procurement threshold* (unless otherwise specified in the relevant Defence Procurement Policy Directive).

Note: Defence Procurement Policy Directive D42 means that, even though Defence *officials* may be exempt from having to comply with the additional rules in Division 2 of the CPRs in relation to their *procurement*, Defence *officials* are still required to comply with the Defence Procurement Policy Directives that are set out in Chapter 5 of the DPPM, unless stated otherwise. This is because these Defence Procurement Policy Directives are of general application and compliance with them will help to ensure that Defence undertakes its *procurements* in an efficient, effective, economical and ethical manner as required by the PGPA Act.

10. Additional rules

CPR 10.1 – 10.8

Additional rules

- 10.1 The rules set out in Division 2 are additional to those in Division 1 and **must** not be interpreted or applied in a manner that diminishes or negates Division 1.
- 10.2 A *procurement*, except a *procurement* that is specifically exempt in accordance with Appendix A, is subject to the rules contained in Division 2 if the expected value of the *procurement* is at, or above, the relevant *procurement threshold*.

Conditions for limited tender

- 10.3 A *relevant entity* **must** only conduct a *procurement* at or above the relevant *procurement threshold* through *limited tender* in the following circumstances:
 - a. when, in response to an *open approach to market*:
 - i. no *submissions*, or no *submissions* that represented value for money, were received,
 - ii. no *submissions* that met the minimum content and format requirements for submission as stated in the request documentation were received, or
 - iii. no *tenderers* satisfied the conditions for participation,and the *relevant entity* does not substantially modify the essential requirements of the *procurement*; or
 - b. when, for reasons of extreme urgency brought about by events unforeseen by the *relevant entity*, the *goods* and services could not be obtained in time under *open tender*; or
 - c. for *procurements* made under exceptionally advantageous conditions that arise only in the very short term, such as from unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy, or receivership, and which are not routine *procurement* from regular *suppliers*; or
 - d. when the *goods* and services can be supplied only by a particular business and there is no reasonable alternative or substitute for one of the following reasons
 - i. the requirement is for works of art,

- ii. to protect patents, copyrights, or other exclusive rights, or proprietary information, or
- iii. due to an absence of competition for technical reasons; or
- e. for additional deliveries of *goods* and services by the original *supplier* or authorised representative that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services, or installations, when a change of *supplier* would compel the *relevant entity* to procure *goods* and services that do not meet requirements for compatibility with existing equipment or services; or
- f. for *procurements* in a *commodity market*; or
- g. when a *relevant entity* procures a prototype or a first *good* or service that is intended for limited trial or that is developed at the *relevant entity's* request in the course of, and for, a particular *contract* for research, experiment, study, or original development; or
- h. in the case of a *contract* awarded to the winner of a design contest, provided that
 - i. the contest has been organised in a manner that is consistent with these CPRs, and
 - ii. the contest is judged by an independent jury with a view to a design *contract* being awarded to the winner.

Note: See paragraphs 37 to 45 in Chapter 2 of the DPPM for guidance about how the circumstances set out in paragraph 10.3 of the CPRs may apply so as to justify using a *limited tender* process.

- 10.4 A *procurement* at or above the relevant *procurement threshold* conducted by *limited tender* is not required to meet the rules in paragraphs 10.6 -10.8 (*Request documentation*), 10.20-10.31 (Minimum time limits), or 10.35 (*Awarding contracts*).
- 10.5 In accordance with the general rules for accountability set out in these CPRs, for each *contract* awarded through *limited tender*, an **official must** prepare and appropriately file within the *relevant entity's* records management system a written report that includes:
 - a. the value and type of *goods* and services procured;
 - b. a statement indicating the circumstances and conditions that justified the use of *limited tender*, and
 - c. a record demonstrating how the *procurement* represented value for money in the circumstances.

Request documentation

- 10.6 **Request documentation must** include a complete description of:
 - a. the *procurement*, including the nature, scope and the quantity of the *goods* and services to be procured or, where the quantity is not known, the estimated quantity, and any requirements to be fulfilled, including any technical *specifications*, conformity certification, plans, drawings, or instructional materials;
 - b. any *conditions for participation*, including any financial guarantees, information and documents that *potential suppliers* are required to submit;
 - c. any *minimum content and format requirements*;
 - d. *evaluation criteria* to be considered in assessing *submissions* and, if applicable to the evaluation, the relative importance of those criteria;
 - e. any dates for the delivery of *goods* or supply of services, taking into account the complexity of the *procurement*; and
 - f. any other terms or conditions relevant to the evaluation of submissions.
- 10.7 However, relevant entities are not obligated to release confidential information, information sensitive to essential security or information that may impede competition.
- 10.8 Relevant entities **must** ensure that *potential suppliers* and *tenderers* are dealt with fairly and in a non-discriminatory manner when providing information leading to, or following,

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an *approach to market*. Relevant entities **must** promptly reply to any reasonable request from a *potential supplier* for relevant information about a *procurement*, and when responding to such enquiries **must** avoid a *potential supplier*, or group of *potential suppliers*, gaining an unfair advantage in a competitive *procurement* process.

Defence Procurement Policy Directives

- D43. Defence *officials* **must** ensure that the *request documentation* for a *procurement* is consistent with the approved *procurement* plan and includes all of the information necessary to enable *potential suppliers* to properly prepare and lodge *submissions*.
- D44. Defence *officials* **must** ensure that all *potential suppliers* are provided with the same information in the *request documentation*, including any amendments to the *request documentation*.
- D45. For all competitive *procurement* processes, Defence *officials* **must** prepare a tender evaluation plan that is commensurate with the scale, scope and risk of the *procurement*.
- D46. Defence *officials* **must** ensure that the tender evaluation plan for a *procurement* is approved by the relevant *official* no later than the opening of *submissions*.

Note: Defence officials should refer to Chapter 5 of the Complex Procurement Guide for more information about how to undertake a tender evaluation for a complex procurement.

CPR 10.9 – 10.13

Specifications

- 10.9 A *relevant entity* **must** not use specifications or prescribe any conformity assessment procedure in order to create an unnecessary obstacle to trade.
- 10.10 In prescribing *specifications* for *goods* and services, a *relevant entity* **must**, where appropriate:
- set out the *specifications* in terms of performance and functional requirements; and
 - base technical *specifications* on international *standards*, when they exist and apply to the relevant *procurement*, except when the use of international standards would fail to meet the *relevant entity's* requirements.
- 10.11 Where an Australian *standard* is applicable for *goods* or services being procured, tender responses **must** demonstrate the capability to meet the Australian *standard*, and *contracts* **must** contain evidence of the applicable standards (see paragraph 7.26).
- 10.12 A *specification* **must** not require or refer to a particular trademark or trade name, patent, copyright, design or type, specific origin, producer, or *supplier*, unless there is no other sufficiently precise or intelligible way of describing the requirement. In an exceptional circumstance when this type of *specification* is used, words such as 'or equivalent' **must** be included in the *specification*.
- 10.13 A *relevant entity* may conduct market research and other activities in developing *specifications* for a particular *procurement* and allow a *supplier* that has been engaged to provide those services to participate in *procurements* related to those services. Relevant entities **must** ensure that such a *supplier* will not have an unfair advantage over other *potential suppliers*.

Defence Procurement Policy Directive

- D47. If essential requirements are specified in *request documentation*, Defence *officials* **must** exclude a *tenderer* from further consideration in the *procurement* process, if the *official* considers that the *tenderer* has not met those requirements (unless the *procurement* is exempt from Division 2 of the CPRs).

Notes: Defence *officials* should refer to Chapter 3 of the Complex Procurement Guide for more information about the use of standards, *specifications* and essential requirements in *request documentation*. For *procurements* that are exempt from Division 2 of the CPRs, Defence Procurement Policy Directive D47 should be followed as good practice.

CPR 10.14 – 10.19

Modification of evaluation criteria or specifications

10.14 When, during the course of a procurement, a relevant entity modifies the evaluation criteria or specifications set out in an approach to market or in request documentation, or amends or reissues an approach to market or request documentation, it **must** transmit all modifications or amended or reissued documents:

- a. to all the *potential suppliers* that are participating at the time the information is amended, if known, and, in all other cases, in the same manner as the original information; and
- b. in adequate time to allow *potential suppliers* to modify and re-lodge their *submissions*, if required.

Conditions for participation

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

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

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

- a. evaluate financial, commercial, and technical abilities on the basis of the *tenderer's* business activities, wherever they have occurred; and
- b. base its determination solely on the *conditions for participation* that the *relevant entity* has specified in either the *approach to market* or the *request documentation*.

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

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

- a. labour regulations, including ethical employment practices;
- b. workplace health and safety; and
- c. environmental impacts.

Note: See the Notes following paragraph 4.10 of the CPRs.

Defence Procurement Policy Directive

D48. If *conditions for participation* are specified in *request documentation*, Defence *officials* **must** exclude a *tenderer* from further consideration in the *procurement* process, if the *official* considers that the *tenderer* has not met those conditions (unless the *procurement* is exempt from Division 2 of the CPRs).

Note: Defence *officials* should refer to Chapters 3 and 5 of the Complex Procurement Guide for more information about *conditions for participation*.

CPR 10.20 – 10.27**Minimum time limits**

- 10.20 *Potential suppliers must* be required to lodge *submissions* in accordance with a common deadline.
- 10.21 Relevant entities **must** provide sufficient time for *potential suppliers* to prepare and lodge *submissions* in response to an *approach to market*. Time limits discussed in this section represent minimum time limits to lodge *submissions* and should not be treated as default time limits.
- 10.22 The time limit for *potential suppliers* to lodge a *submission must* be at least 25 days from the date and time that a *relevant entity* publishes an *approach to market* for an *open tender*.
- 10.23 The 25 day period referred to in paragraph 10.22 **must** be extended by five days for each of the following circumstances:
- when a *relevant entity* does not make *request documentation* available electronically from the date that a *relevant entity* published an *approach to market*; and/or
 - when a *relevant entity* does not accept *submissions* electronically.
- 10.24 A *relevant entity* may establish a time limit that is less than 25 days but no less than 10 days under the following circumstances”
- when the *relevant entity* has published details of the *procurement* in an *annual procurement plan on AusTender*, at least 40 days and not more than 12 months in advance, and those details include a description of the *procurement*, the timing of the *approach to market* and the procedure to obtain *request documentation*;
 - when the *relevant entity* procures *commercial goods and services* (unless the *relevant entity* does not accept the *submissions* electronically, in which case the minimum time limit **must** be no less than 13 days); or
 - when a genuine state of urgency renders the normal time limit impracticable.
- 10.25 In the case of a *multi-stage procurement* each *approach to market must* comply with the time limits stated in paragraph 10.22 – 10.24.
- 10.26 When a *relevant entity* intends to specify *conditions for participation* that require *potential suppliers* to undertake a separate registration procedure, the *relevant entity must* state the time limit for responding to the registration in the *approach to market*. Any such *conditions for participation must* be published in sufficient time to enable all *potential suppliers* to complete the registration procedures within the time limit for the *procurement*.
- 10.27 When a *relevant entity* extends the time limit for registration or *submission*, or when negotiations are terminated and *potential suppliers* are permitted to lodge new *submissions*, the new time limit **must** apply equitably.

Defence Procurement Policy Directive

D49. Defence *officials must* not grant an extension to a deadline for registration or lodgement of *submissions* once the closing date for registration or *submissions* has passed.

CPR 10.28 – 10.31**Late submissions**

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

- 10.29 *Relevant entity* mishandling does not include mishandling by a courier or mail service provider engaged by a *potential supplier* to deliver a *submission*. It is the responsibility of the *potential supplier* to ensure that the *submission* is dispatched in sufficient time for it to be received by the *relevant entity* by the deadline.
- 10.30 Late *submissions* should be returned unopened to the *potential supplier* who submitted them, to:
- ensure that they are not evaluated or compared with *submissions* which were submitted by the due time and date;
 - demonstrate to other *tenderers* that the process for receiving *submissions* is fair and impartial; and
 - eliminate scope for any suggestion that the *submission* was rejected for any reason other than because it was late.
- 10.31 It may be necessary to open a late *submission* if there is no return address or any indication of which *approach to market* the *submission* relates. When a *submission* has been opened under such circumstances the *potential supplier* should be advised that the *submission* was rejected due to lateness and advised of the reason it was opened.

Defence Procurement Policy Directives

- D50. Defence *officials must* decide whether to accept a late *submission* before the relevant *submission* is opened.
- D51. For *procurements* not covered by Division 2 of the CPRs, Defence *officials* may accept a late *submission* if this is consistent with probity in the circumstances of the case.

Notes: Before accepting a late *submission*, Defence *officials* should seek specialist contracting or legal advice. Defence *officials* should refer to Chapters 4 and 5 of the Complex Procurement Guide for more information about the probity risks relating to the acceptance of late tenders.

There are three ways through which Division 2 of the CPRs will not apply to a *procurement*: First, the *procurement* is below the relevant *procurement threshold* (see paragraph 9.7 of the CPRs); second, the *procurement* is exempt through the application of the general exemptions listed in Appendix A to the CPRs (see Appendix A to the DPPM); and third, the *procurement* is exempt through the application of a Defence specific exemption as a result of a measure made by the Secretary under paragraph 2.6 of the CPRs (see Defence Procurement Policy Directives D2 - D4).

CPR 10.32 – 10.34

Receipt and opening of submissions

- 10.32 Procedures to receive and open *submissions must* guarantee fairness and impartiality and *must* ensure that *submissions* are treated in confidence.
- 10.33 When a *relevant entity* provides *tenderers* with opportunities to correct unintentional errors of form between the opening of *submissions* and any decision, the *relevant entity must* provide the opportunity equitably to all *tenderers*.
- 10.34 Further consideration *must* be given only to *submissions* that meet *minimum content and format requirements*.

Defence Procurement Policy Directive

- D52. If *minimum content and format requirements* are specified in *request documentation*, Defence *officials must* exclude a *tenderer* from further consideration in the *procurement* process, if the *official* considers that the *tenderer* has not met those requirements, unless the *official* considers that there has been an unintentional error of form (or unless the *procurement* is exempt from Division 2 of the CPRs).

Note: Defence *officials* should refer to Chapters 3 and 5 of the Complex Procurement Guide for more information about *minimum content and format requirements* and unintentional errors of form.

CPR 10.35 – 10.36

Awarding contracts

10.35 Unless a *relevant entity* determines that it is not in the public interest to award a *contract*, it **must** award a *contract* to the *tenderer* that the *relevant entity* has determined:

- a. satisfies the *conditions for participation*;
- b. is fully capable of undertaking the *contract*; and
- c. will provide the best value for money, in accordance with the essential requirements and *evaluation criteria* specified in the *approach to market* and *request documentation*.

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

Notes: The CPRs state that public interest grounds generally arise in response to unforeseen events or new information that materially affects the objectives or reasons underlying the original procurement requirement as specified in the request document.

Defence *officials* should typically not make any public announcement regarding the selection of a preferred *tenderer* or *tenderers* until *contract* negotiations are completed, all necessary approvals have been obtained, the *contract* signed and unsuccessful *tenderers* have been notified. Defence's experience is that public announcements of preferred *tenderers* can significantly lengthen the time needed to finalise the negotiation of the *contract*.

Defence Procurement Policy Directives

Contract negotiations and management

- D53. Prior to entering into *contract* negotiations, Defence *officials* **must** document their negotiation strategy commensurately with the scale, scope and risk of the *procurement* to which the *contract* relates.
- D54. If *contract* negotiations result in a significant change to a *tenderer's* offer (including its technical solution, pricing, or commercial terms), Defence *officials* **must** consider whether the amended offer continues to represent best value for money.
- D55. Defence *officials* **must** not change the scope of a *contract* to obtain additional or different *goods* or services that fall outside the terms of the original *contract* approval, unless that change is approved by the relevant delegate as a *limited tender* and is otherwise consistent with the CPRs and the Defence Procurement Policy Directives in the DPPM.

Notes: For more complex *procurements*, the negotiation strategy will typically be documented in a *contract* negotiation directive that is endorsed by the relevant delegate for the *procurement*.

To exercise an option in an existing *contract* to procure additional quantities of *goods*, services or optional extras, Defence *officials* should follow the mechanism set out in the relevant *contract*.

Defence *officials* should refer to Chapters 6 of the Complex Procurement Guide for more information about how to undertake *contract* negotiations.

Defence *officials* should refer to the Defence Contract Management Framework to support them achieving best practice contract management. The Framework brings together the underpinning principles, policies, tools, templates, guidance and competencies required to support more collaborative business relationships with industry and deliver more effective contract outcomes. Defence *officials* should refer to Chapter 7 of the Complex Procurement Guide and the Defence Contract Management Handbook for guidance about how to undertake *contract* management.

Appendices

CPR Appendix A – Appendix B

Appendix A: Exemptions from Division 2 of the CPRs

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

1. *procurement* (including leasing) of land, existing buildings or other immovable property or any associated rights (note: the *procurement* of *construction services* is not exempt);
2. *procurement* of *goods* and services from another *Commonwealth entity*, or a state, territory or local government entity;
3. *procurements* funded by international grants, loans or other assistance, when the provision of such assistance is subject to conditions inconsistent with this document;
4. *procurements* funded by grants and sponsorship payments from non-Commonwealth entities;
5. *procurement* for the direct purpose of providing foreign assistance;
6. procurement of research and development services, but not the procurement of inputs to research and development;
7. the engagement of an expert or neutral person, including engaging counsel or barristers, for any current or anticipated litigation or dispute;
8. *procurement* of *goods* and services (including construction) outside Australian territory, for consumption outside Australian territory;
9. acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt;
10. *procurement* by the Future Fund Management Agency of investment management, investment advisory, or master custody and safekeeping services for the purposes of managing and investing the assets of the Future Fund;
11. *procurement* of blood plasma products or plasma fractionation services;
12. *procurement* of government advertising services;
13. *procurement* of *goods* and services by, or on behalf of, the Defence Intelligence Organisation, the Australian Signals Directorate, or the Australian Geospatial Intelligence Organisation;
14. contracts for labour hire;
15. *procurement* of *goods* and services from a business that primarily exists to provide the services of persons with a disability; and
16. *procurement* of *goods* and services from an SME with at least 50 per cent Indigenous ownership.

Appendix B: Definitions

The following definitions apply for the purposes of the CPRs:

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

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

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

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

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

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

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

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

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

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

Contract – an arrangement, as defined by s23(2) of the PGPA Act, for the *procurement* of *goods* and/or services under which *relevant money* is payable or may become payable. Note: this includes *standing offers* and panels.

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

Corporate Commonwealth entities – as defined in section 8 of the PGPA Act.

Days – means calendar *days*.

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

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

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

GST – The *Goods and Services Tax*, as defined by the *A New Tax Systems (Goods and Services Tax) Act 1999*.

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

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

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

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

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

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

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

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

Procurement – refer to paragraphs 2.7 to 2.9 of the CPRs

Procurement thresholds – refer to paragraph 9.7 of the CPRs

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

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

Relevant entity – *non-corporate Commonwealth entities* and prescribed *corporate Commonwealth entities* (listed at Appendix B) that must comply with the CPRs when performing duties related to *procurement*.

Reporting thresholds – refer to paragraph 7.19 of the CPRs.

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

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

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

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

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

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

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

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

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Defence Procurement Policy Directive

D56. Terms that are defined in Appendix B of the CPRs and which are used in the DPPM, have the same meaning in the DPPM as they do in the CPRs, unless the contrary intention appears.

Note: Terms that are defined in Appendix B and which are used in the DPPM are generally identified through the use of italics text.

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Australian Government
Department of Defence

[Insert Signatory's Name and Title]

[Insert Signatory's Address]

[Insert Individual's Name and Title]

[Insert Company Name and Address]

Dear [...]

LETTER OF ENGAGEMENT: [...INSERT TITLE OF ROLE...]

The Commonwealth of Australia (**Commonwealth**) wishes to engage [...INSERT NAME...] (**Consultant**) through [...INSERT COMPANY...] (**Company**) to provide the services described below in accordance with the Terms and Conditions below and set out in Attachment A to this Letter.

Note to drafters: if the resultant engagement will be with a natural person, trust or partnership (rather than a company) references to "The Company" should be removed and replaced with "Consultant" throughout the template.

If engaging a natural person (including with a partner contracting in their own personal capacity rather than on behalf of the partnership), drafters should consider the implications for taxation, superannuation and related matters. Drafters who determine that superannuation is not payable should ensure that they have obtained legal advice.

1. DESCRIPTION OF SERVICES:

The Consultant is required to [...INSERT DETAILS OF SERVICES REQUIRED...].

2. PERIOD OF ENGAGEMENT:

- a. The Commencement Date for the Services is [...INSERT DATE...].
- b. This engagement will continue to operate for a period of [...INSERT DURATION...] from the Commencement Date, or until the agreement is terminated in accordance with either clause 16 or 17 of **Attachment A**.

3. FEES AND PAYMENT:

- a. **Daily Rate:** AUD\$XXX (ex GST) per day.
- b. **Not to Exceed:** AUD\$XXX (ex GST) for the Services.
- c. **GST:** in accordance with clause 7 of **Attachment A**.
- d. **Out of pocket expenses:**
 - (i) The Daily Rate does not include travel, accommodation and incidental expenses incurred by the Consultant and, subject to paragraph 3(d)(ii), these expenses may be separately recovered from the Commonwealth.

Note to Drafters: Where the Agreement relates to overseas travel, consider specifying the currency that reimbursements will be made in.

- (ii) The Company is entitled to seek reimbursement of Commonwealth approved

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travel and accommodation related expenses up to the Defence SES Travelling Allowance rates (as adjusted for GST). The Company must seek the Commonwealth's prior approval for all other out of pocket expenses that it intends to recover from the Commonwealth.

(iii) Alternatively, the Commonwealth may arrange travel and accommodation for the Consultant, as required for the purposes of the engagement.

e. **Manner of payment:** The Company must submit monthly invoices to the Commonwealth. Remittances are to be mailed to the following address:

[...INSERT COMPANY NAME, ABN AND ADDRESS...]

4 INSURANCE:

Note to drafters: The agreement does not mandate any minimum insurance requirements. The below drafting is indicative of the types of insurance that may be sought for a particular engagement. The Company must have insurances required by law, other insurances such as Public Liability Insurance and Professional Indemnity Insurance may be required.

The Company must procure the following insurance before commencing work under the letter of engagement:

- a. Public Liability Insurance of not less than **[...INSERT AMOUNT...]** for each and every public liability occurrence, to be maintained until all work under the engagement is completed or terminated;
- b. Professional Indemnity Insurance of not less than **[...INSERT AMOUNT...]** for each claim and in the annual aggregate for all claims, to be maintained for 7 years after the engagement is completed or terminated; and
- c. insurance as required by law, such as worker's compensation insurance.

5 SECURITY CLEARANCES: (OPTIONAL)

The security classification of the Services is up to and including **[...INSERT CLASSIFICATION...]** level. The Consultant must possess a personnel security clearance at **[...INSERT CLASSIFICATION...]** level and must comply with the requirements and procedures of Principle 40 of the Defence Security Principles Framework, as amended from time to time.

6 COMMONWEALTH CONTACT OFFICER AND ADDRESS FOR NOTICES (INCLUDING INVOICES):

[...INSERT CONTACT DETAILS FOR COMMONWEALTH CONTACT OFFICER...]

7 ACKNOWLEDGEMENT AND AGREEMENT:

If the Company agrees to provide the Services in accordance with the Terms and Conditions set out above and in **Attachment A**, please sign the enclosed copy of the letter (refer below) and return to me at your earliest convenience.

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If you have any questions or require further information, please do not hesitate to contact me.

Yours sincerely

Note to drafters: at the minimum this agreement should be signed by a 2 Star / Band 2.

[... INSERT RELEVANT SIGNATORY...]

Note to drafters: select Option A if the Agreement is with a Company or Option B if the Agreement is with an individual.

OPTION A

Signed for and on behalf of [...INSERT COMPANY NAME YYYYY AND ABN...] by its authorised signatory in the presence of:

Signature of witness

Signature of authorised signatory

Full name of witness

Full name of authorised signatory

OPTION B

I, [...INSERT...] agree to provide the Services on the terms and conditions set out above and attached to this letter in the presence of:

Signature of witness

Signature of authorised signatory

Full name of witness

Full name of authorised signatory

ATTACHMENTS:

Attachment A: Terms and Conditions

Attachment B: Confidentiality and Conflict of Interest Declaration

Attachment C: Code of Conduct

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ATTACHMENT A

TERMS AND CONDITIONS

1. Agreement

1.1 The agreement comprises the particulars described in the Letter of Engagement and the Terms and Conditions set out in this Attachment A.

2. Provision of Services

2.1 The Consultant must provide the services described in paragraph 1 of the Letter of Engagement (**Services**) at the times, in the manner and at the location (if any) described in the agreement or as otherwise notified in writing by the Commonwealth. The Services must be provided with due care and skill in accordance with the highest professional standards to the satisfaction of the Commonwealth.

2.2 The Company must comply, and must ensure the Consultant complies, with all reasonable directions of the Commonwealth as may be given from time to time as to the nature and scope of the Services to be provided. This clause does not affect the Consultant's right to exercise its own judgment and to utilise its own skills as it considers most appropriate in order to comply with the Commonwealth's direction or its obligations under the agreement.

2.3 The Company must comply, and must ensure the Consultant complies, with the Code of Conduct set out at Attachment C.

3. Nature of engagement

3.1 The Commonwealth engages the Company, and the Consultant through the Company, to provide the Services as an independent contractor and not as the Commonwealth's agent or employee. Neither the Company nor the Consultant has any authority to bind the Commonwealth or act on the Commonwealth's behalf at any time. Neither the Company nor the Consultant is entitled to any benefit from the Commonwealth usually attributable to an employee.

4. Payment

4.1 The Commonwealth agrees to pay the Company the fees and other amounts specified in paragraph 3 of the Letter of Engagement for Services provided by the Consultant in accordance with this agreement, within 30 days of the Commonwealth's receipt of a correctly rendered invoice.

4.2 The Commonwealth must pay the Company:

- a. the Daily Rate if the Consultant undertakes 8 or more hours of work on the Services in a 24 hour period; and
- b. a pro-rata proportion of the Daily Rate if the Consultant undertakes less than 8 hours of work on the Services in a 24 hour period.

4.3 The Commonwealth is not obligated to pay the Company more than the Daily Rate for work done within any one 24 hour period, including where the Consultant has been required to travel in the course of that period to undertake the Services.

4.4 The maximum amount payable by the Commonwealth under the agreement, subject to any entitlement of the Consultant to be reimbursed for out of pocket expenses, is the amount specified as the Not to Exceed amount in paragraph 3(b) of the Letter of Engagement.

4.5 If the Commonwealth fails to pay a correctly rendered invoice within 30 days after the date of receipt, the Commonwealth must pay interest on the unpaid amount at the general interest charge rate (determined under section 8AAD of the *Taxation Administration Act 1953* (Cth) on the day payment is due) calculated in respect of each day that the payment was late.

4.6 The Commonwealth must pay interest whether or not the Company has submitted a separate invoice for the interest amount. Interest will only be payable in accordance with clause 4.4 if the interest amount exceeds A\$100.

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5. Invoice

- 5.1 An invoice is correctly rendered if the amount claimed for payment is correctly calculated in accordance with the agreement, contains details of the days (including any part days) worked during the relevant invoicing period, identifies the purchase order number and the Contact Officer specified in paragraph 6 of the Letter of Engagement and is in the form of a valid tax invoice in accordance with *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 5.2 If the agreement provides for reimbursement of out of pocket expenses, the invoice must separately itemise all expenses for which reimbursement is sought, and be accompanied by verifying documentation (including copies of invoices).

6. Price Basis

- 6.1 The fees and other amounts (if any) specified in paragraph 3 of the Letter of Engagement are inclusive of all taxes (excluding GST), duties and government charges imposed or levied in Australia or overseas, remuneration to the Company's officers, employees, agents and subcontractors and costs in respect of procuring and maintaining any insurance required under paragraph 4 of the Letter of Engagement.

7. GST

Note to drafters: Where Defence intends to engage an entity or person that does not carry on a business in Australia and is not registered (itself or through a GST Agent) for GST purposes (i.e. is a non-resident for tax purposes), the Defence Taxation Management Office should be engaged for advice and assistance on GST Reverse Charge Agreements.

- 7.1 In this clause, "GST" means a Commonwealth goods and services tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the expressions "adjustment event", "input tax credits", "taxable supply" and "tax invoice" have the same meaning as in that Act.
- 7.2 If a party to this agreement (the "Supplier") makes a taxable supply under or in connection with this agreement or in connection with any matter or thing occurring under this agreement to another party to this agreement (the "Recipient") and the consideration otherwise payable for the taxable supply does not include GST, the Supplier will be entitled, in addition to any other consideration recoverable in respect of the taxable supply, to recover from the Recipient the amount of any GST on the taxable supply.
- 7.3 If the amount paid by the Recipient to the Supplier in respect of GST differs from the GST on the taxable supply (taking into account any adjustment events that occur in relation to the taxable supply), an adjustment must be made. If the amount paid by the Recipient exceeds the GST on the taxable supply, the Supplier must refund the excess to the Recipient. If the amount paid by the Recipient is less than the GST on the taxable supply, the Recipient must pay the deficiency to the Supplier.
- 7.4 If a party to this agreement is entitled, under or in connection with this agreement or in connection with any matter or thing occurring under this agreement, to recover all or a proportion of its costs or is entitled to be compensated for all or a proportion of its costs, the amount of the recovery or compensation must be reduced by the amount of (or the same proportion of the amount of) any input tax credits available in respect of those costs.

8. Intellectual Property

- 8.1 Title in and ownership of all intellectual property (**IP**) associated with any deliverable or material created by the Company or the Consultant in connection with the agreement ("**Foreground IP**") vests on creation in the Commonwealth. The Company agrees, and must ensure that the Consultant agrees, to execute all documents and do all acts and things required by the Commonwealth to give effect to this clause. The Commonwealth acknowledges that the vesting in the Commonwealth of all Foreground IP does not affect IP in any pre-existing material which is incorporated in any deliverable or material ("**Background IP**"). In such circumstances, the Company must grant (or ensure the grant) to the Commonwealth of a royalty free, irrevocable, non-exclusive, perpetual,

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world-wide licence (including the right to sub licence) of the Background IP to use (including copy, adapt, expand, develop, publish or otherwise change) the pre-existing material.

9. Moral rights

9.1 In relation to any material in which the Company, the Consultant or an individual involved in the creation of the material has a moral right as defined under the *Copyright Act 1968* (Cth), the Company consents (and must obtain the consent of the Consultant and/or any relevant individual) to the Commonwealth doing or omitting to do, anything that, but for the consent, would constitute an infringement of those moral rights.

10. Moral rights and IP Warranty

10.1 The Company warrants, and must ensure that the Consultant warrants, that the provision of the Services (and the Commonwealth's use of any deliverable developed or supplied under the agreement) will not infringe the intellectual property or moral rights of any person.

11. Privacy

11.1 Words defined in the *Privacy Act 1988* (Cth) have the same meaning in this clause.

11.2 If the Company, Consultant or a subcontractor obtains personal information in the course of performing the Services, the Company must, and must ensure that the Consultant and subcontractors, use and disclose that information only for the purposes of this agreement. The Company must comply with, and ensure that subcontractors comply with, the obligations contained in the Australian Privacy Principles as if they were an agency under the *Privacy Act*.

11.3 The Company must notify the Commonwealth as soon as reasonably practicable if it becomes aware of a breach or possible breach of any of the obligations contained, or referred to, in this clause 11, whether by the Company, Consultant or subcontractor to whom the Personal Information has been disclosed for the purposes of the Contract.

12. Confidentiality and Conflict of Interest

12.1 The Company must not, and must ensure that the Consultant does not, disclose to a third party any information that it knows, or ought reasonably to know, is confidential, without the prior written consent of the Commonwealth.

12.2 The Company warrants that to the best of its knowledge no conflict of interest exists or is likely to arise in the performance of this agreement. The Company must ensure that it does not, and that the Consultant does not, engage in any activity that is likely to compromise the ability of the Consultant to perform its obligations fairly and independently. The Company must immediately disclose to the Commonwealth any activity which constitutes or may constitute a conflict of interest.

12.3 The Company must execute the Confidentiality and Conflict of Interest Declaration at Attachment B.

13. Commonwealth Disclosure

13.1 The Company acknowledges and agrees that the Commonwealth may disclose any and all information relevant to the Services and the Company's engagement to perform the Services to third parties without the need to obtain the Company's prior consent.

14. Commonwealth Items

14.1 The Company must not use any Commonwealth supplied documentation, materials or other items (Commonwealth Items) for any purposes other than:

- a. a purpose for which that Commonwealth Item was designed, manufactured or constructed; and
- b. for the provision of the Services.

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15. Security and safety

- 15.1 The Company must comply with, and must ensure that the Consultant complies with, any security and safety requirements notified to it or the Consultant by the Commonwealth or of which the Company is aware and ensure that its officers, employees, agents and subcontractors, including the Consultant, are aware and comply with such security and safety requirements.
- 15.2 Throughout the provision of the Services, the Consultant and the Commonwealth must proactively identify and cooperate to manage any workplace health and safety issues that may arise.

16. Termination for default

- 16.1 The Commonwealth may terminate the agreement immediately by written notice:
- a. if either the Company or the Consultant is in breach of any term or warranty contained in the agreement and, where the breach is capable of remedy, the breach is not remedied with 30 days of written notice by the Commonwealth;
 - b. if the Consultant is not available to provide the Services; or
 - c. the Company becomes bankrupt or insolvent, except to the extent the exercise of a right under this clause 16.1c is prevented by law.

17. Termination for convenience

- 17.1 In addition to clause 16, the Commonwealth may at any time and without cause or reason, terminate the agreement (in whole or in part) by written notice to the Company. If the agreement is terminated under this clause, the Commonwealth must pay the Company for Services rendered before the effective date of termination.

18. Notices

- 18.1 Any notice or communication under the agreement will be effective if it is in writing, signed and delivered to the Contact Officer or the Company (as the case may be) shown in the Letter of Engagement.

19. Assignment

- 19.1 The Company must not assign any of its rights under the agreement without the written consent of the Commonwealth.

20. Subcontracting

- 20.1 The Company must not subcontract the whole or part of its obligations under the agreement without the written consent of the Commonwealth. If the Company subcontracts any or all of its obligations in accordance with this clause, the Company is not relieved of any of its liabilities or obligations under the agreement.

21. Variation

- 21.1 This agreement may only be varied by written agreement of the parties.

22. Applicable law

- 22.1 The law of the Australian Capital Territory applies to this agreement.

23. Entire agreement:

- 23.1 The agreement represents the parties' entire agreement in relation to the subject matter and supersedes all tendered offers and prior representations, communications, agreements, statements and understandings, whether oral or in writing.

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24. Severability

- 24.1 If any part of the agreement is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remainder of the agreement will not be affected and will be read as if that part had been severed.



FACT SHEET

Obligations of Contractors, Consultants and Outsourced Service Providers working in Defence

This fact sheet provides guidance for Contractors, Consultants and Outsourced Service Providers¹ (“CCOSPs”) and the Defence personnel managing them, on their mandatory obligations when working in Defence.

CCOSP Obligations

In the Defence environment, CCOSPs and Defence Officials must comply with obligations prescribed in Commonwealth legislation, Defence policy and its associated controls. CCOSPs’ contracts of engagement are generally the basis for Defence’s control and oversight of outsourced functions, and should contain all relevant obligations.

These obligations include the requirements for CCOSPs to comply with:

- Accountable Authority Instructions (AAIs) and Financial Delegations policy (FINMAN);
- Procurement policy;
- Security policy;
- Work Health and Safety (WHS) policy;
- Public Interest Disclosure scheme;
- management and reporting of fraud, unacceptable behaviour, Notifiable Incidents and incident reporting policies; and
- probity controls and integrity policies, including those prescribing management of conflicts of interest, post separation employment, and gifts, hospitality and sponsorship.

Accountable Authority Instructions and Financial Delegations Policy

Defence may, in limited circumstances, issue CCOSPs with delegations relating to the approval and commitment of relevant money and/or granting of contingent liabilities for Defence under the *Public Governance, Performance and Accountability Act 2013*² (PGPA Act) section 13(3)(c). These delegations are issued via a written Authority to Act instrument upon meeting the requirements to be a Prescribed Official pursuant to AAI 2.10³, FINMAN 2 Delegation Schedule 21A⁴. The delegate’s judgement is independent and may be subject to legal or administrative actions. That is, if a delegate is perceived to make a discriminatory decision, they may be the subject of legal proceedings, and their decisions may also be subject to administrative scrutiny. The Authority to Act:

- advises the legal requirements applicable to Prescribed Officials including the general duties of officials and compliance with the finance law;
- provides a valid Instrument for exercising delegated powers;
- specifies any additional conditions placed on their authority (for example, competency or proficiency requirements).

¹ Glossary - [FINMAN 2 - Financial Delegations Manual](#)

² Section 13 Officials - [Public Governance, Performance and Accountability Act 2013](#)

³ Delegations Issued to Prescribed Officials 2.10 - [Accountable Authority Instruction Chapter 2](#)

⁴ Division 5A Other Delegations, Schedule 21A - [FINMAN 2 - Financial Delegations Manual](#)



A delegate must comply with all the requirements of FINMAN 5 in the responsibilities of Prescribed Officials, and Secretary's directions in the FINMAN 2 schedule and AAls.

Defence Procurement Policy

A CCOSP who is a Prescribed Official must comply with both the Commonwealth Procurement Rules (CPRs) and Mandatory Defence Procurement Policy Directives contained in the Defence Procurement Policy Manual (DPPM) when undertaking procurement.

Security

All Defence endorsed contracting templates, panel deeds (CCOSP Engagement Contracts) and the Defence Instruction Administrative Policy (DIAP) require CCOSPs to comply with the Defence Security Principles Framework (DSPF) and procedure terms and conditions. The DSPF provides guidance to meet protective security requirements and assists in aligning Defence with the Commonwealth's Protective Security Policy Framework (PSPF). The DSPF is intended to support a protective security culture that manages risk and provides additional Defence-specific security guidance.

CCOSP security obligations written in the Engagement Contracts include security clauses that:

- oblige CCOSPs to comply with Defence security policies and practices, including where elements of the function are subcontracted;
- require the security obligations to be periodically updated;
- allow Defence personnel to access CCOSPs' (including subcontractors') premises, records and equipment to monitor their compliance with the protective security conditions in their contracts;
- permit Defence to terminate a CCOSP Engagement Contract if the CCOSP fails to comply with the protective security provisions in the contract, including their unwillingness or inability to remedy security breaches; and
- require CCOSPs to notify the contract manager of any actual or suspected security incidents or breaches that may impact on:
 - o CCOSPs' ability to deliver the functions or services they have been contracted to provide; or
 - o Defence information which is held by, or in transit to/from the service provider.

A CCOSP who breaches Defence security policy may be in breach of contract, and exposed to further sanction under the *Public Service Act 1999* (including the APS Code of Conduct), the *Defence Force Discipline Act 1982*, the *Public Service Act 1999* and the *Crimes Act 1914*.

Work Health and Safety Policy

The Defence Safety Manual (SafetyMan) is the primary WHS policy for Defence. The degree to which SafetyMan applies to CCOSPs depends on the degree of control and influence that Defence has over the undertakings prescribed in the engagement contract. SafetyMan specifies the obligations of officers of the Person Conducting or Undertaking a Business (PCUB) and workers (including CCOSPs), who must cooperate to address and resolve all WHS issues in Defence workplaces. The obligations include the requirement to notify the regulatory immediately after becoming aware that a Notifiable Incident has occurred.

WHS clauses in CCOSP Engagement Contracts reflect SafetyMan and WHS legislation requirements. The CCOSP Engagement Contract templates and deeds must be used for requests for tenders, request for proposals, ITRs, standing offers and contracts.

A CCOSP who breaches the requirements of SafetyMan may be in breach of contract, and exposed to further sanction under the *Work Health and Safety Act 2011* or *Work Health and Safety Regulations 2011* potentially leading to prosecution of individuals and/or the Department of Defence.

Public Interest Disclosure

Under the *Public Interest Disclosure Act 2013*, a CCOSP can report suspected wrongdoing or maladministration within the Commonwealth public sector. Such disclosure will satisfy other Defence obligations relating to the reporting of a Notifiable Incident under Defence Instruction – Administrative Policy AG4 – *Incident Reporting and Management*. Fact sheets and guidance on the Public Interest Disclosure Act 2013 are maintained on the Commonwealth Ombudsman's Public Interest Disclosure website.

Unacceptable Behaviour, Notifiable Incidents and Incident Reporting

Defence Instruction – Administrative Policy PPL7 – *Required Behaviours in Defence*⁵ requires CCOSPs, where it is a term of their contract, to be responsible for their behaviour in any situation in connection with Defence and to not engage in behaviour that is proscribed in the unacceptable behaviour definitions.

Unacceptable behaviour is unreasonable conduct at work or in any situation that may be connected to Defence that is offensive, belittling, abusive or threatening to another person, or adverse to morale, discipline or workplace cohesion. This includes unlawful discrimination and harassment. Refer to Chapter 3 of the *Complaints and alternative resolutions manual*⁶ for detailed descriptions and types of unacceptable behaviour. The manual also specifies the obligations, functions and duties with respect to managing and reporting unacceptable behaviour.

CCOSPs found to have engaged in, contributed to, ignored, assisted or encouraged unacceptable behaviour may be held personally responsible. A failure by a CCOSP to comply with this Instruction may constitute a breach of contract.

Conflicts of Interest

The Defence Integrity Policy Manual contains instructions that also apply to CCOSPs where compliance is a term of their engagement with Defence. The instruction relates to the conflicts of interest that occur between official duties and private interests that can be actual, potential or perceived:

- An actual conflict of interest is one where there is a conflict between a person's official duties and responsibilities and their private interests.
- A potential conflict of interest arises where a person has private interests that may conflict with their official duties.
- A perceived conflict of interest can exist where a third party could reasonably form the view that a person's private interest may influence the performance of their official duties, now or in the future. This can occur whether there is a conflict or not.

The Defence Integrity Policy Manual requires individuals to identify and declare any conflict of interest that arises to ensure it is appropriately managed and recorded. A failure by a CCOSP to comply with this Instruction may constitute a breach of contract.

Post Separation Employment

Post separation employment refers to situations where a former Defence Official or Prescribed Official takes up a position with a private or public sector organisation and becomes involved in providing services, supplies or materiel to Defence.

The Defence Integrity Policy Manual contains specific instructions that apply to Defence personnel (including CCOSPs). Where an offer of employment could result in an actual, potential or perceived conflict of interest, CCOSPs who have previously been employed by Defence must:

- fully inform Defence of the situation before accepting the offer; and
- should at the earliest opportunity notify their prospective employer of their conflict of interest disclosure obligations to Defence.

Defence may instruct CCOSPs' employers to not employ individuals on specific Defence-related activities. Defence may exclude an employer from consideration for specific contracts or activities if the conflict of interest cannot be satisfactorily managed.

Gift, Hospitality and Sponsorship

Defence Instruction (General) PERS 25-7—*Gifts, Hospitality and Sponsorship* addresses the soliciting or acceptance of gifts, hospitality or sponsorship by CCOSPs acting in an official capacity on behalf of Defence (Prescribed Officials). Failure by a CCOSP to comply with this instruction may constitute a breach of contract.

This Instruction requires CCOSPs who are acting on behalf of Defence in an official capacity to be able to demonstrate that they cannot be improperly influenced in the performance of their duties by offers of gifts, hospitality or other inducements. The main risk of accepting a Gift or benefit is that it may result in an actual or perceived Conflict of Interest. In the extreme, it could be perceived as a bribe, which is an offence under the

⁵ Defence Instruction – Administrative Policy, Annex J-11

⁶ Annex 3G to Responding to Unacceptable Behaviour – [Types of Unacceptable Behaviour](#)

Criminal Code Act 1995, breach in the Australian Public Service (APS) Code of Conduct contained in the *Public Service Act 1999*, and a breach of the *Defence Force Discipline Act 1982* (DFDA).

For this reason, and to genuinely assist the agency to develop and maintain constructive relationships with stakeholders, it is prudent for CCOSPs to disclose or register a benefit received, including the approximate value of a gift or hospitality. The Defence Instruction (General) PERS 25-7 — *Gifts, Hospitality and Sponsorship* provides guidance on what can be accepted based on their value and their form.

Approved Contracting Templates

CCOSP engagement contracts typically contain clauses that reflect the requirements of the Integrity Policy Manual and Defence Instruction (General) PERS 25-7, and can be used for request for tenders, request for proposals, intentions to request, standing offers and contracts.

Further Resources

[Commonwealth Ombudsman - Public Interest Disclosure](#)

[Complaints and Alternative Resolutions Manual](#)

[Defence Instruction Administrative Policy \(DIAP\)](#)

[Defence Instructions \(General\) 25-7- *Gifts, Hospitality and Sponsorship*](#)

[Defence Integrity Policy Manual](#)

[Defence Procurement Policy Manual \(DPPM\)](#)

[Defence Security Principles Framework \(DSPF\)](#)

[FINMAN 2 - Financial Delegations Manual](#)

[FINMAN 5 - Managing Risk and Internal Accountability](#)

[SafetyMan - Work Health and Safety for Defence](#)



FACT SHEET

Obligations of Contractors, Consultants and Outsourced Service Providers working in Defence

This fact sheet provides guidance for Contractors, Consultants and Outsourced Service Providers¹ (“CCOSPs”) and the Defence personnel managing them, on their mandatory obligations when working in Defence.

CCOSP Obligations

In the Defence environment, CCOSPs and Defence Officials must comply with obligations prescribed in Commonwealth legislation, Defence policy and its associated controls. CCOSPs’ contracts of engagement are generally the basis for Defence’s control and oversight of outsourced functions, and should contain all relevant obligations.

These obligations include the requirements for CCOSPs to comply with:

- Accountable Authority Instructions (AAIs) and Financial Delegations policy (FINMAN);
- Procurement policy;
- Security policy;
- Work Health and Safety (WHS) policy;
- Public Interest Disclosure scheme;
- management and reporting of fraud, unacceptable behaviour, Notifiable Incidents and incident reporting policies; and
- probity controls and integrity policies, including those prescribing management of conflicts of interest, post separation employment, and gifts, hospitality and sponsorship.

Accountable Authority Instructions and Financial Delegations Policy

Defence may, in limited circumstances, issue CCOSPs with delegations relating to the approval and commitment of relevant money and/or granting of contingent liabilities for Defence under the *Public Governance, Performance and Accountability Act 2013*² (PGPA Act) section 13(3)(c). These delegations are issued via a written Authority to Act instrument upon meeting the requirements to be a Prescribed Official pursuant to AAI 2.10³, Defence Financial Delegations, Delegation Schedule 21A⁴. The delegate’s judgement is independent and may be subject to legal or administrative actions. That is, if a delegate is perceived to make a discriminatory decision, they may be the subject of legal proceedings, and their decisions may also be subject to administrative scrutiny. The Authority to Act:

- advises the legal requirements applicable to Prescribed Officials including the general duties of officials and compliance with the finance law;
- provides a valid Instrument for exercising delegated powers;
- specifies any additional conditions placed on their authority (for example, competency or proficiency requirements).

¹ Glossary – [Defence Financial Delegations](#)

² Section 13 Officials - [Public Governance, Performance and Accountability Act 2013](#)



A delegate must comply with all the requirements of FINMAN 5 in the responsibilities of Prescribed Officials, and Secretary's directions in the Defence Financial Delegations schedule and AAls.

Defence Procurement Policy

A CCOSP who is a Prescribed Official must comply with both the Commonwealth Procurement Rules (CPRs) and Mandatory Defence Procurement Policy Directives contained in the Defence Procurement Policy Manual (DPPM) when undertaking procurement.

Security

All Defence endorsed contracting templates, panel deeds (CCOSP Engagement Contracts) and the Defence Instruction Administrative Policy (DIAP) require CCOSPs to comply with the Defence Security Principles Framework (DSPF) and procedure terms and conditions. The DSPF provides guidance to meet protective security requirements and assists in aligning Defence with the Commonwealth's Protective Security Policy Framework (PSPF). The DSPF is intended to support a protective security culture that manages risk and provides additional Defence-specific security guidance.

CCOSP security obligations written in the Engagement Contracts include security clauses that:

- oblige CCOSPs to comply with Defence security policies and practices, including where elements of the function are subcontracted;
- require the security obligations to be periodically updated;
- allow Defence personnel to access CCOSPs' (including subcontractors') premises, records and equipment to monitor their compliance with the protective security conditions in their contracts;
- CCOSPs must comply with the guidance provided by CIOG, when sending an email the CCOSP must identify themselves in their signature block as a "Contractor to Defence".
- permit Defence to terminate a CCOSP Engagement Contract if the CCOSP fails to comply with the protective security provisions in the contract, including their unwillingness or inability to remedy security breaches; and
- require CCOSPs to notify the contract manager of any actual or suspected security incidents or breaches that may impact on:
 - o CCOSPs' ability to deliver the functions or services they have been contracted to provide; or
 - o Defence information which is held by, or in transit to/from the service provider.

A CCOSP who breaches Defence security policy may be in breach of contract, and exposed to further sanction under the *Public Service Act 1999* (including the APS Code of Conduct), the *Defence Force Discipline Act 1982*, the *Public Service Act 1999* and the *Crimes Act 1914*.

Work Health and Safety Policy

The Defence Safety Manual (SafetyMan) is the primary WHS policy for Defence. The degree to which SafetyMan applies to CCOSPs depends on the degree of control and influence that Defence has over the undertakings prescribed in the engagement contract. SafetyMan specifies the obligations of officers of the Person Conducting or Undertaking a Business (PCUB) and workers (including CCOSPs), who must cooperate to address and resolve all WHS issues in Defence workplaces. The obligations include the requirement to notify the regulatory immediately after becoming aware that a Notifiable Incident has occurred.

WHS clauses in CCOSP Engagement Contracts reflect SafetyMan and WHS legislation requirements. The CCOSP Engagement Contract templates and deeds must be used for requests for tenders, request for proposals, ITRs, standing offers and contracts.

A CCOSP who breaches the requirements of SafetyMan may be in breach of contract, and exposed to further sanction under the *Work Health and Safety Act 2011* or *Work Health and Safety Regulations 2011* potentially leading to prosecution of individuals and/or the Department of Defence.

Public Interest Disclosure

Under the *Public Interest Disclosure Act 2013*, a CCOSP can report suspected wrongdoing or maladministration within the Commonwealth public sector. Such disclosure will satisfy other Defence obligations relating to the

reporting of a Notifiable Incident under Defence Instruction – Administrative Policy AG4 – *Incident Reporting and Management*. Fact sheets and guidance on the Public Interest Disclosure Act 2013 are maintained on the Commonwealth Ombudsman’s Public Interest Disclosure website.

Unacceptable Behaviour, Notifiable Incidents and Incident Reporting

Defence Instruction – Administrative Policy PPL7 – *Required Behaviours in Defence*⁵ requires CCOSPs, where it is a term of their contract, to be responsible for their behaviour in any situation in connection with Defence and to not engage in behaviour that is proscribed in the unacceptable behaviour definitions.

Unacceptable behaviour is unreasonable conduct at work or in any situation that may be connected to Defence that is offensive, belittling, abusive or threatening to another person, or adverse to morale, discipline or workplace cohesion. This includes unlawful discrimination and harassment. Refer to Chapter 3 of the *Complaints and alternative resolutions manual*⁶ for detailed descriptions and types of unacceptable behaviour. The manual also specifies the obligations, functions and duties with respect to managing and reporting unacceptable behaviour.

CCOSPs found to have engaged in, contributed to, ignored, assisted or encouraged unacceptable behaviour may be held personally responsible. A failure by a CCOSP to comply with this Instruction may constitute a breach of contract.

Conflicts of Interest

The Defence Integrity Policy Manual contains instructions that also apply to CCOSPs where compliance is a term of their engagement with Defence. The instruction relates to the conflicts of interest that occur between official duties and private interests that can be actual, potential or perceived:

- An actual conflict of interest is one where there is a conflict between a person’s official duties and responsibilities and their private interests.
- A potential conflict of interest arises where a person has private interests that may conflict with their official duties.
- A perceived conflict of interest can exist where a third party could reasonably form the view that a person’s private interest may influence the performance of their official duties, now or in the future. This can occur whether there is a conflict or not.

The Defence Integrity Policy Manual requires individuals to identify and declare any conflict of interest that arises to ensure it is appropriately managed and recorded. A failure by a CCOSP to comply with this Instruction may constitute a breach of contract.

Post Separation Employment

Post separation employment refers to situations where a former Defence Official or Prescribed Official takes up a position with a private or public sector organisation and becomes involved in providing services, supplies or materiel to Defence.

The Defence Integrity Policy Manual contains specific instructions that apply to Defence personnel (including CCOSPs). Where an offer of employment could result in an actual, potential or perceived conflict of interest, CCOSPs who have previously been employed by Defence must:

- fully inform Defence of the situation before accepting the offer; and
- should at the earliest opportunity notify their prospective employer of their conflict of interest disclosure obligations to Defence.

Defence may instruct CCOSPs’ employers to not employ individuals on specific Defence-related activities. Defence may exclude an employer from consideration for specific contracts or activities if the conflict of interest cannot be satisfactorily managed.

Gift, Hospitality and Sponsorship

Defence Instruction (General) PERS 25-7—*Gifts, Hospitality and Sponsorship* addresses the soliciting or acceptance of gifts, hospitality or sponsorship by CCOSPs acting in an official capacity on behalf of Defence (Prescribed Officials). Failure by a CCOSP to comply with this instruction may constitute a breach of contract.

⁵ Defence Instruction – Administrative Policy, Annex J-11

⁶ Annex 3G to Responding to Unacceptable Behaviour – [Types of Unacceptable Behaviour](#)

This Instruction requires CCOSPs who are acting on behalf of Defence in an official capacity to be able to demonstrate that they cannot be improperly influenced in the performance of their duties by offers of gifts, hospitality or other inducements. The main risk of accepting a Gift or benefit is that it may result in an actual or perceived Conflict of Interest. In the extreme, it could be perceived as a bribe, which is an offence under the *Criminal Code Act 1995*, breach in the Australian Public Service (APS) Code of Conduct contained in the *Public Service Act 1999*, and a breach of the *Defence Force Discipline Act 1982* (DFDA).

For this reason, and to genuinely assist the agency to develop and maintain constructive relationships with stakeholders, it is prudent for CCOSPs to disclose or register a benefit received, including the approximate value of a gift or hospitality. The Defence Instruction (General) PERS 25-7 — *Gifts, Hospitality and Sponsorship* provides guidance on what can be accepted based on their value and their form.

Approved Contracting Templates

CCOSP engagement contracts typically contain clauses that reflect the requirements of the Integrity Policy Manual and Defence Instruction (General) PERS 25-7, and can be used for request for tenders, request for proposals, intentions to request, standing offers and contracts.

Further Resources

[Commonwealth Ombudsman - Public Interest Disclosure](#)

[Complaints and Alternative Resolutions Manual](#)

[Defence Instruction Administrative Policy \(DIAP\)](#)

[Defence Instructions \(General\) 25-7- Gifts, Hospitality and Sponsorship](#)

[Defence Integrity Policy Manual](#)

[Defence Procurement Policy Manual \(DPPM\)](#)

[Defence Security Principles Framework \(DSPF\)](#)

[Defence Financial Delegations](#)

[FINMAN 5 - Managing Risk and Internal Accountability](#)

[SafetyMan - Work Health and Safety for Defence](#)

[CCOSP Email Guidance](#)



FACT SHEET

Engaging Contractors, Consultants and Outsourced Service Providers – Decision Making Governance

This fact sheet provides guidance about the mandatory procurement policies prescribed in the Commonwealth Procurement Rules, Accountable Authority Instructions (AAI), FINMAN and the Defence Procurement Policy Manual (DPPM). The DPPM encapsulates all mandatory procurement policy that relates to Defence. Some mandatory procurement policy is reflected in this fact sheet. Use of the word 'should' in this fact sheet denotes best practice.

Decisions to engage Contractors, Consultants, and Outsourced Service Providers (**Contractors**) are important steps by which Defence may supplement workforce capability when specialist skills are required and the employment of current Defence officials is impractical or undesirable (e.g.. to maintain a level of independence).

This fact sheet documents the practices and procedures required of Defence officials when making decisions about engaging Contractors. Decisions to engage Contractors must be well considered, cost conscious and defensible with sufficient supporting evidence.

This fact sheet applies to all procurements of Contractors, and outlines:

- the decision-making process used to assist Defence officials in determining whether the procurement of a Contractor should be undertaken;
- clear definitions for each of Contractor, Consultant, and Outsourced Service Provider;
- the requirements (before approaching the market) to:
 - o obtain written approval to undertake the procurement, from an Senior Executive Service Band 1 or 1 Star Officer, or above (**SES / Star**); and
 - o advise the Secretary when the estimated daily rate of the Contractor is at or above \$4,500 (GST inclusive).

Background and rationale

The Defence Enterprise Business Committee (**EBC**) requires the implementation of enhanced governance arrangements that will better manage the use, cost and accurate reporting of Defence Contractors. This fact sheet provides advice on the decision-making process required to implement the EBC's direction.

The processes described in this fact sheet:

- support the structured consideration, assessment and reporting of Defence's workforce requirements to decide if the engagement of Contractors is required; and
- include the mandatory requirement to obtain SES/Star approval to undertake the procurement to engage Contractors.

Further workforce planning information is maintained at the People Connect [Managing a Workforce](#) intranet site.

Applicability of this Fact Sheet

This fact sheet applies to all Defence officials (including Prescribed Officials) undertaking procurement of Contractors including those engaged under a standing offer arrangement. The [Public Governance, Performance and Accountability Act 2013 \(Cth\)](#) obliges all Defence officials to apply good governance, and management practices and procedures in their day-to-day work. This includes planning, monitoring and evaluating their use of contracts for labour and services.



The requirement for SES/Star approval

Defence officials are required to obtain SES / Star written approval to undertake the procurement to engage a Contractor before approaching the market.¹ This approval is not a delegation.

Defence officials should record the SES / Star approval by completing the *SES / Star Approval to Commence a Procurement Process to Engage a Contractor, Consultant or Outsourced Service Provider* form.

The requirement to advise the Secretary

Defence officials must advise the Secretary prior to approaching the market to engage a Contractor where the estimated daily rate for an individual under the contract is at or above \$4,500 (GST inclusive).²

Advice to the Secretary should be provided via a Noting Brief for the Secretary from the relevant Service Chief or Group Head, which should include:

- the proposed Contractor(s) to be approached,
- the estimated daily rate,
- the proposed duration of the contract,
- the scope of work, and
- a statement as to Service Chief or Group Head agreement.

Defence officials should provide the advice to the Secretary allowing sufficient time for consideration by and advice from the Secretary before approaching the market. The Noting Brief will be noted or request the Service Chief or Group Head to discuss.

Process to engage a Contractor, Consultant or Outsourced Service Provider

Defence officials should use the questions below and the Decision Tree at Attachment A to support them in their decision-making and in documenting the evidence. These tools are part of the broader responsibility of Defence officials for assuring good governance and ongoing compliance with the PGPA Act 2013, the PGPA Rule 2014 and applicable departmental requirements (i.e. the DPPM, FINMAN 2 and Defence's Accountable Authority Instructions (AAls)).

Step 1 – Planning

Factors for SES/Star to consider in this step include:

- What task/outcome does Defence require?
- How does the task/outcome contribute to delivering Defence's Business Plan, CDF's Preparedness Directive, the Integrated Investment Plan, and/or one of Defence's statutory obligations?
- What is the impact of not achieving this task/outcome or delaying this task/outcome?
- What specialist skills are required to achieve the task/outcome?
- What is the timeframe for completing this task/outcome?

Step 2 – Does the current Australian Defence Force (ADF) and / or Australian Public Service (APS) workforce have the capability or capacity to meet this task/outcome?

The following questions prompt decision-makers to carefully consider their workforce requirements in terms of deliverables, and the skills, experience and profile of the workforce requirement. [Defence People Group](#) can assist decision-makers in designing their workforce or exploring other options.

Factors for SES/Star to consider in this step include:

- What is the current capability and capacity of the ADF/APS workforce within your branch (including allocation and actual headcount)?
- Is the required skills/knowledge already present and available in your branch?

¹ Defence Procurement Policy Directive D10 – [Defence Procurement Policy Manual \(DPPM\)](#).

² Defence Procurement Policy Directive D10 – [Defence Procurement Policy Manual \(DPPM\)](#).

- Is the skills/knowledge available at the right level for meeting the required task/outcome? If not, can it be sourced from elsewhere in Defence?
- Can other work be reprioritised to temporarily release the necessary APS or ADF personnel?
- Can you deliver this task/outcome by redesigning your current workforce?
- Is the workforce requirement ongoing or just a short term need for additional resources or specialised knowledge and/or skills that will not be required within the ongoing APS or ADF?

Step 3 - Is industry the right solution?

Factors for SES/Star to consider in this step include:

- Is industry, or the ADF and APS, the most efficient and effective method of delivering this task/outcome?
- What is the estimated cost of the industry option, and is it affordable within your current budget?
- Will this option ensure that Defence achieves value for money for the Commonwealth?

Step 4 – Decide which to engage: a Contractor or a Consultant or an Outsourced Service Provider

Refer to the definitions in [Defence Instruction Administrative Policy](#) (Annex A) to determine which of Contractor, Consultant or Outsourced Service Provider is most appropriate for your requirement. Attachment B provides further guidance.

Step 5 – Obtain SES/Star approval

Defence officials must not approach the market to procure a Contractor unless they have obtained SES/Star written approval to undertake the procurement.³

Defence Officials should use the [SES Approval Template](#) to document the case to commence the procurement process to engage a Contractor and to seek SES/Star approval.

Defence Officials must provide robust and defensible justifications to support their case so that decisions by SES/Star to approve the procurement of Contractors are sound. SES/Star ranked decision-makers must carefully consider the workforce justifications for approaching the market to engage a Contractor. Factors for SES/Star officials to consider in this step include:

- Whether a Contractor's contribution is necessary to achieving this task/outcomes;
- The justifications for not using current ADF and/or APS workforce; and
- Why industry is the most efficient and effective resource option.

Step 6 – Advise the Secretary

DPPM Defence Procurement Policy Directive D10 requires a Defence official to advise the Secretary, prior to approaching the market, that the delegate intends to engage a Contractor that the estimated daily rate of a person is at or above \$4,500 (GST inclusive).

Step 7 – Undertake procurement process

Defence officials undertaking procurements must comply with [FINMAN 2](#), the [AAIs](#) and the [DPPM, including the requirement to obtain an Endorsement to Proceed before approaching the market if the procurement is valued at or above \\$200,000](#).

Step 8 – Obtain Section 23(3) Commitment Approval

The section 23(3) (commitment of relevant money) delegate must also confirm that SES/Star approval was obtained at Step 5.

³ Defence Procurement Policy Directive D10 – [Defence Procurement Policy Manual \(DPPM\)](#).

Step 9 – Complete AE643 and sign the contract

When completing the AE643 Defence Purchasing Form, the Defence official should:

- enter the SES/Star procurement approver's name and position number; and
- attach the completed SES/Star Approval Document to the AE643.

The section 23(1) delegation is exercised when the delegate signs the contract, or a purchase order is issued.

Further Resources

[Accountable Authority Instructions](#)

[FINMAN 2](#)

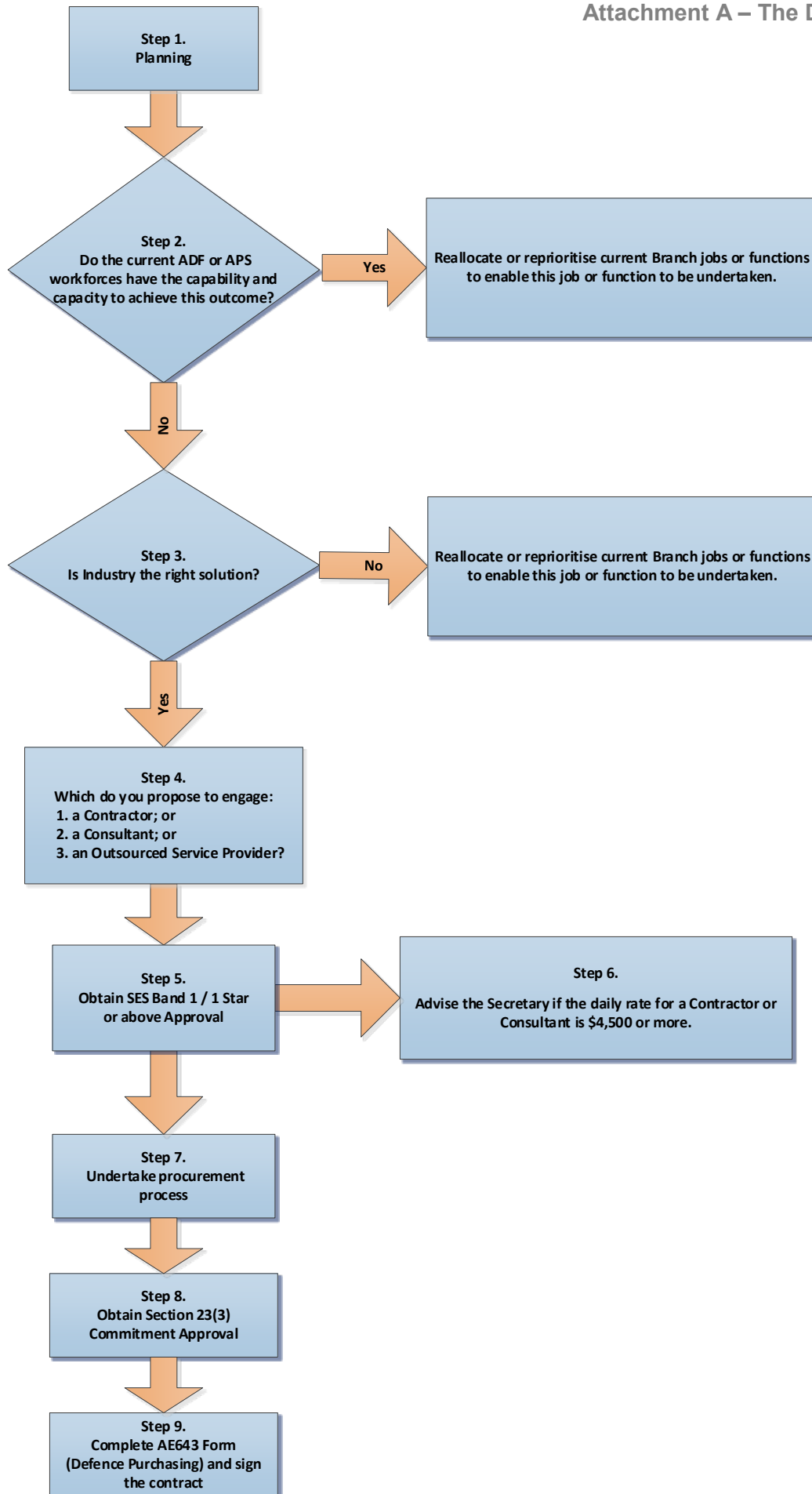
[Defence Procurement Policy Manual](#)

[Complex Procurement Guide](#)

Commercial Policy Helpdesk (for impact on current or future procurement activities) -
procurement.policy@defence.gov.au

[Financial Policy Helpdesk \(for financial delegation aspects\)](#) - (02) 6265 6111 or email
financial.policy@defence.gov.au

Attachment A – The Decision Tree



Attachment B

Criteria	Contractor	Consultant	Outsourced Service Provider
<p>What is the nature of the work required?</p>	<p>Performs day to day duties of the entity. Uses skills to perform the services that would normally be maintained in the entity</p> <p>Involves professional or expert services to implement an existing proposal or strategy.</p> <p>Work is an integral part of the entity's business.</p>	<p>Consultants are individuals, partnerships or corporations engaged to provide professional, independent and expert advice or services.</p> <p>It involves the application of specialist professional knowledge or expertise that may not be maintained in-house.</p> <p>Involves the development of an intellectual output e.g. research, evaluation, advice and recommendations to assist the entity decision making.</p> <p>Involves a one off task, a set of tasks or irregular tasks (making employment of permanent staff impractical or undesirable).</p> <p>Work performed is an accessory to the entity's business.</p>	<p>The entity has made a decision that the function is to be performed by an external service provider on a long term or permanent basis.</p> <p>Usually it involves skills or expertise that is generally not required to be maintained by the entity.</p>

Criteria	Contractor	Consultant	Outsourced Service Provider
<p>Under what direction or control will the work be performed?</p>	<p>Services are performed under supervision of the entity.</p> <p>The entity specifies how the work is to be undertaken and has control over the final form of any resulting output</p> <p>Professional or expert services provided are generally delivered without a high level of supervision and direction from the entity.</p>	<p>Performance of the services is largely left to discretion and professional expertise of the consultant.</p> <p>Performance is without the entity's direct supervision.</p>	<p>Performance of the work is left largely up to the discretion and professional expertise of the outsourced service provider.</p> <p>Typically, service standards or performance indicators are included in contracts and are monitored periodically.</p>
<p>Who will own the outputs?</p>	<p>The output produced will not necessarily represent the independent views of the service provider i.e. the entity controls the form of the output.</p> <p>The resulting output is produced <i>on behalf of</i> the entity and is generally regarded as an entity product.</p>	<p>The output reflects the independent views or findings of the individual or organisation.</p> <p>The output is being <i>produced for</i> the entity.</p> <p>The output may not belong to the entity.</p>	<p>The resulting output is produced <i>for</i> the entity and is not generally considered an entity's product.</p>
<p>How will the contracted party be remunerated?</p>	<p>Remuneration is based on the time worked, usually calculated on an hourly rate.</p>	<p>Remuneration is usually paid when agreed milestones are reached or when a task or project is completed.</p>	<p>Remuneration is paid when milestones are reached or a task is completed, or periodically for the provision of ongoing services.</p>

Criteria	Contractor	Consultant	Outsourced Service Provider
<p>Will the contracted party use Defence resources?</p>	<p>The entity provides all the equipment and supplies. The contractor will usually be engaged to work at the entity's premises.</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> <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.</p>	<p>The provider generally supplies their own equipment and supplies but may work at the entity's premises.</p>



FACT SHEET

Engaging Contractors, Consultants and Outsourced Service Providers – Decision Making Governance

This fact sheet provides guidance about the mandatory procurement policies prescribed in the Commonwealth Procurement Rules, Accountable Authority Instructions (AAI), FINMAN and the Defence Procurement Policy Manual (DPPM). The DPPM encapsulates all mandatory procurement policy that relates to Defence. Some mandatory procurement policy is reflected in this fact sheet. Use of the word 'should' in this fact sheet denotes best practice.

Decisions to engage Contractors, Consultants, and Outsourced Service Providers (**Contractors**) are important steps by which Defence may supplement workforce capability when specialist skills are required and the employment of current Defence officials is impractical or undesirable (e.g. to maintain a level of independence).

This fact sheet documents the practices and procedures required of Defence officials when making decisions about engaging Contractors. Decisions to engage Contractors must be well considered, cost conscious and defensible with sufficient supporting evidence.

This fact sheet applies to all procurements of Contractors, and outlines:

- the decision-making process used to assist Defence officials in determining whether the procurement of a Contractor should be undertaken;
- clear definitions for each of Contractor, Consultant, and Outsourced Service Provider;
- the requirements to:
 - o obtain written approval to undertake the procurement, generally before approaching the market, but at a minimum either prior to or as part of the commitment of relevant money, from an Senior Executive Service Band 1 or 1 Star Officer, or above (**SES / Star**); and
 - o advise the Secretary when the estimated daily rate of the Contractor is at or above \$4,500 (GST inclusive).

Background and rationale

The Defence Enterprise Business Committee (**EBC**) requires the implementation of enhanced governance arrangements that will better manage the use, cost and accurate reporting of Defence Contractors.

This fact sheet provides advice on the decision-making process required to implement the EBC's direction.

The processes described in this fact sheet:

- support the structured consideration, assessment and reporting of Defence's workforce requirements to decide if the engagement of Contractors is required; and
- support the best practice requirement to obtain SES/Star approval to undertake the procurement to engage Contractors.

Further workforce planning information is maintained at the People Connect [Managing a Workforce](#) intranet site.



Applicability of this Fact Sheet

This fact sheet applies to all Defence officials (including Prescribed Officials) undertaking procurement of Contractors including those engaged under a standing offer arrangement. The [Public Governance, Performance and Accountability Act 2013 \(Cth\)](#) obliges all Defence officials to apply good governance, and management practices and procedures in their day-to-day work. This includes planning, monitoring and evaluating their use of contracts for labour and services.

The requirement for SES/Star approval

Defence officials are required to obtain SES / Star approval prior to or as part of the approval of the commitment of relevant money for the proposal.¹ This approval is not a delegation.

It is considered best practice to obtain SES / Star approval prior to approaching the market. This is in order to mitigate the risk of breaching CPR 10.35, which requires a contract to be awarded to a tenderer who a) satisfies the conditions for participation, b) is fully capable of undertaking the contract, and c) will provide the best value for money, *unless* it is not in the public interest to award the contract. As such, if SES / Star approval is sought at the time when commitment of relevant money is required, this may put the SES / Star official in a position where if they choose not to proceed with the contract they will breach CPR 10.35.²

Where the approval is being sought prior to approaching the market, Defence officials can record the SES / Star approval by completing the *SES / Star Approval to Commence a Procurement Process to Engage a Contractor, Consultant or Outsourced Service Provider* form.

The requirement to advise the Secretary

Defence officials must advise the Secretary to engage a Contractor where the estimated daily rate for an individual under the contract is at or above \$4,500 (GST inclusive).³

Advice to the Secretary should be provided via a Noting Brief for the Secretary from the relevant Service Chief or Group Head, which should include:

- the proposed Contractor(s) to be approached,
- the estimated daily rate,
- the proposed duration of the contract,
- the scope of work, and
- a statement as to Service Chief or Group Head agreement.

Defence officials should provide the advice to the Secretary allowing sufficient time for consideration by and advice from the Secretary before approaching the market. The Noting Brief will be noted or request the Service Chief or Group Head to discuss.

Process to engage a Contractor, Consultant or Outsourced Service Provider

Defence officials should use the questions below and the Decision Tree at Attachment A to support them in their decision-making and in documenting the evidence. These tools are part of the broader responsibility of Defence officials for assuring good governance and ongoing compliance with the PGPA Act 2013, the PGPA Rule 2014 and applicable departmental requirements (i.e. the DPPM, FINMAN 2 and Defence's Accountable Authority Instructions (AAIs)).

Step 1 – Planning

Factors for SES/Star to consider in this step include:

- What task/outcome does Defence require?

¹ AAI 2.3.1.7, Defence Procurement Policy Directive D10 – [Defence Procurement Policy Manual \(DPPM\)](#).

² Note that CPR 10.35 is part of Division 2 of the CPRs, and therefore does not apply to procurements valued at less than \$80,000 or procurements from standing offers.

³ AAI 2.3.1.7, Defence Procurement Policy Directive D10 – [Defence Procurement Policy Manual \(DPPM\)](#).

- How does the task/outcome contribute to delivering Defence's Business Plan, CDF's Preparedness Directive, the Integrated Investment Plan, and/or one of Defence's statutory obligations?
- What is the impact of not achieving this task/outcome or delaying this task/outcome?
- What specialist skills are required to achieve the task/outcome?
- What is the timeframe for completing this task/outcome?

Step 2 – Does the current Australian Defence Force (ADF) and / or Australian Public Service (APS) workforce have the capability or capacity to meet this task/outcome?

The following questions prompt decision-makers to carefully consider their workforce requirements in terms of deliverables, and the skills, experience and profile of the workforce requirement. [Defence People Group](#) can assist decision-makers in designing their workforce or exploring other options.

Factors for SES/Star to consider in this step include:

- What is the current capability and capacity of the ADF/APS workforce within your branch (including allocation and actual headcount)?
- Is the required skills/knowledge already present and available in your branch?
- Is the skills/knowledge available at the right level for meeting the required task/outcome? If not, can it be sourced from elsewhere in Defence?
- Can other work be reprioritised to temporarily release the necessary APS or ADF personnel?
- Can you deliver this task/outcome by redesigning your current workforce?
- Is the workforce requirement ongoing or just a short term need for additional resources or specialised knowledge and/or skills that will not be required within the ongoing APS or ADF?

Step 3 - Is industry the right solution?

Factors for SES/Star to consider in this step include:

- Is industry, or the ADF and APS, the most efficient and effective method of delivering this task/outcome?
- What is the estimated cost of the industry option, and is it affordable within your current budget?
- Will this option ensure that Defence achieves value for money for the Commonwealth?

Step 4 – Decide which to engage: a Contractor or a Consultant or an Outsourced Service Provider

Refer to the definitions in the [Financial Delegations Manual \(FINMAN 2\)](#) glossary to determine if you are proposing to engage either a Contractor, or Consultant or Outsourced Service Provider. Attachment B provides further guidance to assist you to determine which definition best describes your procurement.

Step 5 – Obtain SES/Star approval

It is best practice for Defence officials to obtain SES/Star written approval prior to approaching the market to procure a Contractor.

Defence Officials should use the [SES Approval Template](#) to document the case to commence the procurement process to engage a Contractor and to seek SES/Star approval.

Defence Officials must provide robust and defensible justifications to support their case so that decisions by SES/Star to approve the procurement of Contractors are sound. SES/Star ranked decision-makers should carefully consider the workforce justifications for approaching the market to engage a Contractor.

Factors for SES/Star officials to consider in this step include:

- Whether a Contractor's contribution is necessary to achieving this task/outcomes;
- The justifications for not using current ADF and/or APS workforce; and
- Why industry is the most efficient and effective resource option.

Step 6 – Advise the Secretary

Defence officials are required to advise the Secretary that the delegate intends to engage a Contractor that the estimated daily rate of a person is at or above \$4,500 (GST inclusive).⁴

Step 7 – Undertake procurement process

Defence officials undertaking procurements must comply with [FINMAN 2](#), the [AAIs](#) and the [DPPM](#), including the requirement to obtain an Endorsement to Proceed before approaching the market if the procurement is valued at or above \$200,000.

Step 8 – Obtain Section 23(3) Commitment Approval

If approval from an SES / Star official has not yet been obtained, it must be provided as part of the Section 23(3) commitment approval process.

Step 9 – Complete AE643 and sign the contract

When completing the AE643 Defence Purchasing Form, the Defence official should:

- enter the SES/Star procurement approver's name and position number; and
- if approval was obtained prior to approaching the market, attach the completed SES/Star Approval Document to the AE643.

The section 23(1) delegation is exercised when the delegate signs the contract, or a purchase order is issued.

Further Resources

[Accountable Authority Instructions](#)

[FINMAN 2](#)

[Defence Procurement Policy Manual](#)

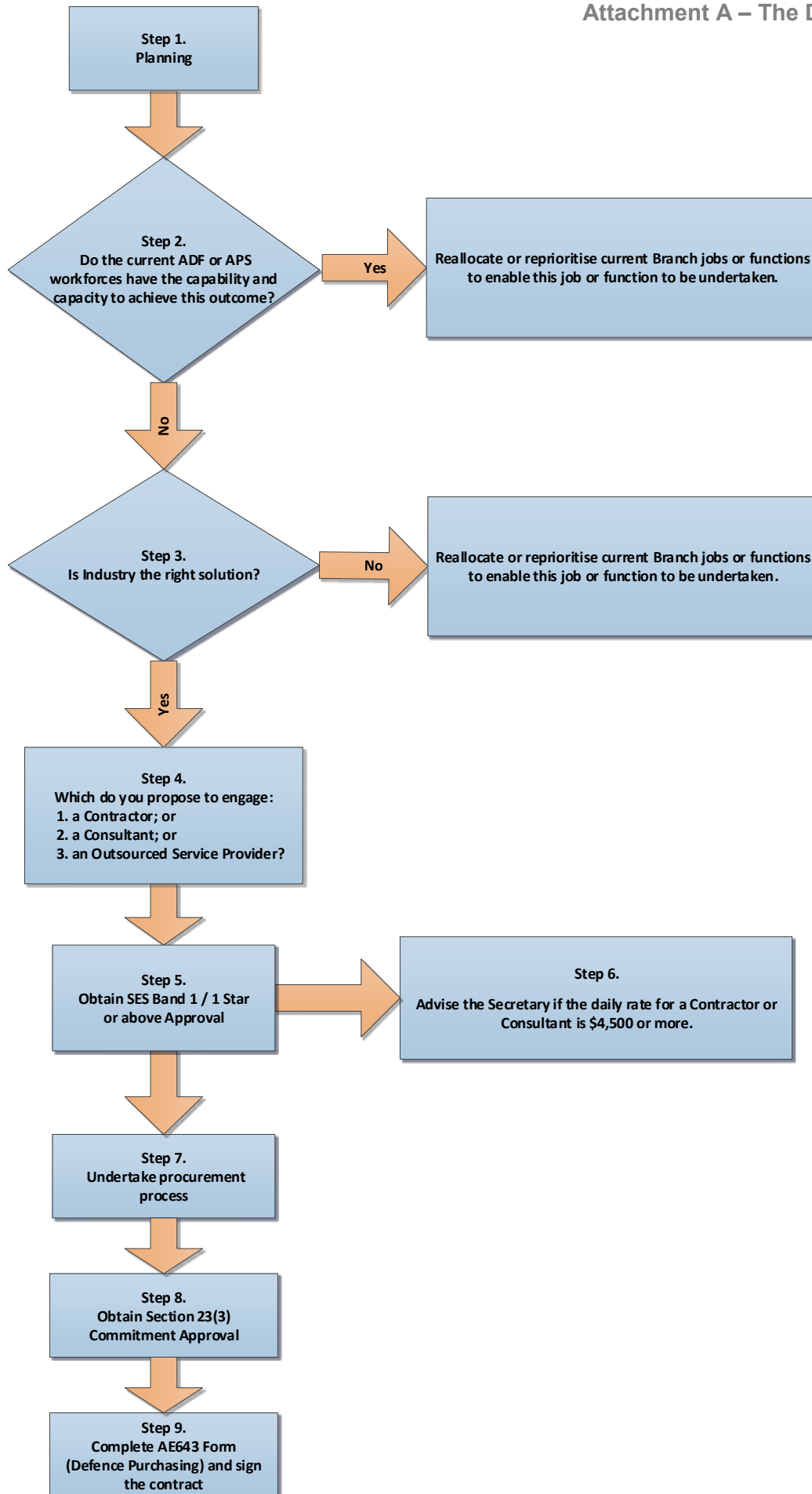
[Complex Procurement Guide](#)

Commercial Policy Helpdesk (for impact on current or future procurement activities) - procurement.policy@defence.gov.au

Financial Policy Helpdesk (for financial delegation aspects) - (02) 6265 6111 or email financial.policy@defence.gov.au

⁴ Defence Procurement Policy Directive D10 – [Defence Procurement Policy Manual \(DPPM\)](#)

Attachment A – The Decision Tree



Attachment B

Criteria	Contractor	Consultant	Outsourced Service Provider
<p>What is the nature of the work required?</p>	<p>Performs day to day duties of the entity. Uses skills to perform the services that would normally be maintained in the entity</p> <p>Involves professional or expert services to implement an existing proposal or strategy.</p> <p>Work is an integral part of the entity's business.</p>	<p>Consultants are individuals, partnerships or corporations engaged to provide professional, independent and expert advice or services.</p> <p>It involves the application of specialist professional knowledge or expertise that may not be maintained in-house.</p> <p>Involves the development of an intellectual output e.g. research, evaluation, advice and recommendations to assist the entity decision making.</p> <p>Involves a one off task, a set of tasks or irregular tasks (making employment of permanent staff impractical or undesirable).</p> <p>Work performed is an accessory to the entity's business.</p>	<p>The entity has made a decision that the function is to be performed by an external service provider on a long term or permanent basis.</p> <p>Usually it involves skills or expertise that is generally not required to be maintained by the entity.</p>

Criteria	Contractor	Consultant	Outsourced Service Provider
<p>Under what direction or control will the work be performed?</p>	<p>Services are performed under supervision of the entity.</p> <p>The entity specifies how the work is to be undertaken and has control over the final form of any resulting output</p> <p>Professional or expert services provided are generally delivered without a high level of supervision and direction from the entity.</p>	<p>Performance of the services is largely left to discretion and professional expertise of the consultant.</p> <p>Performance is without the entity's direct supervision.</p>	<p>Performance of the work is left largely up to the discretion and professional expertise of the outsourced service provider.</p> <p>Typically, service standards or performance indicators are included in contracts and are monitored periodically.</p>
<p>Who will own the outputs?</p>	<p>The output produced will not necessarily represent the independent views of the service provider i.e. the entity controls the form of the output.</p> <p>The resulting output is produced <i>on behalf of</i> the entity and is generally regarded as an entity product.</p>	<p>The output reflects the independent views or findings of the individual or organisation.</p> <p>The output is being <i>produced for</i> the entity.</p> <p>The output may not belong to the entity.</p>	<p>The resulting output is produced <i>for</i> the entity and is not generally considered an entity's product.</p>
<p>How will the contracted party be remunerated?</p>	<p>Remuneration is based on the time worked, usually calculated on an hourly rate.</p>	<p>Remuneration is usually paid when agreed milestones are reached or when a task or project is completed.</p>	<p>Remuneration is paid when milestones are reached or a task is completed, or periodically for the provision of ongoing services.</p>

Criteria	Contractor	Consultant	Outsourced Service Provider
<p>Will the contracted party use Defence resources?</p>	<p>The entity provides all the equipment and supplies. The contractor will usually be engaged to work at the entity's premises.</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> <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.</p>	<p>The provider generally supplies their own equipment and supplies but may work at the entity's premises.</p>



FACT SHEET

Engaging Contractors, Consultants and Outsourced Service Providers – Decision Making Governance

This fact sheet provides guidance about the mandatory procurement policies prescribed in the Commonwealth Procurement Rules, Accountable Authority Instructions (AAI), FINMAN and the Defence Procurement Policy Manual (DPPM). The DPPM encapsulates all mandatory procurement policy that relates to Defence. Some mandatory procurement policy is reflected in this fact sheet. Use of the word 'should' in this fact sheet denotes best practice.

Decisions to engage Contractors, Consultants, and Outsourced Service Providers (**Contractors**) are important steps by which Defence may supplement workforce capability when specialist skills are required and the employment of current Defence officials is impractical or undesirable (e.g. to maintain a level of independence).

This fact sheet documents the practices and procedures required of Defence officials when making decisions about engaging Contractors. Decisions to engage Contractors must be well considered, cost conscious and defensible with sufficient supporting evidence.

This fact sheet applies to all procurements of Contractors, and outlines:

- the decision-making process used to assist Defence officials in determining whether the procurement of a Contractor should be undertaken;
- clear definitions for each of Contractor, Consultant, and Outsourced Service Provider;
- the requirements to:
 - o obtain written approval to undertake the procurement, generally before approaching the market, but at a minimum either prior to or as part of the commitment of relevant money, from an Senior Executive Service Band 1 or 1 Star Officer, or above (**SES / Star**); and
 - o advise the Secretary when the estimated daily rate of the Contractor is at or above \$4,500 (GST inclusive).

Background and rationale

The Defence Enterprise Business Committee (**EBC**) requires the implementation of enhanced governance arrangements that will better manage the use, cost and accurate reporting of Defence Contractors.

This fact sheet provides advice on the decision-making process required to implement the EBC's direction.

The processes described in this fact sheet:

- support the structured consideration, assessment and reporting of Defence's workforce requirements to decide if the engagement of Contractors is required; and
- support the best practice requirement to obtain SES/Star approval to undertake the procurement to engage Contractors.

Further workforce planning information is maintained at the People Connect [Managing a Workforce](#) intranet site.



Applicability of this Fact Sheet

This fact sheet applies to all Defence officials (including Prescribed Officials) undertaking procurement of Contractors including those engaged under a standing offer arrangement. The [Public Governance, Performance and Accountability Act 2013 \(Cth\)](#) obliges all Defence officials to apply good governance, and management practices and procedures in their day-to-day work. This includes planning, monitoring and evaluating their use of contracts for labour and services.

The requirement for SES/Star approval

Defence officials are required to obtain SES / Star approval prior to or as part of the approval of the commitment of relevant money for the proposal.¹ This approval is not a delegation.

It is considered best practice to obtain SES / Star approval prior to approaching the market. This is in order to mitigate the risk of breaching CPR 10.35, which requires a contract to be awarded to a tenderer who a) satisfies the conditions for participation, b) is fully capable of undertaking the contract, and c) will provide the best value for money, *unless* it is not in the public interest to award the contract. As such, if SES / Star approval is sought at the time when commitment of relevant money is required, this may put the SES / Star official in a position where if they choose not to proceed with the contract they will breach CPR 10.35.²

Where the approval is being sought prior to approaching the market, Defence officials can record the SES / Star approval by completing the *SES / Star Approval to Commence a Procurement Process to Engage a Contractor, Consultant or Outsourced Service Provider* form.

The requirement to advise the Secretary

Defence officials must advise the Secretary to engage a Contractor where the estimated daily rate for an individual under the contract is at or above \$4,500 (GST inclusive).³

Advice to the Secretary should be provided via a Noting Brief for the Secretary from the relevant Service Chief or Group Head, which should include:

- the proposed Contractor(s) to be approached,
- the estimated daily rate,
- the proposed duration of the contract,
- the scope of work, and
- a statement as to Service Chief or Group Head agreement.

Defence officials should provide the advice to the Secretary allowing sufficient time for consideration by and advice from the Secretary before approaching the market. The Noting Brief will be noted or request the Service Chief or Group Head to discuss.

Process to engage a Contractor, Consultant or Outsourced Service Provider

Defence officials should use the questions below and the Decision Tree at Attachment A to support them in their decision-making and in documenting the evidence. These tools are part of the broader responsibility of Defence officials for assuring good governance and ongoing compliance with the PGPA Act 2013, the PGPA Rule 2014 and applicable departmental requirements (i.e. the DPPM, FINMAN 2 and Defence's Accountable Authority Instructions (AAIs)).

Step 1 – Planning

Factors for SES/Star to consider in this step include:

- What task/outcome does Defence require?

¹ AAI 2.3.1.7, Defence Procurement Policy Directive D10 – [Defence Procurement Policy Manual \(DPPM\)](#).

² Note that CPR 10.35 is part of Division 2 of the CPRs, and therefore does not apply to procurements valued at less than \$80,000 or procurements from standing offers.

³ AAI 2.3.1.7, Defence Procurement Policy Directive D10 – [Defence Procurement Policy Manual \(DPPM\)](#).

- How does the task/outcome contribute to delivering Defence's Business Plan, CDF's Preparedness Directive, the Integrated Investment Plan, and/or one of Defence's statutory obligations?
- What is the impact of not achieving this task/outcome or delaying this task/outcome?
- What specialist skills are required to achieve the task/outcome?
- What is the timeframe for completing this task/outcome?

Step 2 – Does the current Australian Defence Force (ADF) and / or Australian Public Service (APS) workforce have the capability or capacity to meet this task/outcome?

The following questions prompt decision-makers to carefully consider their workforce requirements in terms of deliverables, and the skills, experience and profile of the workforce requirement. [Defence People Group](#) can assist decision-makers in designing their workforce or exploring other options.

Factors for SES/Star to consider in this step include:

- What is the current capability and capacity of the ADF/APS workforce within your branch (including allocation and actual headcount)?
- Is the required skills/knowledge already present and available in your branch?
- Is the skills/knowledge available at the right level for meeting the required task/outcome? If not, can it be sourced from elsewhere in Defence?
- Can other work be reprioritised to temporarily release the necessary APS or ADF personnel?
- Can you deliver this task/outcome by redesigning your current workforce?
- Is the workforce requirement ongoing or just a short term need for additional resources or specialised knowledge and/or skills that will not be required within the ongoing APS or ADF?

Step 3 - Is industry the right solution?

Factors for SES/Star to consider in this step include:

- Is industry, or the ADF and APS, the most efficient and effective method of delivering this task/outcome?
- What is the estimated cost of the industry option, and is it affordable within your current budget?
- Will this option ensure that Defence achieves value for money for the Commonwealth?

Step 4 – Decide which to engage: a Contractor or a Consultant or an Outsourced Service Provider

Refer to the definitions in the [Financial Delegations Manual \(FINMAN 2\)](#) glossary to determine if you are proposing to engage either a Contractor, or Consultant or Outsourced Service Provider. Attachment B provides further guidance to assist you to determine which definition best describes your procurement.

Step 5 – Obtain SES/Star approval

It is best practice for Defence officials to obtain SES/Star written approval prior to approaching the market to procure a Contractor.

Defence Officials should use the [SES Approval Template](#) to document the case to commence the procurement process to engage a Contractor and to seek SES/Star approval.

Defence Officials must provide robust and defensible justifications to support their case so that decisions by SES/Star to approve the procurement of Contractors are sound. SES/Star ranked decision-makers should carefully consider the workforce justifications for approaching the market to engage a Contractor. Factors for SES/Star officials to consider in this step include:

- Whether a Contractor's contribution is necessary to achieving this task/outcomes;
- The justifications for not using current ADF and/or APS workforce; and
- Why industry is the most efficient and effective resource option.

Step 6 – Advise the Secretary

Defence officials are required to advise the Secretary that the delegate intends to engage a Contractor that the estimated daily rate of a person is at or above \$4,500 (GST inclusive).⁴

Step 7 – Undertake procurement process

Defence officials undertaking procurements must comply with [FINMAN 2](#), the [AAIs](#) and the [DPPM](#), including the requirement to obtain an Endorsement to Proceed before approaching the market if the procurement is valued at or above \$200,000.

Step 8 – Obtain Section 23(3) Commitment Approval

If approval from an SES / Star official has not yet been obtained, it must be provided as part of the Section 23(3) commitment approval process.

Step 9 – Complete AE643 and sign the contract

When completing the AE643 Defence Purchasing Form, the Defence official should:

- enter the SES/Star procurement approver's name and position number; and
- if approval was obtained prior to approaching the market, attach the completed SES/Star Approval Document to the AE643.

The section 23(1) delegation is exercised when the delegate signs the contract, or a purchase order is issued.

Further Resources

[Accountable Authority Instructions](#)

[FINMAN 2](#)

[Defence Procurement Policy Manual](#)

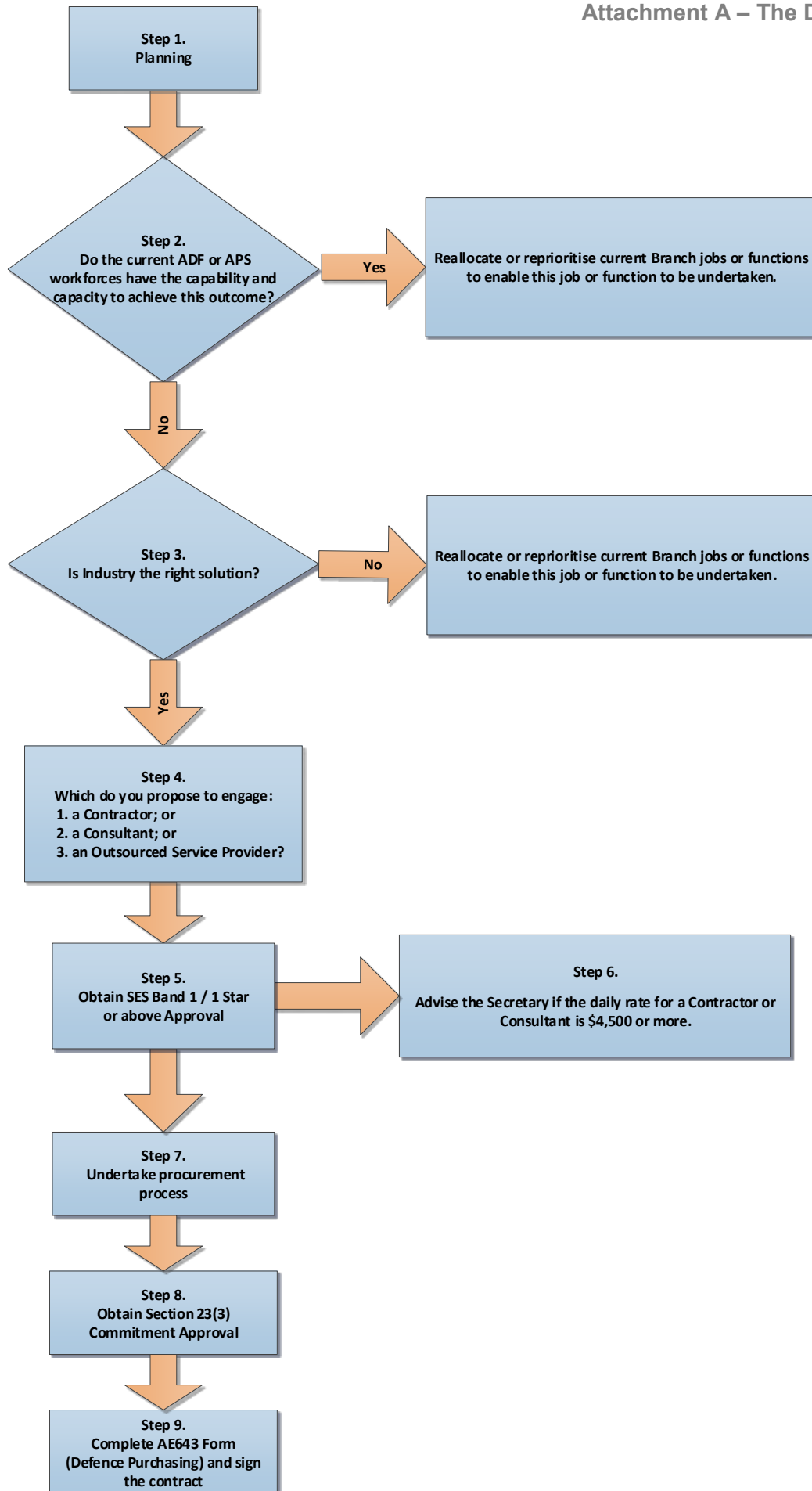
[Complex Procurement Guide](#)

Commercial Policy Helpdesk (for impact on current or future procurement activities) - procurement.policy@defence.gov.au

Financial Policy Helpdesk (for financial delegation aspects) - (02) 6265 6111 or email financial.policy@defence.gov.au

⁴ Defence Procurement Policy Directive D10 – [Defence Procurement Policy Manual \(DPPM\)](#)

Attachment A – The Decision Tree



Defence FOI 551/23/24
Item 2, Document 11

Criteria	Contractor	Consultant	Outsourced Service Provider
<p>What is the nature of the work required?</p>	<p>Performs day to day duties of the entity. Uses skills to perform the services that would normally be maintained in the entity</p> <p>Involves professional or expert services to implement an existing proposal or strategy.</p> <p>Work is an integral part of the entity's business.</p>	<p>Consultants are individuals, partnerships or corporations engaged to provide professional, independent and expert advice or services.</p> <p>It involves the application of specialist professional knowledge or expertise that may not be maintained in-house.</p> <p>Involves the development of an intellectual output e.g. research, evaluation, advice and recommendations to assist the entity decision making.</p> <p>Involves a one off task, a set of tasks or irregular tasks (making employment of permanent staff impractical or undesirable).</p> <p>Work performed is an accessory to the entity's business.</p>	<p>The entity has made a decision that the function is to be performed by an external service provider on a long term or permanent basis.</p> <p>Usually it involves skills or expertise that is generally not required to be maintained by the entity.</p>

Criteria	Contractor	Consultant	Outsourced Service Provider
<p>Under what direction or control will the work be performed?</p>	<p>Services are performed under supervision of the entity.</p> <p>The entity specifies how the work is to be undertaken and has control over the final form of any resulting output</p> <p>Professional or expert services provided are generally delivered without a high level of supervision and direction from the entity.</p>	<p>Performance of the services is largely left to discretion and professional expertise of the consultant.</p> <p>Performance is without the entity's direct supervision.</p>	<p>Performance of the work is left largely up to the discretion and professional expertise of the outsourced service provider.</p> <p>Typically, service standards or performance indicators are included in contracts and are monitored periodically.</p>
<p>Who will own the outputs?</p>	<p>The output produced will not necessarily represent the independent views of the service provider i.e. the entity controls the form of the output.</p> <p>The resulting output is produced <i>on behalf of</i> the entity and is generally regarded as an entity product.</p>	<p>The output reflects the independent views or findings of the individual or organisation.</p> <p>The output is being <i>produced for</i> the entity.</p> <p>The output may not belong to the entity.</p>	<p>The resulting output is produced <i>for</i> the entity and is not generally considered an entity's product.</p>
<p>How will the contracted party be remunerated?</p>	<p>Remuneration is based on the time worked, usually calculated on an hourly rate.</p>	<p>Remuneration is usually paid when agreed milestones are reached or when a task or project is completed.</p>	<p>Remuneration is paid when milestones are reached or a task is completed, or periodically for the provision of ongoing services.</p>

Criteria	Contractor	Consultant	Outsourced Service Provider
<p>Will the contracted party use Defence resources?</p>	<p>The entity provides all the equipment and supplies. The contractor will usually be engaged to work at the entity's premises.</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> <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.</p>	<p>The provider generally supplies their own equipment and supplies but may work at the entity's premises.</p>



FACT SHEET

Engaging Contractors, Consultants and Outsourced Service Providers – Decision Making Governance

This fact sheet provides guidance about the mandatory procurement policies prescribed in the Commonwealth Procurement Rules, Accountable Authority Instructions (AAI), Defence Financial Delegations, and the Defence Procurement Policy Manual (DPPM).

The DPPM encapsulates all mandatory procurement policy that relates to Defence. Some mandatory procurement policy is reflected in this fact sheet. Use of the word 'should' in this fact sheet denotes best practice.

Decisions to engage Contractors, Consultants, and Outsourced Service Providers (CCOSPs) are important steps by which Defence may supplement workforce capability when specialist skills are required and the employment of current Defence officials is impractical or undesirable (e.g. to maintain a level of independence).

This fact sheet documents the practices and procedures required of Defence officials when making decisions about engaging CCOSPs. Decisions to engage CCOSPs must be well considered, cost conscious and defensible with sufficient supporting evidence.

This fact sheet applies to all procurements of CCOSPs, and outlines:

- the decision-making process used to assist Defence officials in determining whether the procurement of a CCOSPs should be undertaken;
- clear definitions for each of Contractor, Consultant, and Outsourced Service Provider;
- the requirements to:
 - o obtain written approval to undertake the procurement, generally before approaching the market, but at a minimum either prior to or as part of the commitment of relevant money, from an Senior Executive Service Band 1 or 1 Star Officer, or above (**SES / Star**); and
 - o advise the Secretary when the estimated daily rate of the CCOSPs is at or above \$4,500 (GST inclusive).

Background and rationale

The processes described in this fact sheet:

- support the structured consideration, assessment and reporting of Defence's workforce requirements to decide if the engagement of CCOSPs is required; and
- support the best practice requirement to obtain SES/Star approval to undertake the procurement to engage CCOSPs.

Further workforce planning information is maintained at the People Connect [Managing a Workforce](#) intranet site.

Applicability of this Fact Sheet

This fact sheet applies to all Defence officials (including Prescribed Officials) undertaking procurement of CCOSPs, including CCOSPs engaged under a standing offer arrangement. The [Public Governance, Performance and Accountability Act 2013 \(Cth\)](#) obliges all Defence officials to apply good governance, and management practices and procedures in their day-to-day work. This includes planning, monitoring and evaluating their use of contracts for labour and services.



The requirement for SES/Star approval

Defence officials should obtain SES / Star approval prior to the approval of the commitment of relevant money for the proposal.¹

This approval is an internal approval step, and is not an exercise of a delegated legislative power.²

It is considered best practice to obtain SES / Star approval prior to approaching the market. This is in order to mitigate the risk of breaching CPR 10.35, which requires a contract to be awarded to a tenderer who a) satisfies the conditions for participation, b) is fully capable of undertaking the contract, and c) will provide the best value for money, *unless* it is not in the public interest to award the contract. As such, if SES / Star approval is sought at the time when commitment of relevant money is required, this may put the SES / Star official in a position where if they choose not to proceed with the contract they will breach CPR 10.35.³

Where the approval is being sought prior to approaching the market, Defence officials can record the SES / Star approval by completing the *SES / Star Approval to Commence a Procurement Process to Engage a Contractor, Consultant or Outsourced Service Provider* form.

The requirement to advise the Secretary

Defence officials must advise the Office of the Secretary prior to approaching the market to engage a CCOSP where the estimated daily rate for the CCOSP under the contract is likely to be at or above \$4,500 (GST inclusive).⁴

Advice to the Office of the Secretary should be provided via a Noting Brief for the Secretary from the relevant Service Chief or Group Head, which should include:

- the proposed CCOSP(s) to be approached;
- the estimated daily rate;
- the proposed duration of the contract;
- the scope of work; and
- a statement as to Service Chief or Group Head agreement.

The process in which to provide a Noting Brief to the Office of the Secretary is as follows:

- within PDMS, create an Executive Correspondence (EC) PDR, this will be the reference number for the Noting Brief;
- once the EC is created, the Briefing template can be found in the response section of the PDR;
- when the appropriate clearances have been sought, workflow through PDMS to the OSEC

Please note - Defence officials should advise the Secretary of the proposed rate as soon as you are aware it is likely to exceed \$4,500 (GST inclusive), to allow sufficient time for consideration by and advice from the Secretary..

Process to engage a Contractor, Consultant or Outsourced Service Provider

Defence officials should use the questions below and the Decision Tree at Attachment A to support them in their decision-making and in documenting the evidence. These tools support the broader responsibility of Defence officials for assuring good governance and ongoing compliance with policy and legislative requirements.

¹ AAI 2.3.1.7, Defence Procurement Policy Directive D10 – [Defence Procurement Policy Manual \(DPPM\)](#).

² For more information, consult the definitions of ‘authorisation’ and ‘delegation’ in the [Glossary: Accountable Authority Instructions and Defence Financial Delegations](#).

³ Note that CPR 10.35 is part of Division 2 of the CPRs, and therefore does not apply to procurements valued at less than \$80,000 or procurements from standing offers.

⁴ AAI 2.3.1.7, Defence Procurement Policy Directive D10 – [Defence Procurement Policy Manual \(DPPM\)](#).

Step 1 – Planning

Factors for SES/Star to consider in this step include:

- What task/outcome does Defence require?
- How does the task/outcome contribute to delivering Defence's Business Plan, CDF's Preparedness Directive, the Integrated Investment Plan, and/or one of Defence's statutory obligations?
- What is the impact of not achieving this task/outcome or delaying this task/outcome?
- What specialist skills are required to achieve the task/outcome?
- What is the timeframe for completing this task/outcome?

Step 2 – Does the current Australian Defence Force (ADF) and / or Australian Public Service (APS) workforce have the capability or capacity to meet this task/outcome?

The following questions prompt decision-makers to carefully consider their workforce requirements in terms of deliverables, and the skills, experience and profile of the workforce requirement. [Defence People Group](#) can assist decision-makers in designing their workforce or exploring other options.

Factors for SES/Star to consider in this step include:

- What is the current capability and capacity of the ADF/APS workforce within your branch (including allocation and actual headcount)?
- Is the required skills/knowledge already present and available in your branch?
- Is the skills/knowledge available at the right level for meeting the required task/outcome? If not, can it be sourced from elsewhere in Defence?
- Can other work be reprioritised to temporarily release the necessary APS or ADF personnel?
- Can you deliver this task/outcome by redesigning your current workforce?
- Is the workforce requirement ongoing or just a short term need for additional resources or specialised knowledge and/or skills that will not be required within the ongoing APS or ADF?

Step 3 - Is industry the right solution?

Factors for SES/Star to consider in this step include:

- Is industry, or the ADF and APS, the most efficient and effective method of delivering this task/outcome?
- What is the estimated cost of the industry option, and is it affordable within your current budget?
- Will this option ensure that Defence achieves value for money for the Commonwealth?

Step 4 – Decide which to engage: a Contractor or a Consultant or an Outsourced Service Provider

Refer to the definitions in the [Defence Financial Delegations](#) glossary to determine if you are proposing to engage either a Contractor, or Consultant or Outsourced Service Provider. Attachment B provides further guidance to assist you to determine which definition best describes your procurement.

Step 5 – Obtain SES/Star approval

It is best practice for Defence officials to obtain SES/Star written approval prior to approaching the market to procure a Contractor.

Defence Officials should use the [SES Approval Template](#) to document the case to commence the procurement process to engage a Contractor and to seek SES/Star approval.

Defence Officials must provide robust and defensible justifications to support their case so that decisions by SES/Star to approve the procurement of Contractors are sound. SES/Star ranked decision-makers

should carefully consider the workforce justifications for approaching the market to engage a Contractor. Factors for SES/Star officials to consider in this step include:

- Whether the contribution of a CCOSP is necessary to achieving this task/outcomes;
- The justifications for not using current ADF and/or APS workforce; and
- Why industry is the most efficient and effective resource option.

Step 6 – Advise the Secretary

Defence officials are required to advise the Secretary that the delegate intends to engage a CCOSP that the estimated daily rate of a person is at or above \$4,500 (GST inclusive).⁵

Step 7 – Undertake procurement process

Defence officials undertaking procurements must comply with the Defence Financial Delegations, the [AAIs](#) and the [DPPM](#), including the requirement to obtain an Endorsement to Proceed before approaching the market if the procurement is valued at or above \$200,000.

Step 8 – Obtain Section 23(3) Commitment Approval

If approval from an SES / Star official has not yet been obtained, it must be provided as part of the Section 23(3) commitment approval process.

Step 9 – Complete AE643 and sign the contract

When completing the AE643 Defence Purchasing Form, the Defence official should:

- enter the SES/Star procurement approver's name and position number; and
- if approval was obtained prior to approaching the market, attach the completed SES/Star Approval Document to the AE643.

The section 23(1) delegation is exercised when the delegate signs the contract, or a purchase order is issued.

[Further Resources](#)

[Accountable Authority Instructions](#)

[Defence Financial Delegations](#)

[Defence Procurement Policy Manual](#)

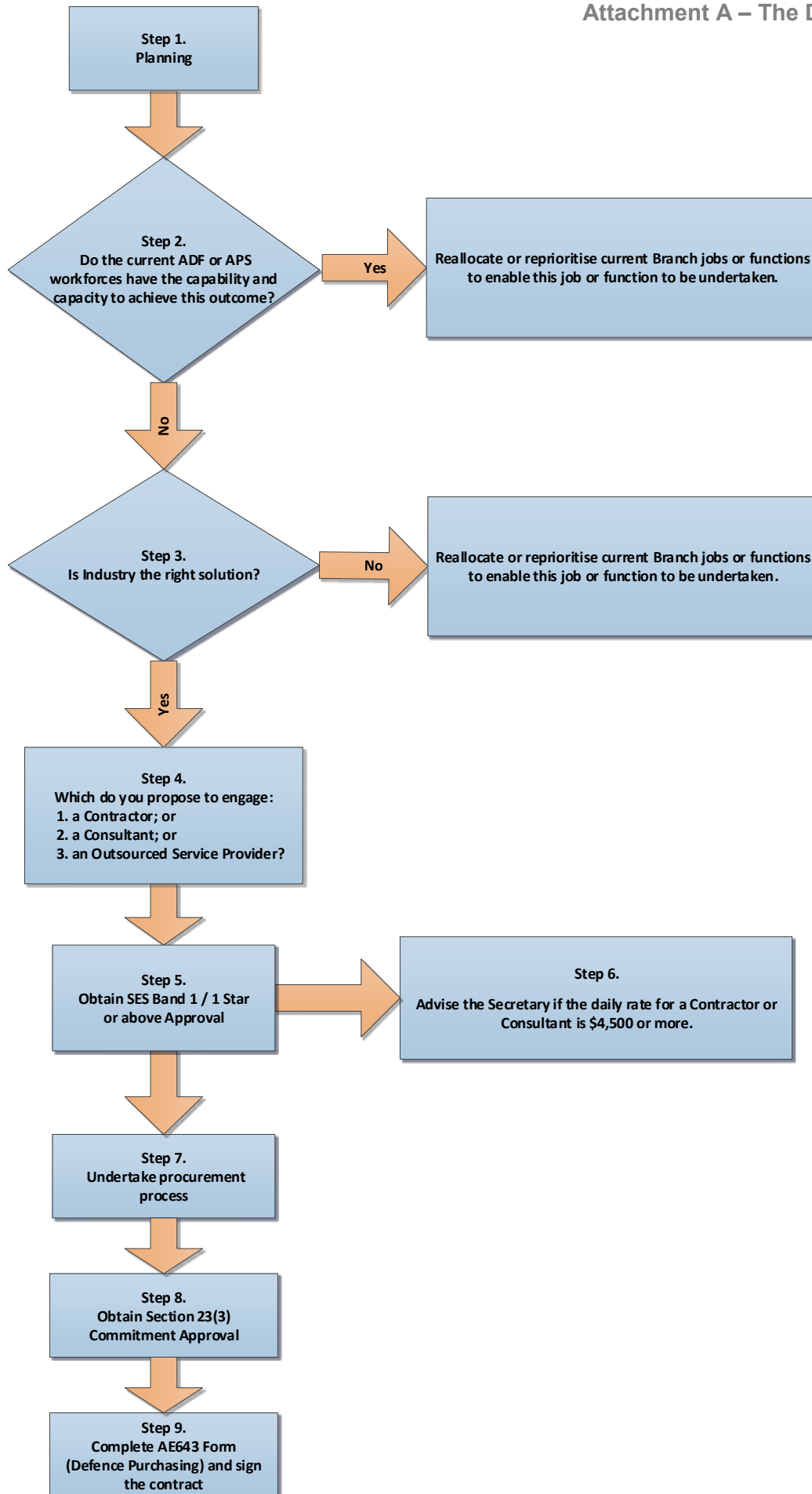
[Complex Procurement Guide](#)

[Commercial Policy Helpdesk \(for impact on current or future procurement activities\) - \[procurement.policy@defence.gov.au\]\(mailto:procurement.policy@defence.gov.au\)](#)

[Financial Policy Helpdesk \(for financial delegation aspects\) - \(02\) 6265 6111 or email \[financial.policy@defence.gov.au\]\(mailto:financial.policy@defence.gov.au\)](#)

⁵ Defence Procurement Policy Directive D10 – [Defence Procurement Policy Manual \(DPPM\)](#)

Attachment A – The Decision Tree



Attachment B

Criteria	Contractor	Consultant	Outsourced Service Provider
<p>What is the nature of the work required?</p>	<p>Performs day to day duties of the entity. Uses skills to perform the services that would normally be maintained in the entity</p> <p>Involves professional or expert services to implement an existing proposal or strategy.</p> <p>Work is an integral part of the entity's business.</p>	<p>Consultants are individuals, partnerships or corporations engaged to provide professional, independent and expert advice or services.</p> <p>It involves the application of specialist professional knowledge or expertise that may not be maintained in-house.</p> <p>Involves the development of an intellectual output e.g. research, evaluation, advice and recommendations to assist the entity decision making.</p> <p>Involves a one off task, a set of tasks or irregular tasks (making employment of permanent staff impractical or undesirable).</p> <p>Work performed is an accessory to the entity's business.</p>	<p>The entity has made a decision that the function is to be performed by an external service provider on a long term or permanent basis.</p> <p>Usually it involves skills or expertise that is generally not required to be maintained by the entity.</p>

Criteria	Contractor	Consultant	Outsourced Service Provider
<p>Under what direction or control will the work be performed?</p>	<p>Services are performed under supervision of the entity.</p> <p>The entity specifies how the work is to be undertaken and has control over the final form of any resulting output</p> <p>Professional or expert services provided are generally delivered without a high level of supervision and direction from the entity.</p>	<p>Performance of the services is largely left to discretion and professional expertise of the consultant.</p> <p>Performance is without the entity's direct supervision.</p>	<p>Performance of the work is left largely up to the discretion and professional expertise of the outsourced service provider.</p> <p>Typically, service standards or performance indicators are included in contracts and are monitored periodically.</p>
<p>Who will own the outputs?</p>	<p>The output produced will not necessarily represent the independent views of the service provider i.e. the entity controls the form of the output.</p> <p>The resulting output is produced <i>on behalf of</i> the entity and is generally regarded as an entity product.</p>	<p>The output reflects the independent views or findings of the individual or organisation.</p> <p>The output is being <i>produced for</i> the entity.</p> <p>The output may not belong to the entity.</p>	<p>The resulting output is produced <i>for</i> the entity and is not generally considered an entity's product.</p>
<p>How will the contracted party be remunerated?</p>	<p>Remuneration is based on the time worked, usually calculated on an hourly rate.</p>	<p>Remuneration is usually paid when agreed milestones are reached or when a task or project is completed.</p>	<p>Remuneration is paid when milestones are reached or a task is completed, or periodically for the provision of ongoing services.</p>

Criteria	Contractor	Consultant	Outsourced Service Provider
<p>Will the contracted party use Defence resources?</p>	<p>The entity provides all the equipment and supplies. The contractor will usually be engaged to work at the entity's premises.</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> <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.</p>	<p>The provider generally supplies their own equipment and supplies but may work at the entity's premises.</p>



FACT SHEET

Engaging Contractors, Consultants and Outsourced Service Providers – Decision Making Governance

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The DPPM encapsulates all mandatory procurement policy that relates to Defence. Some mandatory procurement policy is reflected in this fact sheet. Use of the word 'should' in this fact sheet denotes best practice.

Decisions to engage Contractors, Consultants, and Outsourced Service Providers (CCOSPs) are important steps by which Defence may supplement workforce capability when specialist skills are required and the employment of current Defence officials is impractical or undesirable (e.g. to maintain a level of independence).

This fact sheet documents the practices and procedures required of Defence officials when making decisions about engaging CCOSPs. Decisions to engage CCOSPs must be well considered, cost conscious and defensible with sufficient supporting evidence.

This fact sheet applies to all procurements of CCOSPs, and outlines:

- the decision-making process used to assist Defence officials in determining whether the procurement of a CCOSPs should be undertaken;
- clear definitions for each of Contractor, Consultant, and Outsourced Service Provider;
- the requirements to:
 - o obtain written approval to undertake the procurement, generally before approaching the market, but at a minimum either prior to or as part of the commitment of relevant money, from an Senior Executive Service Band 1 or 1 Star Officer, or above (**SES / Star**); and
 - o advise the Secretary when the estimated daily rate of the CCOSPs is at or above \$4,500 (GST inclusive).

Background and rationale

The processes described in this fact sheet:

- support the structured consideration, assessment and reporting of Defence's workforce requirements to decide if the engagement of CCOSPs is required; and
- support the best practice requirement to obtain SES/Star approval to undertake the procurement to engage CCOSPs.

Further workforce planning information is maintained at the People Connect [Managing a Workforce](#) intranet site.

Applicability of this Fact Sheet

This fact sheet applies to all Defence officials (including Prescribed Officials) undertaking procurement of CCOSPs, including CCOSPs engaged under a standing offer arrangement. The [Public Governance, Performance and Accountability Act 2013 \(Cth\)](#) obliges all Defence officials to apply good governance, and management practices and procedures in their day-to-day work. This includes planning, monitoring and evaluating their use of contracts for labour and services.



The requirement for SES/Star approval

Defence officials should obtain SES / Star approval prior to the approval of the commitment of relevant money for the proposal.¹

This approval is an internal approval step, and is not an exercise of a delegated legislative power.²

It is considered best practice to obtain SES / Star approval prior to approaching the market. This is in order to mitigate the risk of breaching CPR 10.35, which requires a contract to be awarded to a tenderer who a) satisfies the conditions for participation, b) is fully capable of undertaking the contract, and c) will provide the best value for money, *unless* it is not in the public interest to award the contract. As such, if SES / Star approval is sought at the time when commitment of relevant money is required, this may put the SES / Star official in a position where if they choose not to proceed with the contract they will breach CPR 10.35.³

Where the approval is being sought prior to approaching the market, Defence officials can record the SES / Star approval by completing the *SES / Star Approval to Commence a Procurement Process to Engage a Contractor, Consultant or Outsourced Service Provider* form.

The requirement to advise the Secretary

Defence officials must advise the Office of the Secretary prior to approaching the market to engage a CCOSP where the estimated daily rate for the CCOSP under the contract is likely to be at or above \$4,500 (GST inclusive).⁴

Advice to the Office of the Secretary should be provided via a Noting Brief for the Secretary from the relevant Service Chief or Group Head, which should include:

- the proposed CCOSP(s) to be approached;
- the estimated daily rate;
- the proposed duration of the contract;
- the scope of work; and
- a statement as to Service Chief or Group Head agreement.

The process in which to provide a Noting Brief to the Office of the Secretary is as follows:

- within PDMS, create an Executive Correspondence (EC) PDR, this will be the reference number for the Noting Brief;
- once the EC is created, the Briefing template can be found in the response section of the PDR;
- when the appropriate clearances have been sought, workflow through PDMS to the OSEC

Please note - Defence officials should advise the Secretary of the proposed rate as soon as you are aware it is likely to exceed \$4,500 (GST inclusive), to allow sufficient time for consideration by and advice from the Secretary..

Process to engage a Contractor, Consultant or Outsourced Service Provider

Defence officials should use the questions below and the Decision Tree at Attachment A to support them in their decision-making and in documenting the evidence. These tools support the broader responsibility of Defence officials for assuring good governance and ongoing compliance with policy and legislative requirements.

¹ AAI 2.3.1.7, Defence Procurement Policy Directive D10 – [Defence Procurement Policy Manual \(DPPM\)](#).

² For more information, consult the definitions of ‘authorisation’ and ‘delegation’ in the [Glossary: Accountable Authority Instructions and Defence Financial Delegations](#).

³ Note that CPR 10.35 is part of Division 2 of the CPRs, and therefore does not apply to procurements valued at less than \$80,000 or procurements from standing offers.

⁴ AAI 2.3.1.7, Defence Procurement Policy Directive D10 – [Defence Procurement Policy Manual \(DPPM\)](#).

Step 1 – Planning

Factors for SES/Star to consider in this step include:

- What task/outcome does Defence require?
- How does the task/outcome contribute to delivering Defence’s Business Plan, CDF’s Preparedness Directive, the Integrated Investment Plan, and/or one of Defence’s statutory obligations?
- What is the impact of not achieving this task/outcome or delaying this task/outcome?
- What specialist skills are required to achieve the task/outcome?
- What is the timeframe for completing this task/outcome?

Step 2 – Does the current Australian Defence Force (ADF) and / or Australian Public Service (APS) workforce have the capability or capacity to meet this task/outcome?

The following questions prompt decision-makers to carefully consider their workforce requirements in terms of deliverables, and the skills, experience and profile of the workforce requirement. [Defence People Group](#) can assist decision-makers in designing their workforce or exploring other options.

Factors for SES/Star to consider in this step include:

- What is the current capability and capacity of the ADF/APS workforce within your branch (including allocation and actual headcount)?
- Is the required skills/knowledge already present and available in your branch?
- Is the skills/knowledge available at the right level for meeting the required task/outcome? If not, can it be sourced from elsewhere in Defence?
- Can other work be reprioritised to temporarily release the necessary APS or ADF personnel?
- Can you deliver this task/outcome by redesigning your current workforce?
- Is the workforce requirement ongoing or just a short term need for additional resources or specialised knowledge and/or skills that will not be required within the ongoing APS or ADF?

Step 3 - Is industry the right solution?

Factors for SES/Star to consider in this step include:

- Is industry, or the ADF and APS, the most efficient and effective method of delivering this task/outcome?
- What is the estimated cost of the industry option, and is it affordable within your current budget?
- Will this option ensure that Defence achieves value for money for the Commonwealth?

Step 4 – Decide which to engage: a Contractor or a Consultant or an Outsourced Service Provider

Refer to the definitions in the [Defence Financial Delegations](#) glossary to determine if you are proposing to engage either a Contractor, or Consultant or Outsourced Service Provider. Attachment B provides further guidance to assist you to determine which definition best describes your procurement.

Step 5 – Obtain SES/Star approval

It is best practice for Defence officials to obtain SES/Star written approval prior to approaching the market to procure a Contractor.

Defence Officials should use the [SES or Star Approval Webform - AF043](#) to document the case to commence the procurement process to engage a Contractor and to seek SES/Star approval.

Defence Officials must provide robust and defensible justifications to support their case so that decisions by SES/Star to approve the procurement of Contractors are sound. SES/Star ranked decision-makers

should carefully consider the workforce justifications for approaching the market to engage a Contractor. Factors for SES/Star officials to consider in this step include:

- Whether the contribution of a CCOSP is necessary to achieving this task/outcomes;
- The justifications for not using current ADF and/or APS workforce; and
- Why industry is the most efficient and effective resource option.

Step 6 – Advise the Secretary

Defence officials are required to advise the Secretary that the delegate intends to engage a CCOSP that the estimated daily rate of a person is at or above \$4,500 (GST inclusive).⁵

Step 7 – Undertake procurement process

Defence officials undertaking procurements must comply with the Defence Financial Delegations, the [AAIs](#) and the [DPPM](#), including the requirement to obtain an Endorsement to Proceed before approaching the market if the procurement is valued at or above \$200,000.

Step 8 – Obtain Section 23(3) Commitment Approval

If approval from an SES / Star official has not yet been obtained, it must be provided as part of the Section 23(3) commitment approval process.

Step 9 – Complete AE643 and sign the contract

When completing the AE643 Defence Purchasing Form, the Defence official should:

- enter the SES/Star procurement approver's name and position number; and
- if approval was obtained prior to approaching the market, attach the completed SES/Star Approval Document to the AE643.

The section 23(1) delegation is exercised when the delegate signs the contract, or a purchase order is issued.

[Further Resources](#)

[Accountable Authority Instructions](#)

[SES or Star Approval Webform](#)

[Defence Financial Delegations](#)

[Defence Procurement Policy Manual](#)

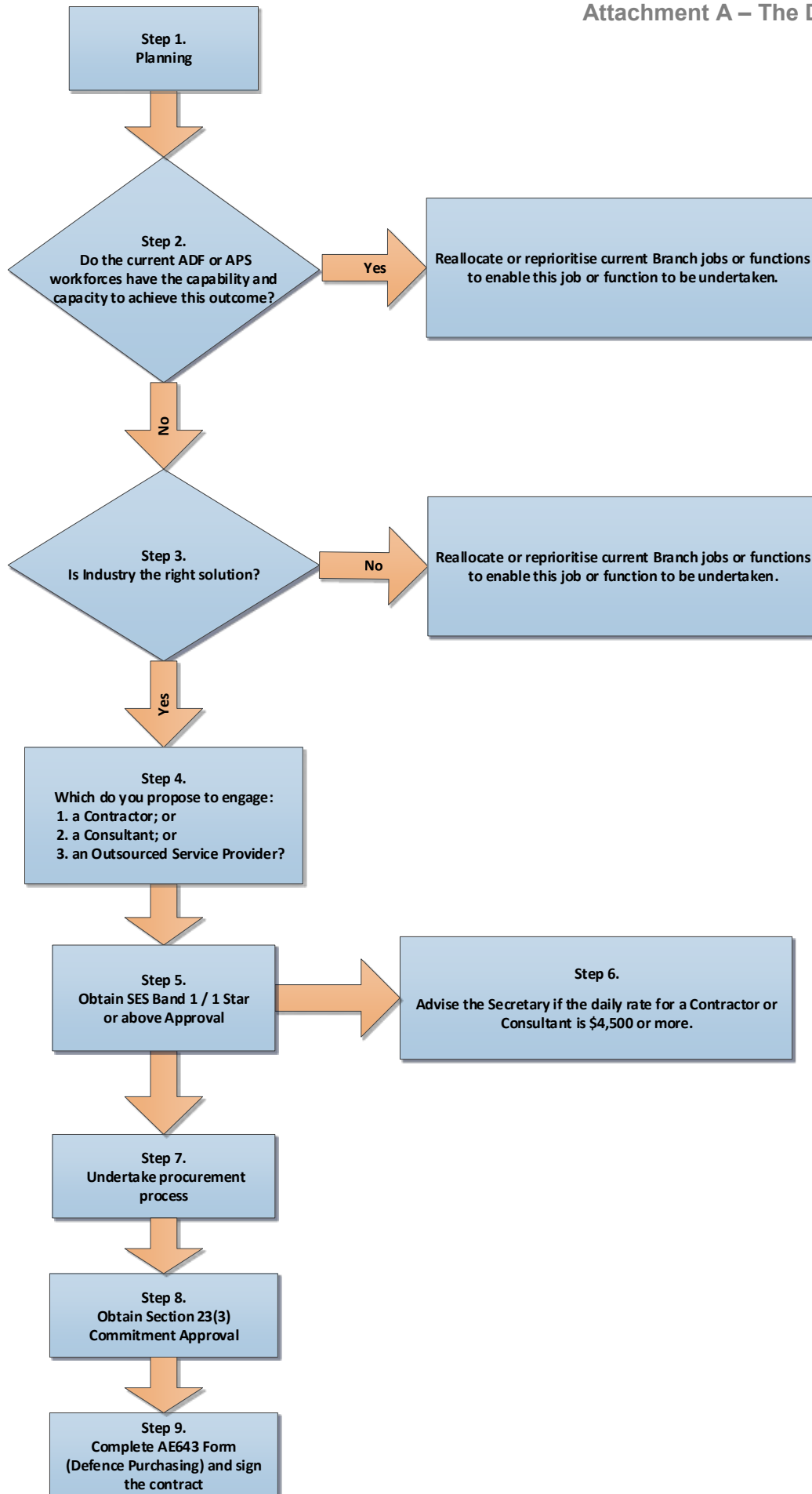
[Complex Procurement Guide](#)

[Commercial Policy Helpdesk \(for impact on current or future procurement activities\) - \[procurement.policy@defence.gov.au\]\(mailto:procurement.policy@defence.gov.au\)](#)

[Financial Policy Helpdesk \(for financial delegation aspects\) - \(02\) 6265 6111 or email \[financial.policy@defence.gov.au\]\(mailto:financial.policy@defence.gov.au\)](#)

⁵ Defence Procurement Policy Directive D10 – [Defence Procurement Policy Manual \(DPPM\)](#)

Attachment A – The Decision Tree



Attachment B

Criteria	Contractor	Consultant	Outsourced Service Provider
<p>What is the nature of the work required?</p>	<p>Performs day to day duties of the entity. Uses skills to perform the services that would normally be maintained in the entity</p> <p>Involves professional or expert services to implement an existing proposal or strategy.</p> <p>Work is an integral part of the entity's business.</p>	<p>Consultants are individuals, partnerships or corporations engaged to provide professional, independent and expert advice or services.</p> <p>It involves the application of specialist professional knowledge or expertise that may not be maintained in-house.</p> <p>Involves the development of an intellectual output e.g. research, evaluation, advice and recommendations to assist the entity decision making.</p> <p>Involves a one off task, a set of tasks or irregular tasks (making employment of permanent staff impractical or undesirable).</p> <p>Work performed is an accessory to the entity's business.</p>	<p>The entity has made a decision that the function is to be performed by an external service provider on a long term or permanent basis.</p> <p>Usually it involves skills or expertise that is generally not required to be maintained by the entity.</p>

Criteria	Contractor	Consultant	Outsourced Service Provider
<p>Under what direction or control will the work be performed?</p>	<p>Services are performed under supervision of the entity.</p> <p>The entity specifies how the work is to be undertaken and has control over the final form of any resulting output</p> <p>Professional or expert services provided are generally delivered without a high level of supervision and direction from the entity.</p>	<p>Performance of the services is largely left to discretion and professional expertise of the consultant.</p> <p>Performance is without the entity's direct supervision.</p>	<p>Performance of the work is left largely up to the discretion and professional expertise of the outsourced service provider.</p> <p>Typically, service standards or performance indicators are included in contracts and are monitored periodically.</p>
<p>Who will own the outputs?</p>	<p>The output produced will not necessarily represent the independent views of the service provider i.e. the entity controls the form of the output.</p> <p>The resulting output is produced <i>on behalf of</i> the entity and is generally regarded as an entity product.</p>	<p>The output reflects the independent views or findings of the individual or organisation.</p> <p>The output is being <i>produced for</i> the entity.</p> <p>The output may not belong to the entity.</p>	<p>The resulting output is produced <i>for</i> the entity and is not generally considered an entity's product.</p>
<p>How will the contracted party be remunerated?</p>	<p>Remuneration is based on the time worked, usually calculated on an hourly rate.</p>	<p>Remuneration is usually paid when agreed milestones are reached or when a task or project is completed.</p>	<p>Remuneration is paid when milestones are reached or a task is completed, or periodically for the provision of ongoing services.</p>

Criteria	Contractor	Consultant	Outsourced Service Provider
<p>Will the contracted party use Defence resources?</p>	<p>The entity provides all the equipment and supplies. The contractor will usually be engaged to work at the entity's premises.</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> <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.</p>	<p>The provider generally supplies their own equipment and supplies but may work at the entity's premises.</p>

Tender Evaluation in Complex Procurement Better Practice Guide

Defence Scope

This publication should be considered better practice guidance for Defence staff undertaking tender evaluation in complex procurement.

Authority

Procurement Better Practice Guides do not create new mandatory procurement policy. All Defence mandatory procurement policy is contained in the Defence Procurement Policy Manual. Any mandatory procurement guidance referred to in this Better Practice Guide is sourced from appropriate legislation and mandatory Commonwealth and Defence policy.

Monitor and Review

This BPG will be reviewed whenever relevant sections of any of the identified references are updated or amended.

All feedback and suggestions for improvement should be sent to: procurement.policy@defence.gov.au

Note to External Agencies

External agencies intending to use this publication will need to tailor it in order to meet their specific procurement requirements (including relevant internal guidance) and should seek appropriate professional guidance as required.

Disclaimer

The information in this publication is provided by Defence for the purpose of disseminating procurement guidance to its staff. While every effort has been made to ensure the guidance in this publication is accurate and up-to-date, any external user should exercise independent skill and judgment before relying on it. Further, this publication is not a substitute for independent professional advice and users external to Defence should obtain appropriate advice relevant to their particular circumstances.

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This publication should be attributed as the Better Practice Guide – Procurement Delivery Models.

Use of the Coat of Arms

The terms under which the Coat of Arms can be used are detailed on the [It's an Honour](#) website.

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Chapter 1

Introduction

Overview

1 This Guide should be read in conjunction with the Defence Procurement Policy Manual (DPPM) and Complex Procurement Guide (CPG) and provides practical guidance to assist those conducting tender evaluations for complex procurements. The primary purpose of this Guide is to assist users to understand some of the key issues to consider when conducting tender evaluations in complex Defence procurements. It is important to note that it is rarely the case that any two procurements are the same and there is no 'one size fits all' approach when conducting tender evaluations. Tender evaluations should therefore, be appropriately tailored to reflect the specific characteristics of the particular procurement at hand.

2 Tender evaluation represents a critical stage in complex procurements and, as noted in the Complex Procurement Guide (CPG), it will be more likely to be successful where earlier activities in the procurement lifecycle have been conducted appropriately - such as the development of the procurement strategy, the request documentation and the tender evaluation plan (TEP).

3 While this Guide principally addresses tender evaluation in the context of a request for tender for a major capital acquisition project (using an ASDEFCON template), the principles outlined in this Guide also apply to other forms of request documentation (such as an invitation to register interest, or a request for proposal) as well as other kinds of Defence procurements. Defence officials need to consider and apply the principles appropriately in light of the nature of the procurement and the request documentation being used.

4 For further advice regarding the conduct of tender evaluation, Defence officials should refer to the [Commercial Help Desk Kiosk](#).

Key principles

5 Defence officials should plan and conduct tender evaluations to reflect the nature, risk and complexity of the particular procurement, and so that Defence can be confident that it achieved the best value for money for the Commonwealth, the process is publicly defensible and is able to withstand challenge and scrutiny.

6 The CPRs require Defence officials to undertake their tender evaluations having regard to key principles such as value for money, probity, confidentiality, ethics and fair dealing, accountability and transparency. Adoption of the steps described in this Guide will assist those conducting complex procurements to adhere to these principles.

7 These principles can be summarised as follows:

- **Value for money** - The key objective of Defence procurement is to obtain value for money. The tender that offers best value for money will not necessarily be the tender which offers the lowest price. Defence officials need to assess which tender offers the best value for money having regard to an assessment against each of the evaluation criteria - including price - and the risks associated with the tender and tenderer.
- **Fairness** - Defence officials should not unfairly advantage or disadvantage any tenderer. All tenderers should be given the same information about the tender process and afforded an equal opportunity to participate in it.
- **Confidentiality** - The CPRs require that tenders are treated as confidential before and after the award of a contract (see CPRs, paragraph 7.21). Defence officials should therefore take appropriate measures to protect the confidentiality of tenders. Tenders and evaluation information should be kept secure and confidential, with distribution of information being undertaken on a need to know basis.
- **Probity** - When undertaking tender evaluation, Defence officials should exercise the highest standards of probity and fair dealing. This includes ensuring there is no bias or favouritism throughout the process, and promptly declaring and managing any conflicts of interest.
- **Accountability and transparency** - Defence officials should maintain a clear audit trail for all procurements. All key steps taken and decisions made should be promptly and

accurately documented in a logical sequence and using clear and concise language to ensure the process is able to withstand challenge and scrutiny. The level of detail of documentation should be commensurate with the scale, scope and risk of the procurement.

Example: In a particular tender process, Defence selected a preferred tenderer on the basis that it offered the best technical solution and one of the lowest overall prices, and hence assessed that it offered significantly better value for money than the other tenders. The incumbent contractor was unsuccessful and challenged the outcome of the tender process.

Because the tender evaluation team was subject to significant time pressures, it did not document the evaluation process and the outcome in sufficient detail in the evaluation report. In addition, the evaluation report did not fully address the compliance issues and risks which were identified and considered in making the source selection decision. As a result, while the actual outcome of the tender evaluation was fair and defensible, the poor documentation of the evaluation made it more difficult for Defence to justify and defend the outcome in response to the challenge by the incumbent contractor.

Chapter 2

Preparing for tender evaluation

Key considerations arising from the request documentation

- 1 Defence officials need to fully understand what is being sought through the request documentation to be able to properly plan and prepare for tender evaluation. While the TEP is the manifestation of this planning and preparation, the content of the TEP will in large part be driven by how Defence officials have drafted the request documentation, and in particular what the request documentation says about the evaluation criteria, information deliverables and requirements prioritisation.
- 2 The following discussion expands on the guidance on these matters provided by Chapters 3 and 5 of the CPG.

Evaluation criteria

- 3 As required by the DPPM, the evaluation team is required to evaluate tenders against the evaluation criteria contained in the request documentation. These criteria will also be set out in the TEP. The evaluation criteria are used to assist the evaluation team to objectively assess tenders and identify which tender offers the best value for money. The TEP should provide the clear and defensible basis for how the evaluation team will evaluate tenders against all of the evaluation criteria, and should ensure that the evaluation team does not introduce any additional criteria during the evaluation.
- 4 Given the wide range of Defence procurements, the evaluation criteria can vary between them, however, in the context of procuring defence materiel, the evaluation criteria detailed in the ASDEFCON templates are comprehensive and typically will not require amendment. Nevertheless, template evaluation criteria should always be reviewed to ensure that they are appropriate for the relevant procurement. Where amendments are justified, specialist contracting and/or legal advice should be obtained to ensure that the amendments do not preclude Defence from assessing key aspects of each tender and that the consequences of amending the evaluation criteria are clearly understood. It is important to ensure that the evaluation criteria allow Defence to assess all relevant aspects of a tender to enable an effective procurement outcome.
- 5 As noted in the CPG, Defence templates do not typically weight evaluation criteria or put them into any order of priority or importance. This allows the evaluation team to undertake its evaluation and determination of best value for money on a balance of its assessment of tenders against all the criteria.
- 6 The CPG provides general guidance about the merits of weighting evaluation criteria – which may be done qualitatively (for example, Important, Very Important etc) or quantitatively (for example, 10%, 20% etc). As noted in the CPG, Defence officials need to ensure that the weightings are appropriate and accurately reflect Defence's requirements. Otherwise, it can result in Defence being unable to place appropriate significance on key issues and risks identified as part of the tender evaluations (for example, if a significant issue or risk is identified but the evaluation criterion to which it relates has been given a very low weighting). Specialist contracting and/or legal advice should be obtained before weighting evaluation criteria in order to ensure that the potential effects are appraised and understood.
- 7 Evaluation criteria are communicated to tenderers but the relative importance of each evaluation criteria is not normally provided to tenderers. Evaluation criteria should be objective, measurable, clear and transparent.

Example: The evaluation criteria for a Defence procurement were weighted in the request documentation. A weighting of 5% was given to the evaluation criterion relating to the tenderer's compliance with the terms of the contract and a weighting of 5% was given to the evaluation criterion relating to the financial standing of the tenderer. A tenderer proposed a technically superior solution at a competitive price, however, the tenderer had a poor financial standing and proposed significant changes to the risk allocation in the contract.

The poor financial standing and the proposed changes to the contract risk allocation were such that Defence could not accept the tender. However, because the relevant evaluation criteria were given such a low weighting of 5%, it meant that it was difficult for Defence to exclude the tender or rate it below other tenders in the assessment against the evaluation criteria.

In the end, and after seeking probity advice, Defence was able to take these matters into further consideration as part of assessing the overall risk associated with each tender and hence in the assessment of overall value for money. However, the weighting of the criteria did complicate the evaluation process. The CPG and Chapter 3 of this Guide discuss quantitative scoring based evaluation methodologies further.

Tender information deliverables

8 Defence officials should ensure that tenderers are required to submit only that information which is necessary to enable Defence to properly assess each tender against each of the evaluation criteria and to make an overall value for money assessment. In addition to increasing the costs of tendering, requiring tenderers to submit unnecessary information can make tender evaluation more difficult due to the volume of information to be assessed and increase the tender evaluation period unnecessarily. In addition, Defence needs to be careful that it does not unnecessarily request the same information in multiple formats.

9 In ASDEFCON templates, the information which tenderers are required to submit as part of their tender is set out in Tender Data Requirements (TDRs) which are attached to the conditions of tender. The ASDEFCON TDRs are comprehensive and each TDR has been mapped to evaluation criteria in the conditions of tender. Nevertheless, in preparing the request documentation for a particular procurement, Defence officials should confirm that the TDRs capture appropriate information requirements in relation to the relevant evaluation criteria. This mapping exercise will assist to identify any gaps in the TDRs or evaluation criteria.

Example: Defence conducted a procurement for the provision of transportation services. Due to the specific nature of the services and the requirements of the procurement, the evaluation criteria in the applicable ASDEFCON template were modified to meet the requirements of the procurement. During tender evaluation, the evaluation team identified two issues. First, the amendments to the evaluation criteria had not been carefully thought through and because a number of the criteria were quite narrow, this made it difficult for the evaluation team to assess a number of issues which it had identified during evaluation. Second, Defence had not made the appropriate corresponding amendments to the TDRs (by mapping the TDRs against the evaluation criteria) and, as a result, tenderers were not required to submit all of the information which Defence required in order to make an assessment against the relevant evaluation criteria.

While the evaluation team was able to complete the tender evaluation and identify a tenderer which represented best value for money, many issues that should have been able to have been addressed during the evaluation needed to be explored and resolved during contract negotiations with the preferred tenderer.

Requirements prioritisation

10 Defence officials will often prioritise Statement of Work (SOW) and specification requirements in request documentation. Requirements prioritisation can be an effective tool for communicating to tenderers the relative importance of individual requirements in the SOW or specification, and can therefore assist in the correct technical evaluation of tenders albeit also adding complexity.

11 Where Defence prioritises its requirements, this is usually done by reference to one of the four following categories:

- a. Essential: Indicates a requirement that has the highest level of consideration without which the achievement of the capability would not be possible;
- b. Very Important: Indicates a requirement that has a high level of consideration and without which the achievement of the capability may not be possible;
- c. Important: Indicates a requirement that has a moderate level of consideration and which is necessary to achieve an intended functionality and/or level of performance, however there is some latitude regarding meeting the intended functionality and/or level of performance; and
- d. Desirable: Indicates a low level of consideration, that is, not a key factor in the achievement of any intended functionality and/or level of performance, but which is perceived as beneficial.

12 As noted in the DPPM and the CPG, it is important that Defence officials do not unnecessarily categorise requirements as being 'Essential'. This is particularly the case for those tenders where the

additional rules in Division 2 of the CPRs apply concerning the exclusion of tenders that do not achieve 'Essential' requirements. The key reasons why the use of 'Essential' requirements should be minimised are:

- a. where the procurement is above the relevant procurement threshold under the CPRs and is not otherwise exempt from Division 2 of the CPRs, the failure to comply with an 'Essential' requirement means that the tender must be excluded as part of the initial screening and shortlisting of tenders;
- b. even if the procurement is exempt from Division 2 of the CPRs, tenderers would normally expect that a failure to comply with an 'Essential' requirement should lead to exclusion of a tender; and
- c. prescribing too many 'Essential' requirements will reduce the ability of tenderers to offer innovative or value for money technical solutions, including proposing capability trade-offs.

Example: In a particular procurement, Defence included a large number of 'essential' requirements in the technical specification. The procurement was above the relevant procurement threshold and was not exempt from Division 2 of the CPRs. Only three tenders were submitted (and one supplier decided not to submit a tender because of the level of non-recurrent engineering that would have been involved in meeting an 'essential' requirement). One of the three submitted tenders had to be set aside as part of the initial screening and short listing of tenders as the tenderer failed to meet a number of the essential requirements.

While the remaining two tenderers satisfied all of the essential requirements, in order to meet them they were required to significantly modify what was otherwise substantially commercial/military off the shelf equipment. This resulted in a significant increase in cost and risk for Defence given the scope and nature of the modifications

Evaluation against a tender evaluation baseline

13 The 'tender evaluation baseline' comprises the totality of Defence's requirements for the procurement as contained in the request documentation. The tender evaluation baseline is the common foundation against which the evaluation team will assess and compare all tenders so as to establish a basis for making informed value for money judgements. If the request documentation includes a Commonwealth initiated option, Defence will need to consider whether the Commonwealth initiated option is to be treated as part of the tender evaluation baseline.

14 Where Defence prioritises its requirements, Defence will need to also consider whether some or all of the 'Desirable' requirements should be included in the tender evaluation baseline. Depending on the nature of the procurement, many of Defence's 'Desirable' requirements can significantly add to the cost, risk and schedule of delivering a capability, particularly where they are aspirational or not already part of a military off the shelf solution. Defence officials should advise tenderers in the request documentation if 'Desirable' requirements are not considered part of the evaluation baseline so that tenderers are not misled about what is important to Defence for the purposes of the procurement decision.

15 During evaluation, the evaluation team will assess the extent to which a tender departs from the tender evaluation baseline. Depending on the evaluation methodology being used (refer to Chapter 3 of this Guide), the departure (or 'non-compliance') may be evaluated qualitatively (for example, through a rating of 'deficient', or similar), quantitatively (for example, through a price adjustment to the tendered price), or through a combination of the two. The tender evaluation methodology to be used will need to be outlined in the TEP.

Example: Examples of departures from the tender evaluation baseline which may result in a price adjustment include where a tenderer proposes:

- (a) a different delivery schedule or milestone payment arrangement. In these circumstances it may be necessary to assess tenders by calculating the net present value of the payments to be made (i.e. assessing the payments in base date dollars to the extent that they have not been expressed in base date dollars);
- (b) a different warranty period;
- (c) alternative indices for the adjustment/indexation of the contract price; or

(d) an alternative risk allocation (i.e. to allocate risk to the Commonwealth which was allocated to the contractor under the draft contract issued as part of the request documentation).

16 The basis and methodology for making price adjustments, and the amount of any price adjustments, should be set out in the evaluation report. To the extent that assumptions are made in making a price adjustment, the assumptions should also be set out. The evaluation team should also consider whether it should carry out any sensitivity analysis in relation to the assumptions made having regard to the nature of the assumptions.

Timeframe for the conduct of tender evaluation

17 The timeframe for the conduct of the tender evaluation should be sufficient to enable the evaluation team to properly assess all of the tenders in accordance with the evaluation criteria and to make a value for money assessment. Given the complexity of many Defence procurements, tender evaluations can take a significant period of time, although political and capability requirements can sometimes put pressure on evaluation teams to carry out tender evaluations within tight timeframes.

18 Early planning will assist Defence to carry out evaluations in a timely manner. Planning considerations should include the governance arrangements for the evaluation, membership and availability of the tender evaluation board and tender evaluation working groups (if applicable), the logistics of where the evaluation will be conducted and associated administrative arrangements.

19 Not allowing sufficient time to conduct a tender evaluation is often the cause of poor evaluation outcomes. Failure to properly evaluate tenders (including not properly identifying and understanding key issues and risks or clarifying uncertainties or ambiguities with tenderers) due to time constraints or poor planning can result in delay to the procurement timetable through significantly extended negotiations and subsequent contractor non-performance.

20 Defence officials should determine the appropriate time allowed for the conduct of tender evaluation having regard to the expected number of tenders to be received. The more tenders that are submitted the longer tender evaluation is likely to take. There needs to be sufficient flexibility to extend the evaluation where more tenders than originally expected are submitted. Alternatively, if timeframes are limited, Defence should have considered this as part of the procurement plan and structured the procurement process accordingly. For instance, Defence could conduct an invitation to register interest to shortlist tenderers to participate in a subsequent request for tender process, or short list tenderers during the request for tender process to participate in offer definition and improvement activities.

21 Better practice is that the timeframe allocated to the conduct of tender evaluation and selection of the preferred tenderer (excluding any offer definition and improvement activities) should be no longer than the time allocated for the tender response period.

The Tender Evaluation Plan

22 Chapter 3 of the CPG provides a good overview of the purpose, structure and content of a TEP as the key document for the management and conduct of tender evaluations for complex procurements.

23 The aim of a TEP is to detail the process for the evaluation of submissions received by Defence in response to request documentation. The TEP should provide for:

- a. a clear and defensible basis for the evaluation process to occur in accordance with the request documentation;
- b. the application of a 'best value for money' assessment; and
- c. an evaluation process that meets the requirements of Commonwealth and Defence procurement policy and good practice.

24 The TEP should be consistent with the request documentation, and the TEP will usually provide that in the event of any inconsistency between the conditions of tender and the TEP, the conditions of tender take precedence.

25 In particular, the evaluation criteria set out in the TEP should be the same as set out in the request documentation. In some cases, to facilitate the conduct of the evaluation against the criteria, the TEP may contain an evaluation breakdown structure that breaks out the evaluation criteria into subordinate sub-criteria or lower level elements. These may or may not be included in the request

documentation. If they are not, then the evaluation team needs to ensure that the sub-criteria or elements are consistent with the higher level evaluation criteria.

26 The TEP will usually provide that all members of the evaluation team are provided with a copy of (or have easy access to) the TEP, and are briefed on the content of the TEP prior to commencing tender evaluation. The evaluation team should have appropriate procedures to ensure continued compliance with the TEP. For example, members of the tender evaluation board and, where applicable, tender evaluation working group leaders, should be given responsibility for ensuring continued compliance with the TEP with the assistance of the legal process and probity adviser (if one is appointed).

27 While Chapter 3 of the CPG provides guidance about the structure and content of a typical Defence TEP, the content of a TEP should be tailored to reflect the particular procurement. For example, if it is intended that the procurement will be divided into a series of stages (for example, shortlisting of tenderers followed by offer definition and improvement activities or parallel negotiations), Defence officials should consider including details of each stage in the TEP.

28 In more complex tender evaluations, best practice is to include in the TEP a description of or guidance as to how the detailed evaluation will be conducted by the evaluation team in assessing each of the evaluation criteria. For example, in relation to the evaluation of the tendered prices, Defence should include details of how it will evaluate the whole of life costs and any model which it will use in doing so. This could include details as to how the evaluation team proposes to evaluate the rates tendered for Task Priced Services, including details of any assumptions made and sensitivity analysis to be conducted. The key benefit of such an approach is that the methodology can be planned and clearly established prior to the commencement of tender evaluation. In adopting such an approach, however, Defence officials need to ensure that the detailed evaluation methodology included in the TEP is appropriate and enables the evaluation team to effectively assess the relevant evaluation criteria.

29 Defence officials should ensure that the TEP does not unnecessarily constrain Defence from exercising the rights it has under the request documentation.

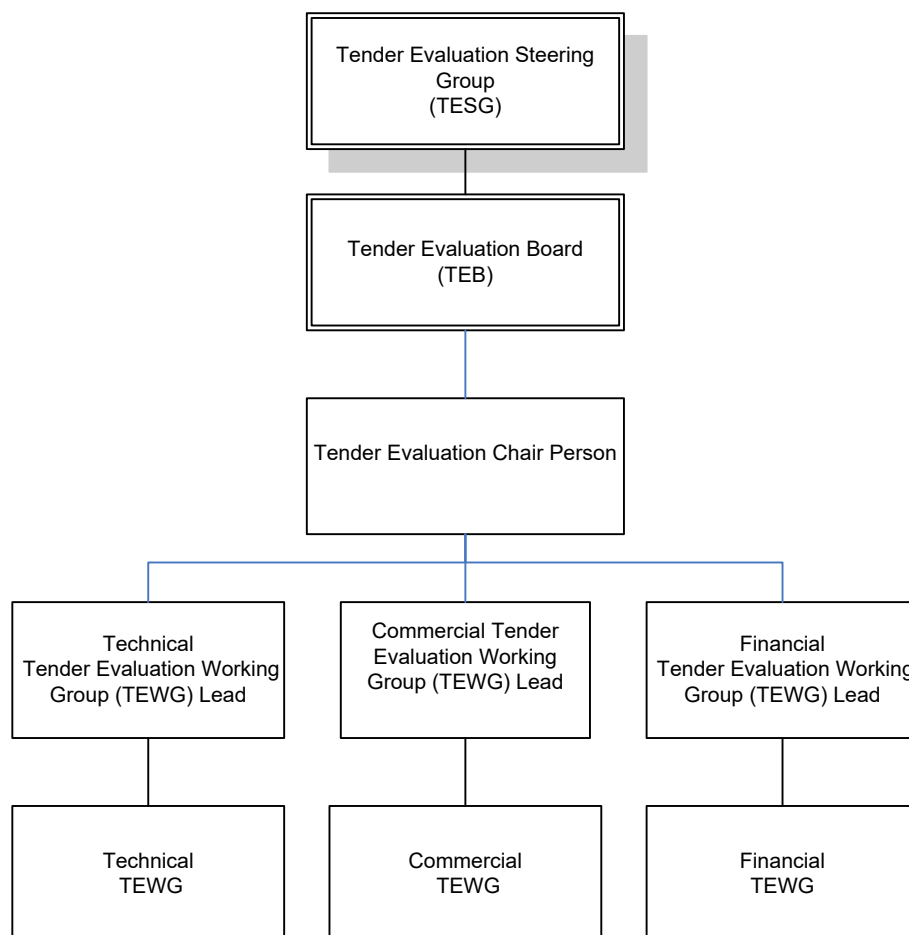
30 A template TEP is available on the [Commercial Division Tools and Templates Intranet page](#).

Tender evaluation organisation (TEO)

Overview

31 A key element of the TEP is to set out the governance arrangements that will be established for the evaluation, and the various roles and responsibilities of the constituent elements of the evaluation team. In major Defence procurements, the evaluation team is often called the Tender Evaluation Organisation (TEO). In some cases, the TEO may simply be a single evaluation committee or tender evaluation board (TEB), which may include the delegate for the procurement. In other cases, the TEO may be a delegate, a tender evaluation team (TET) (or TEB) and TEWGs. In the more complex cases, the delegate may be supported by a tender evaluation steering group (TESG), TEB and tender evaluation working groups (TEWGs). The delegate or the TESG will normally be given responsibility for overseeing the evaluation process and providing guidance to the evaluation team on the conduct of the evaluation and approving the evaluation report. The TET or TEB will usually be responsible for managing the evaluation and ensuring that correct process and probity is adhered to during the evaluation period. The TET or TEB will normally comprise a chair and each of the TEWG leaders will have administrative support, as well as support from relevant advisers (for example, financial, legal, probity etc). For many complex procurements, one or more TEWGs will be formed to undertake the evaluation of specific elements of tenders (for example, Technical TEWG, Commercial TEWG, Financial TEWG etc).

Example Tender Evaluation Organisation (TEO)



Key considerations

32 Defence officials should structure the evaluation team (or TEO) having regard to the size and scale of the tender evaluation, and the nature and complexity of the issues and risks which may need to be considered during the evaluation. As noted above, in more complex procurements, the TEO is often organised into three tiers comprising the TESSG, the TEB and the TEWGs. In less complex procurements, the TEO may comprise two tiers (the TET/TEB and the TEWGs) or even one tier (the TET/TEB). Chapter 5 of the CPG discusses how a standard 'one tier' evaluation committee or board might be set up. However, the following discussion focusses on a more complex procurement process (for example, a major capital acquisition) where a 'three tier' TEO would normally be used.

33 The TESSG is usually chaired by a member of the Senior Executive Service or a Star Rank Officer who has strong complex procurement experience. The role of the TESSG is to provide high level input from stakeholders, such as the sponsor/end user, and management input from outside the TEB. The responsibilities of the TESSG will typically include the following:

- a. ensuring the evaluation is conducted in accordance with Commonwealth and Defence procurement policy, the request documentation and the TEP;
- b. ensuring the appropriate actions and procedures are instituted to support the highest standards of probity and official conduct;
- c. providing advice and direction to the TEB throughout the tender evaluations;

- d. reviewing and finalising the evaluation report prepared by the TEB;
- e. approving the evaluation report, or endorsing the evaluation report for forwarding to Section 23 Delegate Approval (depending on the approval requirements outlined in the TEP); and
- f. providing advice to the Chair of the TESG.

34 All tender evaluations require a TEB (sometimes called a TET). The TEB is typically chaired by the Project Director for the procurement and is made up of the TEWG leaders. The responsibilities of the TEB will usually include the following:

- a. the overall leadership and management of the evaluation process;
- b. ensuring that the evaluation is conducted in a manner which is fair and equitable;
- c. receipt and registration of tenders;
- d. conduct of the initial screening and any shortlisting of tenders;
- e. ensuring the TEWGs conduct their evaluations in accordance with Commonwealth and Defence procurement policy, the request documentation and the TEP;
- f. ensuring the reasons for setting aside any tenders that are clearly not competitive are clearly stated and substantiated;
- g. conducting a comparative assessment of the tenders and the value for money assessment based upon the TEWG reports;
- h. providing guidance to the TEWGs on the preparation of the TEWG reports;
- i. reviewing the TEWG reports to ensure that all information has been taken into consideration in the evaluation report;
- j. reviewing clarification questions proposed by the TEWGs; and
- k. preparing the evaluation report based upon the TEWG reports, and presenting the report to the TESG and delegate.

35 The TEB chair will play a key role in managing the overall conduct of the evaluation, including managing the TEWGs, timetable for the evaluation, and issues which arise during the evaluation.

36 TEWGs are not required for all tender evaluations but are used in more complex evaluations. TEWGs are typically used where the volume of work required in order to carry out the tender evaluation is significant and there is a need to create teams with appropriate specialist expertise and experience. For less complex tender evaluations, the detailed evaluation is typically undertaken by the TET/TEB rather than the TEWGs.

37 The number of TEWGs and the focus of each TEWG will vary depending on the nature of the relevant procurement and the issues which will need to be evaluated, however, may include at least the following TEWGs:

- a. Technical (including operations/project management, and capability) TEWG ; and
- b. Commercial/Contracting/Financial TEWG (includes legal, intellectual property, technical data and other detailed contract matters) .

38 The responsibilities of a TEWG will usually include the following:

- a. assessing each tender against the evaluation criteria allocated to that TEWG (noting that some evaluation criteria may be allocated to more than one TEWG);
- b. conducting a comparative assessment of the tenders in respect of the evaluation criteria allocated to that TEWG;
- c. identifying any risks associated with each tender;
- d. preparing clarification questions; and
- e. preparing a report detailing the TEWG's findings.

39 Each TEWG should have a Defence official that is designated as TEWG leader and the members of the TEWG should be appropriately qualified, skilled and experienced having regard to the focus of the TEWG. Where contractors are proposed to be used as part of a TEWG, this should be

detailed in the TEP, In addition, the probity adviser be consulted to ensure that the required level of care is taken to ensure that probity is appropriately considered and applied.

40 It is important to match the size, skills and structure of the evaluation team / TEO to the complexity and level of risk of the procurement. Defence will need to ensure that it has a sufficient number of appropriately skilled and experienced personnel and appropriate subject matter and/or domain knowledge experts available to conduct the evaluation. This may require Defence to engage consultants with specific industry knowledge or other skills relevant to the evaluation. For particularly large or complex evaluations, Defence should identify potential back up or replacement evaluation team members if evaluation team personnel become unavailable.

41 Evaluation team members should have a detailed understanding of the procurement (including the proposed risk allocation under the draft contract) in order to facilitate the identification of issues and risks during tender evaluation. This can be a significant risk as Defence officials are often brought in to assist in carrying out a tender evaluation that have not been involved in preparing the request documentation and therefore do not have a detailed understanding of the procurement. In these circumstances it is necessary to ensure that these persons are comprehensively briefed on the material.

42 Tender evaluations for complex procurements are typically lengthy and time consuming. Accordingly, it is preferable if evaluation team members work full time on the evaluation rather than seeking to participate in the evaluation while also continuing to perform their usual work activities.

Regular communication within the evaluation team

43 Although each of the TEWGs have their own distinct area of focus, it is important that each TEWG advises other TEWGs of issues which may impact on the evaluation being conducted by the other TEWG. For example, it is often the case that statements contained throughout a tender will indicate that the tenderer is not in fact compliant with a provision of the draft contract notwithstanding the fact that the tenderer has indicated in its Statement of Compliance that it is compliant. These statements can be found in sections of a tender where they would not normally be expected. It is important that TEWGs which identify any such non-compliances or risks advise other relevant TEWGs to ensure non-compliances or risks are not missed. Often these issues require clarification with the relevant tenderer.

44 Accordingly, the evaluation team should encourage regular formal and informal meetings/discussions between TEWG leaders. TEWG leaders will summarise the information and meet with the TEB Chair and Deputy Chair (if there is one). If arrangements are not put in place to facilitate communication between TEWGs, there is a risk that issues will be missed, or their significance not fully appreciated.

Example: In relation to Defence procurement for the provision of training services, Task-Priced Services formed a significant proportion of the overall scope of work under the proposed contract (with each Task-Priced Service comprising the delivery of a training course). The contract did not guarantee any particular volume of Task-Priced Services and allocated the risk of the volume of Task-Priced Services to the contractor. The preferred tenderer indicated in its statement of compliance that it was compliant with Defence's proposed risk allocation in relation to the volume of Task-Priced Services.

During contract negotiations, the preferred tenderer advised that it would not accept the risk of the volume of Task-Priced Services and that if the volume of Task-Priced Services fell below the maximum rate of effort specified in the contract it would need to renegotiate its prices for Task-Priced Services. The tenderer's position was that this non-compliance was included in its tender as it was included as a footnote to the pricing table for Task-Priced Services (notwithstanding that the tenderer had indicated compliance with the relevant contract provisions in the statement of compliance). The financial TEWG was the only TEWG which had access to the pricing tables during tender evaluations. While the financial TEWG had seen the notes, they had not informed the TEO generally or the other TEWGs of the content of the notes.

Although Defence was able to negotiate an acceptable position in relation to the issue, the lack of communication between TEWGs complicated the negotiations and required Defence to re-assess whether the tenderer still represented best value for money.

45 It is beneficial to have the TEO geographically co-located as far as practicable, however if this is not practicable and members of the TEWGs or the TEB are geographically dispersed, the evaluation team will also need to have appropriate arrangements to allow all team members to actively participate as required in relevant meetings and receive relevant information. This may require

establishing secure Information and Communications Technology (ICT) systems to facilitate the required information access and sharing of information.

Evaluation logistics

46 As noted in Chapter 5 of the CPG, the TEP should set out the logistical arrangements for the evaluation. These can be significant for large procurements, and include issues relating to the safe custody of tenders, evaluation facilities, ICT requirements and travel arrangements for evaluation team members.

47 Tender evaluation rooms assist in maintaining the confidentiality and security of tenders and minimise the risk that tenders will be discussed in an open work environment shared by staff members who are not involved in the evaluation. While Defence has a number of on-site tender evaluation rooms, given the number of evaluations that are conducted by Defence, the demand for these facilities can be high and it may be necessary for the evaluation team to arrange alternative facilities (which in some cases could be off Defence premises).

48 The evaluation team should establish rules and processes for the storage of and access to electronic copies of tenders and evaluation material. This may include establishing and using a database or tender evaluation tool, electronic folders and naming conventions. Appropriate security (for example, password protected folders) should also be established. These requirements may also be addressed as part of the Legal Process and Probity Plan (if a separate plan is developed). Legal Process and Probity Plans are discussed in Chapter 3 of the CPG.

Planning, briefing and training

49 Defence officials will usually need to address a number of practical issues prior to commencing tender evaluation, including:

- a. identifying the documents or reports (and their format) relevant to the conduct of the tender evaluation which the evaluation team will need to have in place (for example, tender receipt and registration log, facility entry and exit log and report, communications officer log and report etc);
- b. identifying the manner in which each TEWG will assess each of the evaluation criteria allocated to it and the documentation or tender evaluation tools required, and whether any training is required. This should be set out in the TEP;
- c. identifying the required outputs of the tender evaluation (for example, screening and/or shortlisting report, TEWG reports and the evaluation report etc) and the format of those reports;
- d. identifying key project issues and potential risks that need to be considered during tender evaluation; and
- e. preparing the tender evaluation schedule.

50 For major tender evaluations, evaluation team members will usually participate in a project briefing at the start of the evaluation to inform members about the evaluation process. This briefing would usually cover some or all of the following matters:

- a. an overview of the project;
- b. accountability, probity, ethics and fair dealing, including confidentiality and conflict of interest requirements (this part of the briefing may be given by the legal process or probity adviser, if one is appointed);
- c. security requirements and arrangements;
- d. evaluation organisation structure, membership, roles and responsibilities;
- e. tender evaluation schedule and administrative arrangements (for example, distribution of tender volumes, the tender room, the use of tender evaluation tools or databases etc);
- f. evaluation methodology and process, including a review of the TEP, areas of responsibility for evaluation, evaluation stages and required outputs;
- g. the tender clarification process; and
- h. where a tender evaluation tool or database is being used, guidance on how to use the tender evaluation tool or database.

51 Prior to the commencement of the evaluation, evaluation team members should be provided with copies of (or have electronic access to) all relevant documents, including the request documentation, TEP and any related guidance, Legal Process and Probity Plan, draft report formats (for example, TEWG report/evaluation report), tender evaluation schedule, and any other documents which may assist the tender evaluation members in understanding the project or the issues which need to be considered in carrying out the tender evaluation (which might include the Project Execution Strategy, a more detailed Acquisition or Procurement and Contracting Strategy, Support Procurement Strategy, the Delegate Submission and any Liability Risk Assessment).

52 Members of the TEB and the TEWG leaders should also ensure that all evaluation team members (particularly external advisers) are aware of Commonwealth and Defence procurement policy applicable to the conduct of tender evaluation.

Chapter 3

How to conduct a complex tender evaluation

Overview of evaluation stages

1 Subject to the terms of the request documentation and the content of the approved TEP, the evaluation process for complex Defence procurements typically comprises the following sequential stages (see Annex A to this Guide for a diagrammatic representation of the evaluation process):

Receipt and registration of tenders

2 Procedures to receive and register tenders should be conducted in accordance with the TEP and ensure fairness and impartiality with submissions being kept secure and treated in confidence.

3 Defence officials should identify and record any late tenders. Subject to the terms of the request documentation, a late tender should not be opened and accepted into tender evaluation, unless there has been mishandling by Defence.

4 Defence officials will usually prepare a Tender Receipt and Registration Report for approval by the delegate.

Initial screening

5 The aim of the initial screening is to exclude tenders from further consideration where they are incomplete or do not meet minimum content and format requirements, conditions for participation, or 'Essential' requirements specified in the request documentation. The initial screening process should be set out in and conducted in accordance with the TEP.

6 Any tender that does not meet the screening requirements should be excluded from further consideration unless Defence considers that there has been an unintentional error of form (usually relevant only in the case of minimum content and format requirements). Any decision by the TEB to exclude a tenderer at the initial screening stage should be endorsed by the TESSG and probity adviser (if one is appointed)

7 The evaluation team should identify any alternative tenders and assess whether the alternative tender should be evaluated. Alternative tenders should be documented in the initial screening report together with an explanation as to whether the alternative tender will be evaluated and the reasons for the decision.

8 Depending on the terms of the request documentation, an incomplete tender may also be excluded from further consideration during the initial screening process. This should only be the case where the tender is so incomplete that it would not be capable of a meaningful evaluation.

9 At this stage, Defence officials will usually identify all pricing information in a tender and quarantine this for evaluation by the financial TEWG.

10 During the initial screening stage, any tenders from a tender associated with a current Project of Concern should be identified and referred to the delegate, including the detail of the role that the tenderer has in the Project of Concern. The information provided should be endorsed by the relevant Project of Concern Project Manager. This is because some of the ASDEFCON conditions of tender provide Defence with a discretion to exclude a tender from a tenderer who is involved in a current Project of Concern.

11 An initial screening report should be prepared and approved by the delegate prior to conducting detailed tender evaluation. The purpose of the initial screening process is to undertake a brief initial review of tenders. If any tenders are to be excluded from further consideration as a result of the initial screening, this should be clearly documented in the initial screening report. The reasons should be clearly stated and substantiated as any decision to exclude a tenderer must be justified and defensible.

12 Tenderers who are excluded should be advised as soon as possible that their tenders have been declined after the delegate has approved the recommendation.

Detailed tender evaluation

13 During detailed tender evaluation, the tenderers are assessed against each of the evaluation criteria set out in the request documentation and the TEP. The manner in which the evaluation team will undertake the detailed tender evaluation will depend on the tender evaluation methodology set out

in the request documentation and the TEP. During detailed evaluation, tenders may be progressively shortlisted out of the tender process. Shortlisting is used to identify and exclude tenders which are clearly non-competitive and have no reasonable prospect of exhibiting the best value for money (or where it subsequently becomes apparent during detailed evaluation that the tender does not meet a condition for participation or 'Essential' requirement). The degree of analysis applied to shortlisting must be of sufficient rigour to ensure that excluded tenderers, under further detailed evaluation, stand no reasonable chance of providing the best value for money. Shortlisting (or setting aside) tenderers during detailed evaluation reduces the costs for both Defence and industry. Tenderers who are set aside on this basis should be advised as soon as practicable that their tenders have been declined after the delegate has approved the recommendation, normally based on a shortlisting report. If a tender is set aside late in the process, this recommendation may be included in the evaluation report, rather than a separate shortlisting report.

14 Where the comparative assessment and ranking tender evaluation methodology is adopted, detailed tender evaluations are typically broken into two stages:

- a. First, the evaluation team assesses each of the tenders individually against each of the elements in the evaluation breakdown structure (which might be undertaken at the evaluation sub-criterion or a lower level), on the basis of compliance and/or risk (depending on the criterion), and identifies any risks and potential issues for negotiation. This assessment is then usually rolled up and presented at either the evaluation sub-criterion or more usually at the evaluation criterion level; and
- b. Second, the evaluation team undertakes a comparative assessment of tenders across each of the evaluation criteria (or sub-criteria). Comparative assessment involves the ranking of tenderers in relative order of merit against each evaluation criterion / sub-criterion, including in relation to risk. The comparative assessment should draw out the major differences between tenderers as they relate to the evaluation criteria / sub-criteria. This provides the basis for determining value for money. The ranking of tenders in respect of each of the evaluation criteria / sub-criteria needs to be substantiated and supported by the assessments in the individual TEWG reports.

15 The TEWGs should document the outcomes of their respective evaluations in TEWG reports, with the TEB then recording the outcomes at a higher level in the evaluation report. The evaluation report needs to contain sufficient detail to reflect the outcomes of the evaluation and the key points of differentiation between tenders.

16 As noted above, if it becomes evident during the detailed evaluation that a tender is clearly not competitive, a decision may be made to set aside the tender from further evaluation. A decision to set aside a tender must be justified and defensible. The reasons for setting aside a tenderer should be clearly stated and substantiated in the evaluation report.

Initial value for money assessment

17 Following detailed evaluation, the TEB should conduct an initial value for money assessment and ranking of tenderers. The value for money assessment should be based on the outcomes of the detailed evaluation, including the assessments of tendered prices and risk which are detailed later in this chapter.

18 Following the initial value for money assessment, the evaluation team may recommend:

- a. appointing a preferred tenderer and entering into contract negotiations with that tenderer; or
- b. shortlisting two or more tenderers to participate in further tenderer engagement activities, such as offer definition and improvement activities or parallel negotiations.

Final value for money assessment

19 Following the completion of any further tenderer engagement activities with the shortlisted tenderers (where applicable), the TEB should reassess the tenders in light of the outcome of the engagement activities. This will not be a full re-evaluation of the tenders, but rather an assessment of whether, and if so, how the initial evaluation and value for money assessment needs to be updated in light of the outcomes of the tenderer engagement activities. The evaluation team should record the final value for money assessment in the updated evaluation report (or in some cases, a separate final source evaluation report).

Tender evaluation methodologies

20 Tender evaluation methodologies are the processes set out in the TEP that an evaluation team will apply to conduct the detailed evaluation of tenders in accordance with the evaluation criteria in the request documentation. There is no single tender evaluation methodology that is appropriate in every case, and Defence officials should consider and apply the appropriate methodology for the nature and scope of the particular procurement. Tender evaluation methodologies will typically comprise a mix of qualitative and quantitative assessments.

21 As noted in the CPG and earlier in this Guide, a tender evaluation methodology commonly used for complex Defence procurements is the comparative assessment and ranking method. An overview of the comparative assessment and ranking method is included in Annex B of this Guide. Annex B also includes an example of a simpler evaluation methodology.

22 If the evaluation team is using a software based evaluation tool to facilitate tender evaluations (including the scoring functionality associated with some tender evaluation tools), the evaluation team needs to ensure that the tool is consistent with the tender evaluation methodology detailed in the TEP and the request documentation.

23 As discussed in the CPG, Defence officials should be careful in adopting quantitative based tender evaluation methodologies which are heavily reliant on weighted scoring methodologies. These methodologies are often used as part of software based tender evaluation tools. The risk with a weighting or scoring based methodology is that if it is not carefully designed, it may result in Defence being unable to place appropriate weight on key issues identified as part of the tender evaluations. For example, while a key issue may result in a low score for a particular aspect of the tender evaluation, that score may represent only a small part of the overall score and not be truly reflected in the overall evaluation outcome of the tender. Accordingly, Defence usually prefers to use a tender evaluation methodology that allows key issues to be captured qualitatively outside of a narrow scoring methodology.

Risk

24 The CPRs require that Defence 'should consider risks and their potential impact when making decisions relating to value for money assessments' (CPRs paragraph 8.2). Accordingly, evaluation teams need to ensure that the tender evaluation includes an assessment of the level of risk associated with each tender.

25 The evaluation team should assess risk in accordance with the risk ratings and methodology set out in the TEP. The CASG Project Risk Management Manual (PRMM) should be used as the prime source of reference for risk assessment in tender evaluations (An example of a risk assessment methodology is included in Annex B to this Guide).

26 Risk assessments in tender evaluations are informed judgments of the risk associated with all aspects of a tender. The kinds of risks that should be considered include those associated with the achievement of the performance of a system/equipment, alignment of the Contract Work Breakdown Structure (CWBS) with the Statement of Work (SOW), schedule, cost, project management, work health and safety, Australian Industry Capability, through life support, corporate structure and the financial viability of the tenderer. These risks need to be taken into account not only in the context of the tenderer itself, but also the contribution that key members of its team (for example, key subcontractors) make to these risks.

27 Some requirements in request documentation will be more demanding or difficult to satisfy than others, and therefore inherently more 'risky', requiring particular attention in the assessment of the risk of a tender. For example, claims by a tenderer that it complies with the performance requirements of a system/equipment will typically warrant further investigation by Defence to ensure that the claim can be substantiated (See the helicopter evaluation example given in Chapter 5 of the CPG). In addition, requirements which are relatively less demanding or difficult to satisfy might be made inherently more risky by the manner in which a tenderer proposes to satisfy them and may therefore also be deserving of particular attention in the assessment of risk of a tender.

28 Insufficient information or lack of clarity in a tender will have an impact on the assessment of risk and, as a consequence, the robustness of the evaluation. Accordingly, the evaluation team should seek to clarify relevant aspects of a tender to ensure it is properly able to assess the risk with the tender. If, despite rigorous clarification, the evaluation team concludes that the tenderer has provided insufficient information in relation to a stated requirement, the evaluation team should assess and record the risk associated with that element of the tenderer's response.

29 Wherever practicable, the evaluation team should further investigate risks as part of the detailed evaluation process (for example, through clarification or offer definition and improvement activities) so that risks can be addressed with greater certainty in the value for money assessment and hence the selection of the preferred tenderer. By investigating the risk, Defence may be able to downgrade its severity in light of a better understanding of the risk, its likelihood or consequences or any risk mitigation strategies which are in place or may be available. During tender negotiations, Defence may then seek to negotiate the appropriate strategies with the tenderer in order to mitigate the risk.

30 While an initial assessment of risk associated with tenders commences at the level of compliance assessments, overall judgments on the collective implications of risk generally do not become apparent until they are aggregated and an overall assessment of risk is made for each tenderer; typically at the level of discussion in the evaluation report. The assessment of risk in the evaluation report should provide an explanation of the nature of risk, its likelihood and its probable consequences for each tenderer, particularly where the nature of such risks are a major factor in establishing a basis for ranking tenderers. Comparative assessments should contrast relative risks between tenderers and be factored into the value for money assessment leading to the ranking of tenderers.

31 The TEP should outline the process for the assessment of risk (consistently with the PRMM), which should involve:

- a. identifying the risks associated with the tender;
- b. analysing the identified risks to determine:
 - likelihood rating - that is, the likelihood (or probability) of the risk event occurring; and
 - consequence rating - that is, the seriousness of the consequences (or impacts) should the risk event occur.
- c. A single risk rating is then calculated for each risk by assessing the likelihood and consequence of that risk, using the standard risk analysis criteria in the PRMM (see PRMM, Annex D);
- d. evaluating the risks. Each of the identified risks needs to be evaluated in order to determine whether they are acceptable or unacceptable. Unacceptable risks need to be treated; and
- e. treating the risks. This involves identifying options for the treatment of risks and selecting the most appropriate treatment strategy.

Financial evaluation

32 Under Defence templates, the financial evaluation criteria generally address the total tendered price, financial and corporate viability of the tenderer, payment structure and the suitability of foreign currencies and price escalation indices and formulas.

Disclosure of pricing information

33 Chapter 5 of the CPG notes that, in conducting tender evaluations for more complex procurements, it is usual for the pricing information in relation to each tender to be provided only to the financial TEWG and not more broadly within the evaluation team (including the other TEWGs). The reason for this is to ensure that the other TEWGs carry out tender evaluations without being influenced by knowledge of the respective prices tendered.

34 As part of the tender opening process, Defence officials will remove the pricing section of each tender (whether hard copy or electronic) and provide this to the financial TEWG. As part of the tender administrative arrangements, the evaluation team needs to put in place appropriate mechanisms to ensure that other evaluation team members do not have access to the pricing information. In addition, financial TEWG members will need to ensure that they do not openly discuss pricing information in front of other evaluation team members.

35 However, as noted in the CPG, the principle that pricing information should not be disclosed more broadly needs to be applied in a sensible manner. There may be circumstances where it is entirely appropriate to disclose pricing information to other members of the evaluation team to enable those members to properly carry out their own part of the tender evaluation. These circumstances need to be assessed on a case by case basis and any disclosure should be on a need to know basis and restricted to the relevant parts of the pricing information in consultation with the TEB Chair and probity advisor.

Example: As part of its tender, a tenderer sought to cap its liability under the contract by reference to the contract price. The liability provisions and liability caps were being evaluated by the commercial/contracting TEWG. As the commercial/contracting TEWG did not have access to the pricing information, the commercial/contracting TEWG was not able to properly evaluate the proposed liability cap without understanding the amount of the contract price for that tenderer.

The overall contract price in respect of that tenderer was disclosed to the relevant individual in the commercial/contracting TEWG to enable it to complete the evaluation of the liability provisions in respect of that tenderer. The pricing information was disclosed late in the tender evaluation to minimise any potential adverse impact of the disclosure of the information and on the basis that the individual to whom it was disclosed would not communicate the information to anyone else during tender evaluations.

Financial evaluation issues

36 As discussed in the CPG, the financial evaluation team will need to establish the extent to which tendered prices should be normalised between tenderers to ensure that a like for like comparison of each tendered price can be undertaken. The financial evaluation team may also be required to evaluate the impact of any financial arrangements proposed in the tender, including the level of risk assumed by the tenderer in its proposed pricing structure.

37 In evaluating the tendered price, the team will often need to make various assumptions, for example, where the team is evaluating prices which vary depending on volume and the volume is not certain at the commencement of the contract. This may be the case for:

- a. Survey and Quote (S&Q) services where the price payable typically varies based on the number of hours and the mix of labour to be used (as usually there is a mix of labour categories for which different rates are used); or
- b. Task-priced services where the price payable typically varies based on the nature and number of taskings requested by Defence.

38 In order to evaluate the tendered prices for S&Q services and task-priced services, Defence needs to assess the volume of hours/taskings which are expected to occur during the course of the contract term and the mix of labour for S&Q services. This assessment should ideally be based on historical data to the extent that historical data is available and relevant to the procurement (for example, if there is an existing contract which the new contract will replace, the evaluation team could use the volume of hours/mix of labour/taskings which occurred under that previous contract). If, however, relevant historical data is not available, Defence will need to assess the volume of hours/mix of labour/taskings based on its expectations and having regard to any similar contracts which may provide guidance.

39 The basis for determining the volume of hours/mix of labour/taskings for S&Q services and task-priced services should be logical and clearly documented (including in the evaluation report) so it is capable of withstanding challenge and scrutiny. This is particularly important where the expected volume of S&Q services/task-priced services forms a significant part of the overall scope of work under the contract.

40 In addition, where the volume of S&Q services/task-priced services is significant relative to the overall scope of work under the contract, Defence should consider whether it should provide tenderers with an indication of the anticipated volume of such services, or at least provide information which tenderers can use to make their own assessment of the volume of such services. In either case, the request documentation should make it clear that Defence is not promising any particular volume of such services, and tenderers need to rely on their own assessment. In addition, Defence officials should consider the extent to which it sets out in the request documentation its proposed methodology for assessing tenderer pricing for S&Q services/task-priced services, including assumptions about volume of hours/mix of labour/ taskings.

41 In assessing the mix of labour for S&Q services and applying that mix to a particular tender, Defence officials should carefully consider the categories of labour proposed by the relevant tenderer, as often as each tenderer will propose their own unique categories of labour. The evaluation team needs to ensure a 'like for like' comparison during evaluation, and if it is not clear how each of the categories of labour apply under a particular tender, the evaluation team may need to clarify this with the relevant tenderer.

42 Given that the volume of hours/taskings and the mix of labour for S&Q services/task-priced services used for the purpose of carrying out the evaluations will often be an estimate, the evaluation team should also consider whether to conduct sensitivity analysis in order to understand the impact on

the overall price evaluation of a change (increase or decrease) in the volume of hours/mix of labour/taskings. Where the outcome of the sensitivity analysis demonstrates that the outcome is sensitive to the volume of hours/mix of labour/taskings, the evaluation team will need to consider how this affects its evaluation and the value for money assessment.

Example: In the tender process for the support of an existing Defence capability, the overall scope of work under the contract comprised both Recurring Services and S&Q Services, of which the S&Q Services constituted a significant proportion. Of the two tenderers which were shortlisted to participate in parallel negotiations, Tenderer A had a lower price for Recurring Services but on average more expensive rates for S&Q Services across each category of labour than Tenderer B.

Given the significance of S&Q Services relative to the overall scope of work, Defence determined an estimate of the likely number of hours of S&Q Services over the term of the contract. Given that the contract was replacing an existing contract with a similar scope of work, the estimate was determined having regard to the volume of S&Q hours under the existing contract and then adjusted for any differences in the scope of work between the two contracts and other relevant factors. The methodology for determining the estimate and the detailed calculations and adjustments made to historical data were documented in the evaluation report. The request documentation required tenderers to provide rates for a number of different categories of labour. The categories of labour used would depend on the nature of the S&Q Services being performed. Based on the nature of the S&Q Services to be performed, Defence made an assessment of the likely mix of labour.

The effect of incorporating the evaluation of S&Q Services into the overall price evaluation was that Tenderer A was determined to offer a higher overall price, as the anticipated price for S&Q Services based on the estimate of hours for the S&Q Services for Tenderer A was significantly higher than the anticipated price for Tenderer B. Defence also conducted extensive sensitivity analysis to determine the extent to which the outcome of the overall price evaluation was sensitive to both the volume of hours estimated and the mix of labour used. The sensitivity analysis included determining at what volume of S&Q Services Tenderer A had an overall cheaper price (based on Recurring Services and S&Q Services) than Tenderer B. This volume of services was well below the expected volume of S&Q Services. In light of the sensitivity analysis conducted, the evaluation team concluded that the outcome of the evaluation of S&Q Services was not sensitive to either the volume of hours estimated or the mix of labour used. Details of the sensitivity analysis and the outcomes were recorded in the evaluation report.

Evaluating whole of life costs

43 For most complex Defence procurements relating to goods or works, the tendered price is seldom the only relevant cost and the evaluation of whole of life costs is a critical aspect of the tender evaluation. In making a value for money assessment, a comparison of the relevant benefits and costs on a whole of life basis should be undertaken. Whole of life costs are the total costs arising from a decision to purchase and are incurred in respect of the purchased item over its life cycle from acquisition to disposal.

44 The assessment of whole of life costs seeks to take into account the full potential financial implications of a purchase. A 'whole of life' cost assessment for the procurement of Defence materiel will typically include the initial purchase price, installation costs (including, for example, modification of existing platforms), operating and support costs, cost of spares, licence fees, and disposal costs. It may also take into account (where relevant) the timing of replacement of a product or systems within a product at the end of their life of type.

45 For example, a tendered item may have an initial cheaper price but thereafter require more extensive (or expensive) maintenance or more frequent replacement of components as compared to other tendered items. Some items may impose costs on Defence outside the project itself, such as modification of platforms or other equipment. In these circumstances, to ensure the selection of the tender which represents best value for money, all relevant costs associated with a purchase should be factored into the financial evaluation.

46 In some cases, the assessment of whole of life costs will be a simple process as the total costs and benefits of ownership will be readily apparent. In respect of more complex procurement, evaluating whole of life costs may require the development of a detailed methodology to ensure that all relevant costs are identified and quantified where appropriate. Financial advisers may need to be engaged to assist in the evaluation of whole of life costs for more complex procurements especially where life cycle cost modelling is required.

47 There is no simple formula for assessing whole of life costs. Assessing whole of life costs will require some judgement about options and future events. To the extent that assumptions are made in

evaluating whole of life costs, the evaluation team will need to assess whether it should carry out sensitivity analysis in relation to the assumptions.

48 The TEP should outline the methodology to be adopted in assessing whole of life costs. The evaluation report should provide an overview of the methodology adopted and details of any assumptions made and sensitivity analysis conducted.

Example: As part of the evaluation of tenders for the acquisition of a new aircraft, the evaluation team assessed the whole of life costs of the purchase. Modifications were required to ships and existing facilities and the extent and nature of the modifications required were dependent on the aircraft acquired. In addition, the weapons to be acquired varied depending on the successful solution. The price evaluation factored in the anticipated cost of the modification to the existing ships and facilities and the cost of acquiring the relevant weapons for each of the solutions. As part of the assessment, the evaluation team made independent investigations of the anticipated costs including, in the case of the cost of acquiring the weapons, obtaining tender quality pricing from prospective suppliers.

Value for money assessment

49 'Achieving value for money is the core rule of the CPRs. Officials responsible for a procurement are required to be satisfied, after reasonable inquiries, that the procurement achieves a value for money outcome' (see CPRs, paragraph 4.4). The application of this rule requires consideration of the financial and non-financial costs and benefits associated with the procurement, for example, the achievement of qualitative outcomes such as improved or innovative design and service standards, as well as quantitative outcomes such as an overall reduced cost of delivering capability and related services.

50 As noted in Chapter 1 of this Guide, the price of the goods, works or services being acquired is not the sole determining factor in assessing value for money. Defence officials need to assess which tender offers the best value for money having regard to the outcome of the assessment against each of the evaluation criteria, including price, and any risks associated with the tender. Accordingly, the value for money assessment should take a holistic view of the tenderer and its offer against the evaluation criteria. The assessment should be based on:

- a. the evaluation of each tender against the evaluation criteria (or sub-criteria), including relative ranking of tenders against each criterion and across all criteria;
- b. the identification and assessment of the key areas of discrimination between each tender in relation to the criteria or sub-criteria (for example, the relative strengths and weaknesses);
- c. whole of life costs (including tendered prices) and an explanation of cost risk attributable to each tender;
- d. an assessment of the risks associated with each tender and an indication of the strategies that are necessary to manage the risks; and
- e. an explanation of the actions that would be necessary to enter into a contract, for example, the extent of negotiation required in relation to contractual non-compliances (which would normally take the form of a draft Contract Negotiation Directive).

51 If further tenderer engagement activities and/or negotiations are conducted following the initial evaluation outcome, Defence officials should confirm at the conclusion of those activities or negotiations that the preferred tenderer's offer continues to represent value for money. This is because if the preferred tenderer's offer changes significantly during negotiations, there is a risk that that tender may no longer represent value for money.

Example: In a tender process, the two leading tenderers were assessed to be very close with little distinguishing the two. The tenderer who was assessed as offering the best value for money was appointed as the preferred tenderer and contract negotiations with the preferred tenderer commenced. During contract negotiations, the preferred tenderer raised a number of issues and non-compliances which were not included in its original tender submission. While the Defence negotiation team made a number of minor concessions in relation to some of the new issues and non-compliances (primarily in relation to the wording of the contract), the team advised the tenderer that it was not in a position to make any additional amendments of a more significant nature given the closeness of the two tenders. Following completion of contract negotiations, Defence confirmed that the negotiated contract continued to represent best value for money.

52 To support the assessment of value for money in the evaluation report, the TEP may provide for the use of a 'value' descriptor to describe the overall value of a particular tender, before price is considered. This is another mechanism that can be used to assist in the ranking of tenderers. In this context, 'value' is a judgement based on the combined influences of the compliance and risk assessments. Value is considered in isolation of price. An example of a value rating table is set out in Annex B to this Guide.

53 Annex C identifies some of the key issues which can arise during tender evaluations and identifies possible steps which can be adopted to assist in preventing or mitigating those issues.

Offer Definition and Improvement Activities

54 In the most complex of Defence procurement processes, the request documentation and the TEP may provide for the conduct of offer definition and improvement activities (ODIA) as a further stage in the detailed evaluation process. ODIA is usually undertaken with two tenders that have been shortlisted following the initial detailed evaluation.

55 For more information about ODIA, Defence officials should refer to Chapter 5 of the CPG and the ODIA Better Practice Guide which is currently under development.

Negotiation issues

56 A key part of the work of evaluation teams during evaluation is to identify those issues and risks that it will be imperative to successfully address should Defence undertake contract negotiations (or ODIA) with the relevant tenderer. When recording their assessment of tenders against the evaluation criteria, the TEP will usually require evaluation team members to record negotiation issues (and/or issues for ODIA), as well as an indicator as to how essential it is to successfully negotiate the issue.

57 The following indicators are sometimes used in TEPs to support the identification of negotiation issues:

Classification	Description
Must obtain	Any contract which does not achieve the acceptable resolution of the issue is likely to be unacceptable. Additional cost may need to be incurred by the Commonwealth to achieve resolution, but may affect value for money assessment.
Should obtain at cost.	The negotiation team should attempt to hold the Commonwealth's desired position in relation to this issue, but a reasonably negotiated compromise would be acceptable. Additional cost may need to be incurred by the Commonwealth to achieve resolution, but may affect value for money assessment.
Should obtain at no cost.	An inconsequential issue which may be traded off to reduce cost to improve negotiated outcome in another area.

Chapter 4

Products of the tender evaluation process

Overview

1 This Chapter provides an overview of the documents which will be required by Defence in relation to its tender evaluations. While the documents which will be produced as a result of the conduct of tender evaluation will vary from procurement to procurement, it is imperative that the process followed and the tender evaluation itself is clearly documented to ensure that the process delivers good outcomes which are defensible, particularly if an unsuccessful tenderer challenges the outcome of the process. The level of detail in each of the documents should be commensurate with the nature and complexity of the procurement.

2 As discussed in the CPG, prior to commencement of the tender evaluation for a complex procurement, Defence officials will have developed and approved the key procurement documentation, including the procurement plan, request documentation, TEP and, for the more complex or sensitive procurements, a Legal Process and Probity Plan and/or associated probity documentation (for example, conflict of interest declarations and confidentiality agreements etc).

3 The following documents will typically be produced as a result of conducting tender evaluations. The range of documents necessary for a particular evaluation will depend on the nature and complexity of the procurement and the activities which are conducted as part of the tender evaluations (and in particular, the scope of tenderer engagement activities):

- a. Tender Receipt and Registration Log – to record the receipt and registration of tenders;
- b. Communications Officer Log and Report - to record all communications with tenderers;
- c. Initial Screening and/or Shortlisting Report – to record the outcome of the initial screening and any shortlisting of tenders;
- d. TEWG reports which records the findings from the detailed evaluation conducted by each TEWG;
- e. Source Evaluation Report (SER) or tender evaluation report - to record the findings and outcomes of the tender evaluation;
- f. If ODIA is undertaken, any additional process documentation to support those activities;
- g. The updated or final TEWG reports and SER (following the outcomes of the ODIA). The updated or final TEWG reports can often be incorporated into the updated or final SER rather than separate standalone reports being prepared;
- h. Contract Negotiation Strategy and Contract Negotiation Directive – to set out the Commonwealth's negotiation strategy with the preferred tenderer/s, and the issues to be negotiated and Defence's positions on the issues, respectively;
- i. Contract Negotiation Report – to set out the outcome of the negotiations;
- j. Legal Process and Probity Report – to set out the probity report and sign off provided by the legal process and probity advisor;
- k. Other adviser's reports – to set out the reports and sign offs from other advisers, for example, the legal adviser in relation to the negotiated contract, the financial adviser in relation to matters such as the financial evaluation, financial viability assessment, or the final pricing and payment schedule;
- l. Debriefing Reports - to set out the content of each proposed debriefing to tenderers; and
- m. Delegate Submission - to seek formal approval of the SER and for Defence to enter into the contract negotiations.

Source Evaluation Report

4 Defence officials should prepare an evaluation report for all complex procurements. The SER should clearly outline the considerations and justifications that led to the source selection recommendation(s). If Defence proposes to shortlist tenderers to participate in further tenderer engagement activities, the evaluation team may prepare an interim SER which clearly outlines the considerations leading to the shortlisting of tenderers. The relevant delegate should approve the

interim SER before the team proceeds with the further activities. Following completion of the further activities, the evaluation team should either update the interim SER or prepare a final SER which documents the decision to select a preferred tenderer.

5 The SER (and the TEWG reports) should contain sufficient detail to ensure the source selection recommendation and each of the findings/conclusions are substantiated, defensible and able to withstand challenge and scrutiny. The level of detail included in the SER (and the TEWG reports) should be commensurate with the nature and complexity of the procurement. The level of detail in the documentation will also be determined by the nature and range of issues which arise during the tender evaluations and the need to clearly articulate the key points of differentiation between tenders.

6 The evaluation team needs to ensure that all material issues and risks identified in the TEWG reports are captured in the SER and that the findings/conclusions contained in the SER are consistent with the findings/ conclusions in the TEWG reports.

7 Preparing the SER can be resource intensive and the evaluation team therefore needs to ensure that it allocates sufficient resources to this activity so that it is done properly.

8 The SER should contain sufficient detail on each of the following:

- a. the outcome of the initial screening and any shortlisting;
- b. details of the evaluation process and methodology used, including details of any tenderer engagement activities conducted;
- c. the justification for setting aside any tenders that are clearly not competitive;
- d. the outcome of the evaluation in relation to each of the evaluation criteria;
- e. the outcome of the comparative assessment of tenders against each of the evaluation criteria;
- f. a clear statement of the risks in relation to each of the tenders;
- g. the value for money assessment and recommendations; and
- h. details of further actions to be taken.

9 An SER (Medium to High Risk Acquisitions) template can be found on the [Commercial Division Tools and Template Intranet Page](#). The SER template assumes the preparation of separate TEWG reports. As with all templates, the SER template should be tailored as appropriate in the context of the particular evaluation.

Chapter 5

Evaluating Foreign Military Sales (FMS) vs commercial procurement

1 For some materiel related procurements, Defence may issue request documentation for a commercial procurement and a letter of request for a Foreign Military Sale (FMS) case in parallel to meet the capability requirement. This raises a number of unique evaluation issues which need to be carefully considered and addressed as part of planning the procurement and in conducting the evaluation. Given the terms under the FMS system are significantly different to the ASDEFCON contract terms for a commercial procurement, there is no common commercial tender evaluation baseline against which the respective responses can be evaluated. Accordingly, the evaluation methodology needs to address how a 'like for like' evaluation can be undertaken between the commercial responses and the FMS response.

2 As discussed in the DPPM, an FMS case involves a direct government-to-government arrangement between Defence and the US Government under the FMS program. The procurement officer in Australia forwards a complete statement of requirement to Defence Materiel Washington (DEFMAT (W)) using a request for a Letter of Request (LOR). The LOR is sent to the US Government by the Director Foreign Military Sales within DEFMAT (W). After considering the LOR, the US Government responds to Defence with a Letter of Offer and Acceptance (LOA) which, following the signature of both parties, forms the FMS contract.

3 As noted above, the terms of an FMS contract are significantly different to the standard contract provisions and risk allocation in the ASDEFCON templates, generally adopting an approach which is less favourable to Defence. Some of the key issues and risks arising from conducting a procurement under FMS compared to a commercial procurement include:

- a. the US Government procures the items on terms and conditions that conform to US Department of Defense regulations and procedures. There can be a disparity between the acceptance procedures applied by the US Government and those used by Defence to satisfy itself as to the condition of the goods or services being procured. Accordingly, it is important to identify in the LOR any specific requirements regarding the condition of the goods or services;
- b. FMS contracts require the purchasing government to pay all costs that may be associated with the sale as the US Arms Export Control Act 1976 (US) requires that the FMS program be conducted at no cost to the US Department of Defense. As a result, the total price of items procured is billed to Defence even if that cost exceeds the amount estimated in the LOA;
- c. Defence assumes the risk of delay, with the US Government only being required to use its best efforts to advise Defence where the delays may substantially affect delivery dates;
- d. the indemnity, liability and warranty provisions in an FMS arrangement are far less favourable to Defence than the ASDEFCON provisions, and in fact require the Commonwealth to indemnify the US Government against loss or liability;
- e. the scope of intellectual property rights and access to technical data are less favourable to Defence; and
- f. the US Government has no liability for infringement or violation of intellectual property or technical data rights.

4 In order to facilitate the tender evaluation, Defence could seek to reduce the 'gap' between the FMS case and the commercial procurement by attempting to more closely align the terms of the FMS contract in the LOR to the terms of the contract used for the commercial procurement. However, Defence's ability to do this is usually limited as it depends on the willingness of the relevant US Government contracting officer to agree to the additional terms included in the LOR. Alternatively, Defence officials can seek to negotiate separate agreements with the relevant FMS contractors, for example, to ensure the necessary technical data and IP rights are given to Defence (which may not otherwise be available through the FMS provisions). The cost of these separate agreements can then be factored into the evaluation.

5 Given that there is no common tender evaluation baseline, the tender evaluations of the commercial responses and FMS response need to include an assessment of the key areas of difference between the LOA for the FMS case and the tender for the commercial procurement. Typically, the assessment of the difference between the LOA and the tender will identify the areas of difference which have a cost or risk impact on Defence or would otherwise provide a benefit to Defence. These differences are either evaluated quantitatively through a price adjustment to the tendered price or qualitatively (or through a combination of the two).

Example: Defence conducted a procurement process that competed an FMS case against a commercial procurement. As part of planning the procurement, Defence considered its proposed tender evaluation methodology and its approach to evaluating the differences between the LOA and the tender. In drafting the LOR, Defence included a number of additional terms to more closely align the terms of the FMS contract to the terms of the contract used for the commercial procurement, for example, by seeking more extensive warranties, intellectual property rights and access to technical data. In addition, Defence sought more information than is typically requested under an FMS case to more closely align the LOR with the information requested in respect of the commercial procurement (i.e. in the Tender Data Requirements). Defence was aware that given the manner in which the FMS program operated, there was no guarantee that the US Government would agree to the additional terms or provide the additional information, but ultimately was able to narrow the gap in some respects.

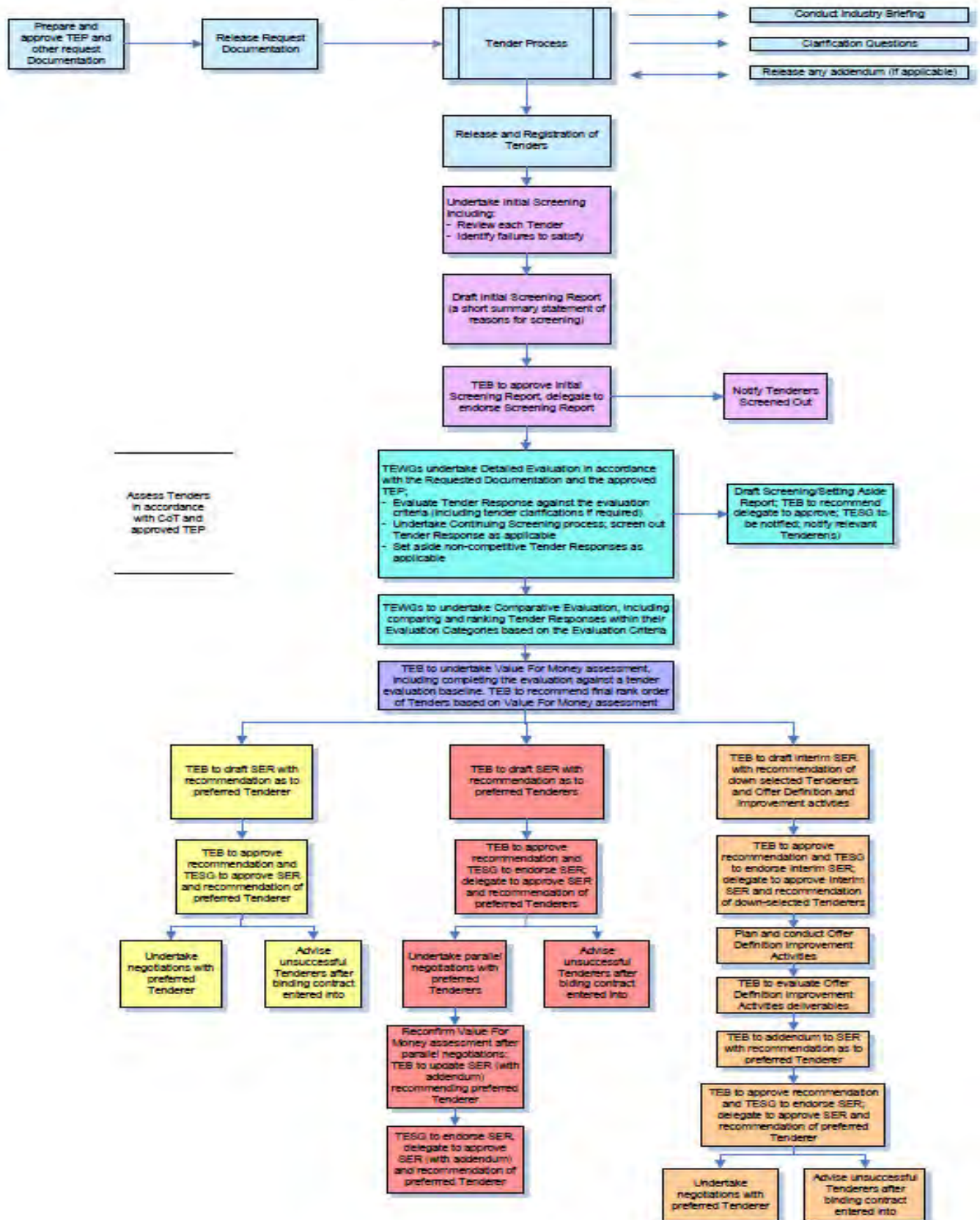
In conducting the evaluation, the key areas of difference between the LOA for the FMS case and the tender for the commercial procurement which had a cost or risk impact on Defence or would otherwise provide a benefit to Defence were identified and evaluated. Examples of the key areas of difference which were evaluated included:

- (a) warranties - the assessment involved a price adjustment and a qualitative assessment;
- (b) intellectual property rights and access to technical data - the assessment involved a qualitative assessment;
- (c) indemnity and liability provisions - the assessment involved a price adjustment;
- (d) Australian Industry Capability - the assessment involved a price adjustment and a qualitative assessment; and
- (e) differences in the allocation of other key risks - the assessment involved a combination of price adjustments and qualitative assessments depending on the particular risk and the extent to which it was capable of being costed.

6 In light of the difficulties associated with evaluating an FMS case against a commercial procurement, it is important that Defence officials set out the agreed evaluation methodology in the TEP, and in particular the approach to evaluating the differences between the LOA and the commercial tenders. It is also important that the outcomes of the evaluation (and in particular the outcome of the assessment of the differences between the LOA and the tenders) are set out in the SER to ensure the outcome of the evaluation is defensible and able to withstand challenge and scrutiny.

Annex A

Overview of Tender Evaluation Process



Annex B

Comparative Assessment and Ranking Method

Introduction

- 1 Comparative assessment involves ranking tenders in their relative order of merit against the requirements of the request documentation by evaluating tenders (including their associated risks) against each evaluation criterion, to arrive at a recommendation of the overall merit of the tenders against the requirements.
- 2 The three key steps in the comparative assessment and ranking method are:
 - a. evaluating each tender against each of the evaluation criteria;
 - b. conducting a comparative assessment of tenders in respect of each of the evaluation criteria; and
 - c. conducting a value for money assessment.
- 3 These steps are discussed in turn below.

Evaluating against each of the evaluation criteria

The 'Technical' evaluation

- 4 Each tender will normally be assessed against an evaluation criterion that relates to the extent to which the tender meets the Statement of Requirements and related specifications of the request documentation. This assessment is often described the 'technical' evaluation. The Technical TEWG will normally undertake its evaluation by reference to a detailed evaluation breakdown structure of the requirements, with the compliance and risk assessments being done at the lowest level of the breakdown structure (which might be at the evaluation element or sub-sub-criterion level). These individual assessments are then 'rolled up' and presented in the TEWG report (and SER) at the evaluation criterion or sub-criterion level.
- 5 The TEP should define the 'compliance' ratings to be used during the technical evaluation to assist in differentiating between tenders. As noted in Chapter 5 of the CPG, ratings that are commonly used include:
 - a. **Exceeds:** the tendered solution exceeds the requirement specified in the request documentation in a manner which offers significant additional benefits to Defence;
 - b. **Compliant:** the tendered solution meets the requirement specified in the request documentation or, where it exceeds the requirement, there is no significant additional benefits to Defence; and
 - c. **Deficient:** the tendered solution does not meet the requirement specified in the request documentation.
- 6 Deficiencies are often further classified as:
 - a. **Critical:** a deficiency that cannot be readily remedied and which is of such significance that it may seriously prevent the principal project objectives from being achieved;
 - b. **Significant:** a deficiency that has the potential to prevent an element of the principal project objectives from being achieved; and
 - c. **Minor:** a deficiency that has no substantial implications for the project objectives and, subject to negotiations with the tenderer, may be acceptable without remedial action.
- 7 In applying the deficiency ratings, the evaluation team (which may be a Technical TEWG) needs to judge each deficiency on its merits as presented, irrespective of the case or cost of rectification. Having made this judgement, the evaluation team then assesses how readily the deficiency might be overcome and whether or not such deficiencies should be rectified or identified as a shortcoming in the response.
- 8 'Critical' deficiencies will typically only be relevant to 'Essential' (if any) or 'Very Important' requirements. All 'Critical' deficiencies should be highlighted and explained in the SER in terms of why the deficiency was assessed as 'Critical' and why the deficiency cannot be readily remedied. If a tender is assessed as having a 'Critical' deficiency, the evaluation team will need to assess whether the tender should be set aside.

9 As well as assessing the tenderers' compliance against the technical requirements, the evaluation team needs to assess the risk that the tenderers' solution will perform to the level of compliance offered against the requirements. In the context of the technical evaluation criterion, risk is assessed in terms of the probability of the tenderer's solution not achieving the stated level of compliance, and the consequence of the risk event based on the risk categories identified in the TEP (which, for example, might be the risk to performance, schedule, cost or supportability). Risk assessment is discussed further below in this Annex.

Other non-price evaluation criteria

10 The evaluation of tenders against other non-price evaluation criteria may use a similar assessment approach as with the technical evaluation, or may adopt a modified methodology, as appropriate for the particular criterion. Evaluation criteria may be broken down into sub-criteria or lower level evaluation elements to assist with the evaluation of tenders against the particular criterion.

11 In the case of the evaluation of compliance with the draft conditions of contract, this usually involves an assessment of the 'risk' to Defence (that is, the Commonwealth) of the non-compliances. This risk assessment may involve a qualitative assessment of the implications of the changed risk allocation that arises as result of the non-compliance. This assessment may also use standard risk descriptors (see the risk assessment methodology below). In addition, the evaluation will also usually involve the evaluation team undertaking a quantitative assessment of the 'cost' to the Commonwealth of the changed risk allocation, which will then need to be 'priced in' (that is, added on) to the tendered price.

12 The evaluation of compliance with the draft conditions of contract often takes the form of a table, an example of which is at Annex D to this Guide. This table can also be used for any offer definition and improvement activities or negotiations (for example, as an attachment to the Contract Negotiation Directive), and can be further updated with the outcomes of those activities or negotiations, as the case requires.

13 The assessment against the non-price criteria should generally be in the form of a qualitative statement that addresses the key strengths and weaknesses of the tender together with the risks identified. Quantitative methods may be used to support the qualitative statement where appropriate.

Financial (price) evaluation

14 Some considerations relating to the financial evaluation (including the evaluation of the tendered price, and whole of life costs) are discussed in Chapter 3 of this Guide.

Comparative assessment of tenders

15 Following the assessment of each of the tenders against each of the evaluation criteria, a comparative assessment is undertaken of all tenders on a qualitative basis in respect of each of the evaluation criteria. Comparative assessment involves the ranking of tenderers in relative order of merit against each of the evaluation criteria, including risk. The comparative assessment should draw out the major differences and identifies discriminators between the tenders as they relate to the evaluation criteria.

16 Where the TEO involves TEWGs, the comparative assessment will be conducted firstly at the TEWG level in respect of those evaluation criteria for which each TEWG is responsible and then at the TEB level in respect of all evaluation criteria.

17 In relation to the technical evaluation, the evaluation team may decide to record the compliance and risk assessments of the technical requirements in a table, as follows:

Requirement (from SoW or specification)	Tenderer A		Tenderer B		Tenderer C	
	Compliance	Risk	Compliance	Risk	Compliance	Risk
1.1.1	Deficient minor	Medium	Deficient significant	Low	Meets	Very High
1.1.2	etc					
1.1.3 etc	etc					

18 Recording the evaluation in this kind of format may allow the evaluation team to more easily identify and draw out the key areas of discrimination across the relevant evaluation criteria.

Value for money assessment

19 Following the completion of the comparative assessment of tenders, the evaluation team conducts a value for money assessment to determine which tender offers best value for money.

20 It should be noted that the tender which receives the highest overall ranking as part of the comparative assessment (for example, is ranked first against the most number of evaluation criteria) will not necessarily be the tenderer which offers the best value for money. This is because the value for money assessment involves a more holistic assessment of each of the tenders, including an aggregates assessment of overall risk, and in particular allows the evaluation team to consider price in the context of the 'value' of the tenders against the non-price criteria.

Value rating table

21 As noted in Chapter 3 of this Guide, the TEP may provide for the use of a 'value' descriptor to describe the overall value of a particular tender, before price is considered, with 'value' being a judgement based on the combined influences of the compliance and risk assessments against the non-price evaluation criteria.

Value Rating	Value Rating Guidance
Very Strong	Corresponds to compliance levels of Exceeds or Compliant with Negligible or Low risk magnitude.
Strong	Corresponds to compliance levels of Exceeds or Compliant with Moderate risk magnitude, or Deficient – Minor with Negligible or Low risk magnitude.
Fair	Corresponds to compliance levels of Exceeds or Compliant with High risk magnitude, Deficient – Minor with Moderate risk magnitude, or Deficient – Significant with Negligible or Low risk magnitude.
Marginal	Corresponds to compliance levels of Exceeds or Compliant with a Very High risk magnitude, Deficient – Minor with High or Very High risk magnitude, or Deficient – Significant with Moderate risk magnitude.
Unacceptable	Corresponds to compliance levels of Deficient – Significant with High or Very High risk magnitude, or Deficient – Critical with any risk magnitude.

Risk assessment methodology

22 This section sets out a basic risk assessment methodology. Defence officials need to consider and tailor the consequence and probability descriptors by reference to the particular procurement they are undertaking.

23 In the more complex procurements, the TEP may set out separate Consequence tables for specific evaluation criteria. For example, for the technical evaluation, the Consequence table may have descriptors that are focussed on the performance of the platform, equipment or system being procured. Whereas for the financial evaluation, the Consequence table may have descriptors focused on potential cost increases of increasing magnitudes. Alternatively, the TEP may set out Consequence tables by risk category that are able to be applied across all evaluation criteria, where relevant. For example, the TEP could set out individual Consequence tables for Performance, Schedule, Cost and Supportability.

24 Identification of risks during assessment is made at the lowest level of assessment. Assessment encompasses consideration of the Consequence or Impact of risk on the function under consideration, and the Probability or Likelihood of the risk arising. The consequence and probability are then combined to determine an overall Risk Rating.

25 The determination of the consequence of risk on each function forming part of the requirements is influenced by various factors. Consequence can be considered by identifying the overall outcomes

to be delivered across the contract and considering the likely consequences of risk as a result of the identified factors.

Risk Consequence Example 1 (Major Capital Acquisition)

Consequence	Consequence Description
Extreme	<p>Critical increase in acquisition cost – eg project unaffordable</p> <p>Critical increase in Through Life Costs. – eg support unaffordable</p> <p>Critical schedule slip. [eg > 3 years – consider project cancellation]</p> <p>Critical reduction in operational performance. – eg project will not deliver a capability usable by Capability Manager</p> <p>Critical reduction in supportability – eg platform unable to be supported</p> <p>Critical reduction in technical integrity. – eg platform unable to be safely or reliably operated</p> <p>Critical failure of equipment leading to death/serious injury of personnel eg platform unsafe to use</p>
High	<p>Significant increase in acquisition cost [insert range, eg \$20-50m].</p> <p>Significant increase in Through Life Costs. [insert range, eg \$20m pa]</p> <p>Significant schedule slip. [insert range, eg 2-3 years]</p> <p>Significant reduction in operational performance.</p> <p>Significant reduction in supportability.</p> <p>Significant reduction in technical integrity.</p> <p>Significant failure of equipment leading to injury of personnel.</p>
Medium	<p>Moderate increase in acquisition cost. [insert range]</p> <p>Moderate increase in Through Life Costs. [insert range]</p> <p>Moderate schedule slip. [insert range]</p> <p>Moderate reduction in operational performance.</p> <p>Moderate reduction in supportability.</p> <p>Moderate reduction in technical integrity.</p> <p>Failure of equipment leading to damage to platform.</p>
Low	<p>Minor increase in acquisition cost. [insert range]</p> <p>Minor increase in Through Life Costs. [insert range]</p> <p>Minor schedule slip. [insert range]</p> <p>Minor reduction in operational performance.</p> <p>Minor reduction in supportability.</p> <p>Minor reduction in technical integrity.</p> <p>Minor failure of equipment.</p>
Negligible	The consequences would be dealt with through routine management and operations.

Risk Consequence Example 2 (Services based procurement)

Consequence	Consequence Description
Extreme	<p>Would threaten the survival of not only the program or project, but also Defence's operations; or</p> <p>Has extreme political and/or community sensitivity</p>
High	<p>Would threaten the survival or continued effective function of the program or project;</p> <p>Could significantly impact on Defence's strategic/operational objectives; or</p> <p>Has significant political and/or community sensitivity</p>

Medium	Would not threaten the program or project, but would mean that the program or project could be subject to significant review or changed ways of operating. Has moderate impact on Defence's strategic and/or operational objectives; or Has moderate political and / or community sensitivity.
Low	Would threaten the efficiency or effectiveness of some aspect of the program or project, but would be dealt with internally, or Has minimal impact on Defence's strategic/operational objectives, or Has low political and/or community sensitivity
Negligible	The consequences would be dealt with through routine operations.

26 An assessment of probability of the risk occurring is also required. The assessment is made on occurrence, that is, it is not a constant like impact, but is an individual assessment in each case. The assessment will be based upon the likelihood that the risk will occur in light of the response provided by the tenderer. Probability will be assessed as follows:

Risk Probability

Likelihood	Frequency Description
Almost Certain	Almost certain to occur
Likely	Likely to occur
Moderate	Could occur
Unlikely	Unlikely to occur
Remote	Would only occur in extreme circumstances

27 This assessment will result in the allocation of a Risk Rating, which is a function of the assessment of the Consequence and Probability of these two factors as follows:

Risk Assessment Table

Consequence/ Impact	Likelihood				
	Almost Certain	Likely	Moderate	Unlikely	Remote
Extreme	Significant	Very High	High	Medium	Low
High	Very High	High	Medium	Low	Very Low
Medium	High	Medium	Low	Very Low	Nil
Low	Medium	Low	Very Low	Nil	Nil
Negligible	Low	Very Low	Nil	Nil	Nil

Less complex evaluation methodology

28 As noted in Chapter 5 of the CPG, evaluation methodologies can take various forms depending on the nature and risk of the relevant procurement. The following is an example of a less complex scoring system which includes both quantitative and qualitative aspects. Under this methodology, the scoring of tenders determines the extent of compliance and quality of each tendered response against the requirements set out in the request documentation. Note that the scoring system combines the risk assessment with the qualitative rating to determine the score.

29 This kind of approach could be used for most non-price evaluation criteria, and may be suitable for services based contracts.

Descriptor	Definition	Risk Level	Score
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Descriptor	Definition	Risk Level	Score
Excellent	<ul style="list-style-type: none"> - The tendered offer meets the requirement in all respects. - The evaluator has complete certainty and without reservation that the Tenderer will be able to meet the required standard at the highest level. - The Tenderer's claims are fully supported by the information provided. - The supporting information is comprehensive and complete. - Where consulted, all reference sites confirmed the superior nature of the Tenderer's performance. 	Nil risk	10
Very Good	<ul style="list-style-type: none"> - The tendered offer meets the requirement in most but not all respects. - The evaluator has no reason to believe that the Tenderer will not meet the required standard. - The Tenderer's claims are well supported by the information provided. - Supporting information is comprehensive and complete. - Where consulted, the majority of reference sites generally confirmed the high quality of the Tenderer's performance. 	Very low risk	9 - 8
Good	<ul style="list-style-type: none"> - The tendered offer generally meets the requirement but not in all respects. - The evaluator has no reason to believe that the Tenderer will not meet the required standard. - Supporting information is complete. - Where consulted, the majority of reference sites generally confirmed a good level of service 	Low risk	7 - 6
Satisfactory	<ul style="list-style-type: none"> - The tendered offer just satisfies the requirements but there are some deficiencies and shortcomings in the scope and detail of the supporting information. - The evaluator has some reservations regarding the satisfaction of the required standard. - Where consulted, the reference sites generally confirmed a level of service that was satisfactory without being exceptional. 	Medium risk	5 - 4
Poor	<ul style="list-style-type: none"> - There are major deficiencies in the scope and detail of the tendered offer and/or supporting information and the evaluator has significant reservations regarding the Tenderer's ability to meet the requirement. - Where consulted, the reference sites had reservations about the quality of the service provided. 	High risk	3 - 2
Unsatisfactory	<ul style="list-style-type: none"> - The supporting information is insufficient to allow any judgment. 	Very High - Significant risk	1
Nil Response	<ul style="list-style-type: none"> - There is no response. 	N/A	0

Annex C

Common tender evaluation issues

This Annex identifies some of the key issues which can arise during tender evaluations and identifies possible steps which can be adopted to assist in preventing or mitigating those issues.

Issue	Potential steps to prevent issue arising
<ul style="list-style-type: none"> Insufficient time, resources or skills to carry out the tender evaluations effectively. 	<ul style="list-style-type: none"> Ensure that the request documentation is released early. Plan the tender evaluation upfront so the TEO is aware of how it will go about assessing each of the evaluation criteria, what information it will require to assess each of the evaluation criteria and what key issues are anticipated. Ensure the TEO is adequately resourced and has the necessary skills, training and knowledge/subject matter experts. For large evaluations, identify potential back up or replacement team members. Ensure that tenderers are required to submit all information which Defence requires in order to assess tenders against the evaluation criteria.
<ul style="list-style-type: none"> Failure to effectively plan for and resource tender evaluation. 	<ul style="list-style-type: none"> Ensure logistics support is planned well in advance of receipt and opening of tenders. Ensure tender rooms are available for the duration of the tender evaluation. Ensure members of the TEB and TEWG are appropriately skilled, experienced and available to conduct the tender evaluation.
<ul style="list-style-type: none"> Failure to justify findings/conclusions contained in the SER, the TEWG reports do not adequately differentiate between tenders, or the SER or the TEWG reports otherwise do not include sufficient detail. 	<ul style="list-style-type: none"> Include sufficient detail in the SER and the TEWG reports to justify the source selection recommendation and the various findings / conclusions. Articulate in the SER and TEWG reports the key points of differentiation between the tenders. Include sufficient detail in the TEWG reports about the outcome of the evaluation in relation to each of the evaluation criteria. Include sufficient detail in the SER about each of the following: <ul style="list-style-type: none"> the outcome of the evaluation in relation to each of the evaluation criteria; the outcome of the comparative assessment of tenders against each of the evaluation criteria; the risks in relation to each of the tenders; and the value for money assessment and recommendations. Clearly state in the SER details of the evaluation process and methodology used. Ensure that the level of detail included in the SER and the TEWG reports is commensurate with the nature and complexity of the procurement. Cite all supporting information sources from the tenders.
<ul style="list-style-type: none"> Incomplete or poorly drafted SER due to insufficient time being devoted to the preparation of the SER following completion of the TEWG reports. 	<ul style="list-style-type: none"> Ensure that sufficient time and resources are devoted to the preparation of the SER. Plan the format and structure of the SER as part of preparing for and planning the tender evaluation. Obtain specialist commercial contracting advice and input on the draft SER.

Issue	Potential steps to prevent issue arising
<ul style="list-style-type: none"> Failure to ensure consistency between the various reports resulting from tender evaluation. 	<ul style="list-style-type: none"> Ensure that all material issues and risks identified in the TEWG reports are captured in the SER. Ensure that the findings / conclusions contained in the SER are consistent with the findings / conclusions in the TEWG reports and use cross-referencing where appropriate in the SER.
<ul style="list-style-type: none"> Failure to properly understand an aspect of a tender. 	<ul style="list-style-type: none"> Where an aspect of a tender is unclear or ambiguous, clarify the matter with the tenderer. If a material matter which is unclear or ambiguous is not clarified, outline the reasons for not doing so in the relevant TEWG report and the SER.
<ul style="list-style-type: none"> Inability to consider certain information as part of the tender evaluation due to the limited scope of the evaluation criteria. 	<ul style="list-style-type: none"> Ensure that the evaluation criteria are sufficiently broad. Except where justified in the circumstances, avoid using narrow evaluation criteria. Do not introduce additional evaluation criteria as part of tender evaluation to compensate for narrowly drafted evaluation criteria.
<ul style="list-style-type: none"> Failure to require tenderers to submit all information which is required by Defence in order to assess each of the evaluation criteria and to make a value for money assessment. 	<ul style="list-style-type: none"> In preparing the request documentation, map each of the Tender Data Requirements against the evaluation criteria to identify any gaps and to ensure that the TDRs are comprehensive and capture all of Defence's information requirements.
<ul style="list-style-type: none"> Failure to properly identify and assess risk treatments for risks associated with a tender. 	<ul style="list-style-type: none"> Ensure that as part of the tender evaluation risks are identified and recorded in respect of each tender. Each of the risks can then be assessed and appropriate risk treatments identified. Risks associated with each tender must be taken into consideration as part of the value for money assessment. If required, clarify the identified risks with tenderers.
<ul style="list-style-type: none"> Failure of the TEO members to fully understand the key aspects of a tender. 	<ul style="list-style-type: none"> Ensure that each of the TEO members have a good understanding of the key aspects of each tender. For example, often pricing information (even at a more general level) is not disclosed to any members of the TEWGs outside the Finance TEWG. This can result in a failure by other TEWGs to identify issues or risks in conducting their own evaluation as they do not have an understanding of the basis on which each tenderer has priced the tender. Hold regular meetings of the TEO to assist with communication between TEO members on key issues associated with each tender. Ensure that all TEO members can participate in relevant meetings including those who are working remotely.
<ul style="list-style-type: none"> Failure to properly consider all relevant information included in a tender which is relevant to the procurement. 	<ul style="list-style-type: none"> Implement arrangements to ensure that all relevant information is considered as part of the tender evaluations. For example, often information relating to a legal or commercial issue may be included in that part of a tender submission relating to technical matters. In such circumstances the Technical TEWG should advise the Commercial/Contracting/Financial TEWG about the information. Hold regular meetings of the TEO to assist with communication between TEO members.

Issue	Potential steps to prevent issue arising
<ul style="list-style-type: none"> Failure to effectively evaluate tendered prices. 	<ul style="list-style-type: none"> Ensure the evaluation of the tendered prices considers all pricing aspects. For example, if the tendered prices include S&Q Services or Task-Priced Services, these need to be considered as part of the price evaluation. Similarly, ensure that 'whole of life' costs are properly assessed on a consistent basis across all tenders. Ensure that any pricing assumptions are plausible, tested and clearly stated in the TEWG reports and the SER. Where appropriate, conduct sensitivity analysis to test the outcomes of the price evaluation. Where appropriate, prices should be 'normalised' or adjusted to ensure a complete and 'like for like' cost comparison of all tenders. Where an aspect of the tenderer's pricing is unclear or ambiguous, clarify the matter with the tenderer – do not make assumptions about a tenderer's pricing if it is not clear.
<ul style="list-style-type: none"> Failure to comply with any processes, requirements or criteria detailed in the request documentation or the TEP. 	<ul style="list-style-type: none"> Ensure the TEP is consistent with the request documentation. Implement safeguards to ensure that the tender evaluation is conducted in accordance with the TEP. Ensure that all members of the TEO understand the request documentation and the TEP and are briefed appropriately. Hold regular meetings of the TEO to facilitate identification of possible non-compliances. Ensure that the TEP is drafted so that the TEO can comprehensively evaluate tenders and does not unnecessarily restrict Defence's flexibility in relation to the conduct of tender evaluation.
<ul style="list-style-type: none"> Failure to evaluate tenders consistently. 	<ul style="list-style-type: none"> Review the outcomes of the tender evaluation to ensure that tenderers have been treated consistently. Ensure that the advantages and disadvantages of each tender are identified. Ensure that where a benefit, issue or risk in respect of one tenderer has been identified, it is also identified in respect of other tenderers where that benefit, issue or risk exists in respect of the other tenderer.
<ul style="list-style-type: none"> Failure to treat tenderers equally or to give tenderers equal opportunity. 	<ul style="list-style-type: none"> Ensure that where an opportunity is given to one tenderer that it is given to all tenderers (where applicable).
<ul style="list-style-type: none"> Focussing on scoring tenders and failure to adequately capture key issues and risks through qualitative assessments. 	<ul style="list-style-type: none"> Ensure that any key issues and risks are captured and appropriately addressed through qualitative statements. Consider the qualitative statements as part of the overall value for money assessment.
<ul style="list-style-type: none"> Failure to maintain confidentiality. 	<ul style="list-style-type: none"> Ensure that the TEP and the Legal Process and Probity Plan adequately set out clear requirements in relation to confidentiality. Ensure members of the TEO are briefed, understand and are regularly reminded of their obligations of confidentiality. Ensure appropriate security of tenders and documentation relating to the conduct of tender evaluations.
<ul style="list-style-type: none"> Changing evaluation criteria. 	<ul style="list-style-type: none"> Evaluate tenders in accordance with the evaluation criteria set out in the request documentation. Ensure that the evaluation criteria set out in the TEP are consistent

Issue	Potential steps to prevent issue arising
	<p>with the evaluation criteria set out in the request documentation.</p> <ul style="list-style-type: none"> Do not introduce additional evaluation criteria during the evaluation. Ensure that the evaluation criteria are sufficiently broad. Except where justified in the circumstances, avoid using narrow evaluation criteria.
<ul style="list-style-type: none"> Failure to comply with process documents governing the conduct of offer definition and improvement activities. 	<ul style="list-style-type: none"> Where Defence proposes to conduct offer definition and improvement activities ensure that any supporting process documents are prepared and provided to tenderers which clearly outline the process to be followed and the rules governing the proposed activities. Ensure that Defence complies with the process documents.
<ul style="list-style-type: none"> Failure to make a proper value for money assessment. 	<ul style="list-style-type: none"> Understand that the tenderer whose tender offers the best value for money will not necessarily be the tenderer which offers the lowest price. Assess which tender offers the best value for money having regard to the assessment against all the evaluation criteria, including price, and any risks associated with the tender. Consider both quantitative and qualitative issues identified from the conduct of the tender evaluation.
<ul style="list-style-type: none"> Dominant personalities amongst members of the TEO exert undue influence on other members. 	<ul style="list-style-type: none"> The Chair of the TEB needs to take steps to ensure that any member of the TEO, particularly those with a leadership role such as TEWG leaders, does not exert undue influence on other members of the TEO during the course of the tender evaluations.
<ul style="list-style-type: none"> Failure to appoint a legal process and probity adviser or a failure to consult the legal process and probity adviser when probity issues arise. 	<ul style="list-style-type: none"> Ensure that a legal process and probity adviser is appointed where appropriate to do so (see DPPM and CPG for more information). Ensure that appropriate arrangements are established within the TEO to identify legal process and probity issues (for example, ensure that probity is an agenda item at all TEWG and TEB meetings) and that the legal process and probity adviser is consulted in relation to issues which have been identified.
<ul style="list-style-type: none"> Operational bias amongst members of the TEO (for example, understating technical issues and risks of the solution with the best perceived capabilities). 	<ul style="list-style-type: none"> Ensure that the risk assessment of tenderers' ability to achieve capability requirements is rigorous and realistic. Ensure that developmental solutions (including integration of COTS/MOTS items) are not described in the SER as COTS/MOTS. The Chair of the TEB needs to ensure that the operational view does not exert undue influence during the course of the tender evaluations.

CONTRACT COMPLIANCE – [INSERT NAME OF TENDERER]

CoC Reference	Details of clause and tenderer's response	Compliance (Complies / Does not comply)	Evaluation (risk assessment) of any non-compliance	Assessment rating of any non-compliance (Critical / Significant / Minor)	Price Adjustment (if any)	Negotiation Issues and Comments	Indicator of criticality for negotiations (Must obtain / Should obtain at cost / Should obtain at no cost / desirable at no cost)
1.1.1	[INSERT DETAILS OF CLAUSE] [INSERT TENDERER'S PROPOSED MARK UP (IF ANY)]	[Example: Does Not Comply]	[INSERT NARRATIVE ASSESSMENT OF THE NON-COMPLIANCE, FOR EXAMPLE: <ul style="list-style-type: none"> - WHAT IS THE NON-COMPLIANCE - WHAT IS THE ISSUE OR RISK FOR THE COMMONWEALTH AS A RESULT OF THE NON-COMPLIANCE - IS THERE A REASON OR JUSTIFICATION FOR THE NON-COMPLIANCE. - IS THERE A RISK TRANSFER TO THE COMMONWEALTH AS A RESULT OF THE NON-COMPLIANCE - CAN THE RISK TRANSFER BE QUANTIFIED - IS THE RISK TRANSFER UNACCEPTABLE - ARE THERE MITIGATIONS - ANY OTHER OBSERVATIONS ABOUT THE NON-COMPLIANCE - CAN AN ACCEPTABLE SOLUTION BE NEGOTIATED - ETC] 	[Example: Significant]	[Example: \$30m]	[IDENTIFY RELEVANT ISSUES FOR NEGOTIATION AND SUPPORTING COMMENTS]	Must obtain

CoC Reference	Details of clause and tenderer's response	Compliance (Complies / Does not comply)	Evaluation (risk assessment) of any non-compliance	Assessment rating of any non-compliance (Critical / Significant / Minor)	Price Adjustment (if any)	Negotiation Issues and Comments	Indicator of criticality for negotiations (Must obtain / Should obtain at cost / Should obtain at no cost / desirable at no cost)
1.1.2							
1.1.3							
...							

WORKED EXAMPLE

CoC Reference	Details of clause and tenderer's response	Compliance (Complies / Does not comply)	Evaluation (risk assessment) of any non-compliance	Assessment rating of any non-compliance (Critical / Significant / Minor)	Price Adjustment (if any)	Negotiation Issues and Comments	Indicator of criticality for negotiations (Must obtain / Should obtain at cost / Should obtain at no cost / desirable at no cost)
3.3.2	Authorisations	Complies	N/A	N/A	N/A	Nil	N/A
5.3.2b	<p>Intellectual Property Licence</p> <p>Tenderer requires restrictions on ability of Platform Integration Contractor (PIC) to sub-licence and transfer licence granted.</p> <p>Proposed mark up: Without limiting clause 5.3.1 and subject to clause 5.3.3, unless the Contractor has specified otherwise in the IP Plan: a. ... b. subject to clause 5.3.2c, in respect of all Third Party IP the</p>	Does Not Comply	<p>Tenderer proposes to prevent a PIC from being able to issue a third party (ie a subcontractor) with a sub-licence to use Third Party IP. This could significantly hinder the PICs ability to use and maintain the platform. Accordingly, tenderer's proposed changes at 5.3.2b(i) and (ii) present a high risk to Defence. The self-sufficiency of the PICs would be undermined if the proposed changes were accepted, which could lead to a greater reliance on the Commonwealth to engage and arrange maintenance/support activities.</p> <p>If tenderer holds to this position, there is a serious possibility that the deficiency cannot be remedied or mitigated. This would mean the principal requirements of the project could be prevented from being achieved.</p>	Critical	Cannot be quantified at this stage (to be reassessed after negotiation, eg if tenderer requires additional licence fee)	<p>The proposed restrictions will need to be negotiated with tenderer.</p> <p>The Commonwealth's preferred position is to retain the provisions as written in the draft Conditions of Contract.</p> <p>Defence could consider whether suitable protections can be agreed with tenderer, eg a restricted list of contractors, confidentiality deeds etc.</p> <p>Tenderer may demand additional fee to agree to licence, which may affect VFM of the tender.</p>	Must obtain

	<p>Contractor shall ensure that the PIC is either: (i) entitled to be granted a <u>non-transferable</u> sublicense from the Commonwealth in accordance with clause 5.3.1b(i); or (ii) is granted a Licence in respect of all Third Party IP to use, maintain and dispose of the Supplies.</p>						
<p>9.2.1 (new clause)</p>	<p>Warranty Tenderer proposes addition of 'industry standard' provisions relating to warranties applying to the Supplies.</p> <p>Proposed mark up: <u>Contractor's liability under this clause 9.2.1 shall not extend to:</u> <u>a. remedial work arising after the Supplies have, temporarily or otherwise, ceased to be operated other than in accordance with this Contract;</u> <u>b. remedial work necessitated, by any act, omission or neglect of the Commonwealth and/or a PIC, its servants or agents, or where defects arise or are</u></p>	<p>Does not comply</p>	<p>The risk of agreeing to this clause is that the Commonwealth will be unable to successfully rely on the warranty under the contract. The clause is very broad and will prevent warranty claims arising from normal usage.</p> <p>Proposed para (a) limits the ability of the PICs to use the platform without voiding warranty.</p> <p>Proposed para (b) will leave open to argument any warranty claim where it could be argued the Commonwealth/ PIC has attempted repair work and increase the burden on the Commonwealth as many warranty claims will likely be disputed.</p> <p>Proposed para (c) is extremely broad and would cover many legitimate warranty claims – something that is subject to fair wear and tear yet still breaks during the warranty period should not be an exception from the warranty.</p> <p>Proposed para (d) is not on the subject of warranty and should not be located in the warranty clause.</p> <p>In general, the proposed provisions do not appreciate how the platforms are to be operated and may prevent warranty claims where the defect arises from normal usage.</p>	<p>Significant</p>	<p>\$10m (estimated warranty claims that would be foregone - based on remedial work undertaken on platform under previous contract)</p>	<p>Proposed para (a) is potentially acceptable in principle (defects arising from use outside the scope of the contract) but the proposal fails to provide any scope/limitation to the clause. For example, need a clear statement as to what 'operated in accordance with the contract' means (eg reference to FPS, OCD, potentially reference to other plans/operational documentation). Further, the proposed wording excludes all defects occurring <i>after</i> use outside the contract, not defects <i>caused</i> by such use.</p> <p>Proposed para (b) can probably also be accepted with amendment – if Defects are caused by the willful negligence or willful damage of the Cth or the PICs. Current wording is unacceptable – the proposal to exclude 'any' act, omission etc. of the Commonwealth causing remedial work is extremely broad. Similarly, the principle</p>	<p>Should obtain at no cost.</p>

<p><u>aggravated by repair work or attempts to repair by the Commonwealth and/or a PIC, their servants, agents and contractors not approved by the Contractor;</u> <u>c. remedial work arising out of the normal wear and tear and use of the Supplies and any of their components;</u> <u>d. any claim by any person or party howsoever arising including, but not limited to injury, loss, loss of profits or damage caused by or sustained by the Supplies, the Commonwealth and PICs.</u></p>		<p>It is possible an acceptable outcome can be negotiated but will require extensive redrafting.</p>			<p>behind 'caused by or aggravated by' repair work may also be acceptable if it is limited in scope, for example, only to the extent that such work was not in accordance with any repair manuals/TD provided by the contractor. The contractor does not get the right to approve all repairers and this suggestion indicates that the tenderer does not understand the nature of the contract and how the PICs will be maintaining the platform.</p> <p>Proposed para (c) is extremely broad and would cover many legitimate warranty claims. This should not be agreed.</p> <p>Proposed para (d) is not on the subject of warranty and should not be located in the warranty clause.</p>	
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ACCOUNTABLE AUTHORITY INSTRUCTION

2 APPROVAL AND COMMITMENT OF RELEVANT MONEY

2.1 INTRODUCTION

2.1.1 About this Accountable Authority Instruction (AAI)

2.1.1.1 This AAI is issued under section 20A of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). It provides instruction to officials on approving and committing relevant money and entering into, varying or administering arrangements. It includes instructions in relation to:

- a) approving proposed commitments of relevant money and entering into arrangements;
- b) tax;
- c) guarantees, indemnities and warranties on behalf of the Commonwealth;
- d) gifts, hospitality and sponsorship;
- e) official hospitality;
- f) official travel; and
- g) Foreign Military Sales.

2.1.2 Proper use of public resources

2.1.2.1 Section 15 of the PGPA Act imposes a duty on the Secretary to promote the proper use and management of the public resources for which he is responsible. Consistent with this duty, the Secretary has established controls that ensure officials consider the proper use (i.e. efficient, effective, economical and ethical use) of public resources when making decisions regarding the commitment of relevant money.

2.1.3 Before committing relevant money

2.1.3.1 Before you enter into an arrangement that may commit relevant money, you must be satisfied that:

- a) you have authority to enter into the arrangement;
- b) the commitment has been approved, (if required) in accordance with these instructions;
- c) you have acted in accordance with the *Commonwealth Procurement Rules* or *Commonwealth Grants Rules and Guidelines* (CGRGs), where relevant; and
- d) you have acted in a manner which is not inconsistent with the policies of the Australian Government.

2.1.3.2 For Defence, the authority to enter into, vary or administer an arrangement generally comes from legislation. The authority can come from section 23 of the PGPA Act, section 32B of the *Financial Framework (Supplementary Powers) Act 1997* (FF(SP) Act) or other specific legislation.

2.1.3.3 The Secretary has delegated the power to Defence officials under FINMAN 2 (Attachment 1 to AAI 15 – *Financial Delegations in Defence*) schedules 2 and 3 to enter into, vary or administer an arrangement.

2.1.3.4 For Defence, where a commitment of relevant money relates to the ordinary services and functions of government, the authority to enter into, vary or administer an arrangement is conferred on the Secretary by section 23 of the PGPA Act. This power has been delegated to officials under FINMAN 2 schedule 2.

2.1.3.5 Section 18 of the PGPA Rule (Approving commitments of relevant money) sets out the requirements that apply to all Commonwealth officials approving the commitment of relevant money.

ACCOUNTABLE AUTHORITY INSTRUCTION 2 – APPROVAL AND COMMITMENT OF RELEVANT MONEY

- 2.1.3.6** Expenditure for purposes other than the ordinary services and functions of government should be authorised by specific legislation (for example, section 32B of the FF(SP) Act for Defence grants).
- 2.1.3.7** Officials in Defence have been delegated powers, under the PGPA Act and the FF(SP) Act to enter into and administer arrangements. Section 23(1) of the PGPA Act contains the power to enter into, vary and administer arrangements, while section 32B of the FF(SP) Act sets out similar powers in relation to the FF(SP) framework.
- 2.1.4** **What is a commitment of relevant money?**
- 2.1.4.1** Relevant money becomes ‘committed’ when Defence undertakes an activity that results in an obligation to pay relevant money. For example, entering into an arrangement under which relevant money will or may become payable, including obligations that are contingent upon certain events occurring, such as indemnities, guarantees and warranties. The Secretary has established controls relevant to the approval of commitments that must be followed before an arrangement is entered into (or a payment is made), based on risk and proportionality appropriate to the circumstances of the proposed commitment.
- 2.1.5** **What is an arrangement?**
- 2.1.5.1** Section 23 of the PGPA Act refers to an arrangement as including a contract, agreement, deed or understanding. This is a broad definition and includes a range of agreements, such as MOUs, standing offers and grant agreements. It also includes any arrangement that involves a contingent liability (i.e. a commitment that may give rise to a cost as a result of a future event), such as an indemnity or guarantee.
- 2.1.5.2** Arrangements for the engagement of an employee or the payment of an entitlement or allowance are to be managed in accordance with the applicable employment framework.
- 2.1.6** **Who can enter into an arrangement?**
- 2.1.6.1** Arrangements may be entered into, varied and administered under section 23 of the PGPA Act or other specific legislation (e.g. section 32B of the FF(SP) Act for grants).
- 2.1.6.2** Section 23 of the PGPA Act provides the Secretary with the power to enter into, vary or administer an arrangement, on behalf of the Commonwealth, in relation to the affairs of Defence. It also allows Defence to work cooperatively in a range of areas, including where Defence enters into an arrangement and the services can be accessed by other Commonwealth entities.
- 2.1.6.3** Delegations and authorisations are an important way in which the Secretary enables officials within Defence or another Commonwealth entity to enter into an arrangement.
- 2.1.7** **References**
- 2.1.7.1** [Public Governance, Performance and Accountability Act 2013](#), sections 15, 21 and 60
- 2.1.7.2** *Public Governance, Performance and Accountability Rule 2014*, section 18
- 2.1.7.3** *Charter of Budget Honesty Act 1988*, sections 5(1)(a) and 12(1)(e)
- 2.1.7.4** *Financial Framework (Supplementary Powers) Act 1997*, section 32B
- 2.1.7.5** *Financial Framework (Supplementary Powers) Regulations 1997*, Schedule 1AA
- 2.1.7.6** Resource Management Guide No. 400, *Approving Commitments of Relevant Money*
- 2.1.7.7** Resource Management Guide No. 405, *Official International Travel - Approval and Use of the Best Fare of the Day*

ACCOUNTABLE AUTHORITY INSTRUCTION 2 – APPROVAL AND COMMITMENT OF RELEVANT MONEY

- 2.1.7.8 Resource Management Guide No. 404, *Official Domestic Air Travel - Use of the Lowest Practical Fare*
- 2.1.7.9 Resource Management Guide No. 414, *Indemnities, Guarantees or Warranties granted by the Commonwealth*
- 2.1.7.10 Resource Management Guide No. 212, *Prescribing Officials for Non-Corporate Commonwealth Entities*
- 2.1.7.11 Financial Delegations Manual ([FINMAN 2](#)) (Attachment 1 to AAI 15 – *Financial Delegations in Defence*, hereafter referred to as FINMAN 2)
- 2.1.7.12 *Defence Procurement Policy Manual*
- 2.1.7.13 Defence Travel Website
- 2.1.7.14 Defence Instruction – Administrative Policy (DIAP)
- 2.1.7.15 DI(G) PERS 25-7 *Gifts, Hospitality and Sponsorship*

2.2 APPROVING COMMITMENTS OF RELEVANT MONEY AND ENTERING INTO ARRANGEMENTS

- 2.2.1.1 Section 15 of the PGPA Act imposes duties on the Secretary regarding the governance of Defence; including managing Defence in a way that promotes the proper use and management of public resources.
- 2.2.1.2 Section 23 of the PGPA Act confers on the Secretary the power to approve proposals for the commitment of relevant money.
- 2.2.1.3 Section 18 of the PGPA Rule sets out the core legal requirements that apply to approvals for the commitment of relevant money. That section applies to all Commonwealth entities under the PGPA Act and to all officials involved in the commitment of relevant money.
- 2.2.1.4 The PGPA framework provides flexibility in the approval of relevant money by allowing the Secretary to apply controls that are appropriate to Defence. Before committing relevant money you should consider the requirements, under sections 15 (to ensure that the proposal is a proper use of Commonwealth resources) and 21 (to ensure that is not inconsistent with the policies of the Commonwealth) of the PGPA Act.
- 2.2.1.5 It is important to comply with the ‘policies of the Australian Government’ in a way that ensures, to the greatest possible extent, that any public resources claimed or expenses incurred in relation to the conduct of Defence business are a proper use of relevant money. That is, that the proposal represents an efficient, effective, economical and ethical use of relevant money, taking into account the need to conduct Defence business and the policies of the Australian Government.
- 2.2.1.6 See part 2.5 ‘Tax’ of this AAI for guidance on taxation-related issues.

2.3 APPROVING COMMITMENTS OF RELEVANT MONEY

- 2.3.1.1 Unless specifically provided by other legislation, the decision to approve a proposed commitment of relevant money (a proposal) is made under section 23 of the PGPA Act and section 18 of the PGPA Rule. This rule requires an approver - whether a Minister, the Secretary of Defence or a delegate under FINMAN 2, schedule 1 - to be satisfied that giving effect to the spending proposal would be a proper use of public resources.

Instructions – All officials

ACCOUNTABLE AUTHORITY INSTRUCTION 2 – APPROVAL AND COMMITMENT OF RELEVANT MONEY

2.3.1.2	When considering a proposed commitment of relevant money, you must determine whether it is a grant, procurement or other type of financial arrangement.
2.3.1.3	You must consult with your Group or Service Assistant Secretary Finance (AS FIN) where you are unsure what type of financial arrangement the proposed commitment of relevant money is.
2.3.1.4	You must not approve a proposed commitment of relevant money, unless you have been delegated powers to do so.
2.3.1.5	Proposed commitments of relevant money must be approved in a manner consistent with any written requirements specified in these instructions or the terms of the relevant delegation or authorisation instrument.
2.3.1.6	You must provide the delegate with sufficient information to enable the delegate to consider the proposed commitment of relevant money, commensurate with the risk and purpose of the proposal.
2.3.1.7	Where the proposed arrangement involves the engagement by Defence of a Contractor, Consultant or Outsourced Service Provider, Defence officials must obtain and document approval from a Defence official at the Senior Executive Service (SES) Band 1 / 1 Star level or above prior to or as part of the approval of the commitment of relevant money for the proposal. The proposed commitment of relevant money must be approved in accordance with FINMAN 2 schedule 1. Defence officials must also advise the Secretary when the estimated daily rate of the Contractor, Consultant or Outsourced Service Provider is at or above \$4,500 (including GST). (See the Glossary in FINMAN 2 for definitions of Contractors, Consultants or Outsourced Service Providers).

Instructions – All delegates

2.3.1.8	You must comply with the requirements of section 18 of the PGPA Rule (Approving commitments of relevant money), and approve the proposed commitment of relevant money in a manner consistent with any written requirements, specified in these instructions or the terms of the relevant delegation (contained in FINMAN 2).
2.3.1.9	You must be satisfied that the proposed commitment of relevant money promotes a 'proper' use (i.e. value for money including efficient, effective, economical and ethical) of relevant money that is not inconsistent with the policies of the Australian Government.
2.3.1.10	While complying with the policies of the Australian Government, you must do so in such a way that you ensure, to the greatest possible extent, that any public resources claimed or expenses incurred in relation to the conduct of Defence business are a proper use of relevant money. That is, the use or consumption of public resources must represent an efficient, effective and ethical use of relevant money, taking into account the need to conduct Defence business and the policies of the Australian Government.
2.3.1.11	If a commitment of relevant money involves procurement, you must ensure it complies with the CPRs (see AAI 3 - <i>Procurement</i>).
2.3.1.12	If a commitment of relevant money involves a grant, you must ensure it complies with the CGRGs and AAI 4 - <i>Grants</i> .
2.3.1.13	If you provide verbal approval for a commitment of relevant money, you must record in writing the approval as soon as practicable after giving it (section 18 of the PGPA Rule). The documentation must specify the date and details of the verbal approval.
2.3.1.14	Approvals for proposed commitments of relevant money must be properly recorded.

ACCOUNTABLE AUTHORITY INSTRUCTION 2 – APPROVAL AND COMMITMENT OF RELEVANT MONEY

- 2.3.1.15** You must not approve a commitment of relevant money that is subject to conditions without seeking advice from your AS FIN area.
- 2.3.1.16** FINMAN 2 schedule 1 ‘Commitment approval’ delegates must ensure that any conditions that attach to a proposed commitment of relevant money are met prior to the arrangement being entered into. You may provide approval for a group of proposals to commit relevant money (e.g. ‘bulk approval’).
- 2.3.1.17** You must not approve a payment to yourself.
- 2.3.1.18** For each proposal to commit relevant money you must be satisfied that:

- a) sufficient funds are available within the relevant budget to support all proposed payments under the proposed arrangement;
- b) you have considered and taken account of part 2.5 ‘Tax’ of this AAI;
- c) costing assumptions are sound;
- d) costing calculations are accurate; and
- e) the benefits of entering into the arrangement outweigh the risk of locking away future budget flexibility.

- 2.3.1.19** You must consult with your AS FIN to seek specialist financial advice on proposals that include any of the following:

- a) a commitment of relevant money that has long term financial implications (i.e. over 12 months in duration or across multiple financial years); or
- b) expenditure that will exceed your current financial year budget allocation.

- 2.3.1.20** You must not approve a proposed commitment of relevant money involving the engagement by Defence of Contractors, Consultants or Outsourced Service Providers unless the proposal has been approved in accordance with paragraph 2.3.1.7 of this AAI. (See the Glossary in FINMAN 2 for definitions of Contractors, Consultants or Outsourced Service Providers).

2.3.2 ICT Software (Commitments of Relevant Money for ICT Software Procurement)

- 2.3.2.1** In accordance with the DIAP, the Chief Information Officer (CIO) is the Accountable Officer for Defence ICT and ICT software assets in Defence. (See the DIAP for the definition of Accountable Officer).
- 2.3.2.2** Subject to FINMAN 2 schedule 1, parts 2 and 3, Chief Information Officer Group (CIOG) is responsible for the approval of proposed commitments of relevant money for the procurement of ICT software (including ICT software as a service), subject to the exceptions set out in those parts of schedule 1 of FINMAN 2.

Instructions – All officials (including Australian Signals Directorate officials)

- 2.3.2.3** You must seek approval from a delegate listed in FINMAN 2 schedule 1 part 2 with the authority to approve commitments of relevant money under FINMAN 2 schedule 1 part 3 or a CIOG delegate listed in part 3 of schedule 1 of FINMAN 2 for all commitments of relevant money for the procurement of ICT software (including ICT software as a service), subject to the exceptions set out in that part of schedule 1 of FINMAN 2.
- 2.3.2.4** You must ensure that all requests for approval of the commitment of relevant money for the procurement of ICT software are logged through the SIE Service desk and submitted on a completed form available from the Hardware and Software Branch website or Directorate of Procurement and Contracting Services website or a higher delegation submission.
- 2.3.2.5** You must provide information to CIOG on any Urgent Operational Procurement of ICT software as soon as practicable (see DEFLOGMAN Part 2, Volume 8, Chapter 2 and Annex A to that chapter for further details).
- 2.3.2.6** You must ensure that all transactions pertaining to the procurement of ICT software are accurately documented and recorded in ROMAN.

ACCOUNTABLE AUTHORITY INSTRUCTION 2 – APPROVAL AND COMMITMENT OF RELEVANT MONEY

Instructions – Strategic Policy and Intelligence Group (SPIG) Officials

2.3.2.7 You must provide information to CIOG on any procurement of ICT software as stipulated in the Software Asset Management Plan.

Instructions – Defence Science and Technology Group (DSTG) Officials

2.3.2.8 You must advise CIOG of the ICT software details prior to procuring ICT software.

2.3.2.9 You must provide all ICT software licensing details including licensing terms and conditions, type and quantity of licenses purchased and Purchase Order number to CIOG within 5 business days of entering into the arrangement.

2.3.3 ICT Hardware (Commitments of Relevant Money for ICT Hardware Procurement)

2.3.3.1 In accordance with the DIAP, the Chief Information Officer (CIO) is the Accountable Officer for Defence ICT (including ICT hardware assets in Defence). (See the DIAP for the definition of 'Accountable Officer').

2.3.3.2 Subject to FINMAN 2 schedule 1, parts 2 and 4, CIOG is responsible, in accordance with part 4 of schedule 1 of FINMAN 2, for the approval of commitments of relevant money for the procurement of ICT hardware, subject to the exceptions set out in that part of schedule 1 of FINMAN 2.

2.3.3.3 ICT hardware that is not approved in accordance with the below instructions and FINMAN 2 schedule 1 part 4 may be removed at the discretion of the CIOG. Any costs associated with the removal may be recovered by the CIOG from the Group, Service or individual who approved the commitment of relevant money for the procurement. SPIG and DSTG have this authority with regard to intelligence networks and DSTG research networks respectively.

Instructions – All officials (including Australian Signals Directorate officials)

2.3.3.4 You must seek approval from a delegate listed in FINMAN 2 schedule 1 part 2 with the authority to approve commitments of relevant money under FINMAN 2 schedule 1 part 4 or a CIOG delegate listed in FINMAN 2 schedule 1 part 2 with the authority to approve commitments of relevant money under part 4 of schedule 1 of FINMAN 2 for all commitments of relevant money for the procurement of ICT hardware, subject to the exceptions set out in that part of schedule 1 of FINMAN 2.

2.3.3.5 You must ensure that Whole-of-Government procurement arrangements are used where they apply to ICT hardware assets. This includes desktop hardware and major office machines.

2.3.3.6 You must provide information to CIOG on any Urgent Operational Procurement of ICT hardware as soon as practicable after entering into the arrangement.

2.3.3.7 You must ensure that all transactions pertaining to ICT hardware purchases are accurately documented and recorded in the appropriate asset register.

Instructions – All delegates responsible for approving the commitment of relevant money for the procurement of ICT hardware

2.3.3.8 You may approve the commitment of relevant money for the procurement of ICT software where:

- a) The ICT software is bundled with the hardware provided by the Original Equipment Manufacturer (OEM); and
- b) The hardware cannot be purchased without the ICT software; and
- c) The ICT software is required for the essential functioning of the hardware and does not provide additional functionality.

2.3.3.9 You must ensure that requests for approval of the commitment of relevant money for ICT software that provides additional functionality, ICT software that is

not part of the OEM, and contracts and renewals of ICT software maintenance are approved by a CIOG ICT software delegate in accordance with part 3 of schedule 1 of FINMAN 2.

Instructions – DSTG Officials

2.3.3.10 When procuring ICT hardware for DSTG research networks, you must notify the CIOG prior to entering into any arrangement.

Instructions – Defence Attaches at Australian overseas posts

2.3.3.11 You must provide information to the CIOG on any procurement of ICT hardware as soon as practicable after entering into the arrangement.

2.3.3.12 You must ensure that all procurements are within the limits set by the International Policy Division in the Form *Payment Limit Advice* and comply with AAI 13 - *Finance and Administration at Overseas Posts*.

2.4 ENTERING INTO ARRANGEMENTS

2.4.1.1 The authority to enter into, vary or administer an arrangement on behalf of the Commonwealth comes from either section 23 of the PGPA Act, (for all arrangements other than grants) or section 32B of the FF(SP) Act (for grants). These authorities are delegated to officials to enable them to enter into, vary or administer arrangements.

2.4.1.2 Defence officials sometimes enter into arrangements that do not involve the commitment of relevant money, for example novation deeds, license deeds, non-disclosure deeds and 'nil cost' contract change proposals. Despite the fact that these arrangements do not involve payments of relevant money, they can carry significant risk to the Commonwealth.

Instructions - All officials

2.4.1.3 You must not enter into, vary or administer an arrangement, unless you have been delegated powers to do so (see FINMAN 2 schedules 2 or 3).

2.4.1.4 Before entering into, varying or administering an arrangement that may commit relevant money, you must be satisfied that:

- a) The proposed commitment of relevant money has been approved by a FINMAN 2 schedule 1 'Commitment Approval' delegate, or for a grant, the Minister for Defence, or the Minister for Defence Industry, or the Minister for Defence Personnel, or the Secretary of Defence, or one of their delegates; and
- b) the value does not exceed the amount approved.

2.4.1.5 If the arrangement involves procurement, you must act in accordance with the CPRs, including the reporting and publishing requirements (see AAI 3 - *Procurement*).

2.4.1.6 If the proposed arrangement involves the engagement by Defence of Contractors, Consultants or Outsourced Service Providers, you must not enter into the arrangement unless part 2.3 of this AAI and the applicable requirements of FINMAN 2 have been complied with.

2.4.1.7 If the arrangement involves a grant, you must act in accordance with the CGRGs, including the reporting and publishing requirements (see AAI 4 - *Grants*).

2.4.1.8 You must ensure that any payments to be made under the arrangement, including prepayments, have been considered by the FINMAN 2 schedule 1 delegate.

ACCOUNTABLE AUTHORITY INSTRUCTION 2 – APPROVAL AND COMMITMENT OF RELEVANT MONEY

2.4.1.9 If a proposed arrangement (including a proposed variation to an existing arrangement) does not involve a commitment of relevant money (and therefore does not require a FINMAN 2 schedule 1 (PGPA Act section 23(3)) commitment approver delegation to be exercised) you **must** still be satisfied that the proposed arrangement represents a proper use and management of public resources and is not inconsistent with the policies of the Australian Government. Further, you must not:

- a) enter into the arrangement unless you hold, are acting in, or have been directed to perform the duties of the rank of EL 2 / O-6 (COL(E)) or above; or
- b) vary the arrangement by changing in any way the scope of the arrangement unless you hold, are acting in or have been directed to perform the duties of the rank or level of at least the same rank or level as the FINMAN 2 delegate who entered into the arrangement originally; or
- c) vary the arrangement by changing any of the bank accounts detailed in the arrangement unless you hold, are acting in or have been directed to perform the duties of the rank or level of at least the same rank or level as the FINMAN 2 delegate who entered into the arrangement originally.

2.5 TAX

2.5.1.1 Defence is required to comply with Commonwealth taxation laws including Goods and Services Tax (GST) and Fringe Benefits Tax (FBT). The Defence Tax Management Office (DTMO) manages the taxation compliance and advisory function within Defence. Defence officials are encouraged to contact the DTMO (see the Finance in Defence website for contact details) if they have any questions in relation to taxation-related issues.

Instructions – All officials

- 2.5.1.2** You must ensure that Defence meets its taxation obligations, including maintaining appropriate records and ensuring the completeness, accuracy and reliability of primary transaction data.
- 2.5.1.3** You must respect the confidentiality of tax information acquired in the course of your work and not use or disclose tax information or associated personal information, except in accordance with relevant legislation.
- 2.5.1.4** You must ensure that all contracts for the acquisition or sale of goods and services by Defence appropriately address taxation issues.
- 2.5.1.5** DTMO must approve the discussion of any taxation matters with the Australian Taxation Office prior to the discussion occurring.
- 2.5.1.6** Unless reverse charging arrangements approved by DTMO are in place, you must ensure that a valid tax invoice which separately identifies any GST component is obtained for each purchase to enable Defence to claim input tax credits for the purposes of GST, where applicable.
- 2.5.1.7** Before seeking approval for a proposed commitment of relevant money, you must

- a) consider the potential FBT implications of the proposed commitment, and
- b) ensure that the request to the relevant FINMAN 2 schedule 1 delegate for approval of the commitment of relevant money includes GST, where applicable.

2.6 INDEMNITIES, GUARANTEES AND WARRANTIES ON BEHALF OF THE COMMONWEALTH

ACCOUNTABLE AUTHORITY INSTRUCTION 2 – APPROVAL AND COMMITMENT OF RELEVANT MONEY

- 2.6.1.1** Section 60 of the PGPA Act authorises the Finance Minister to grant an indemnity, guarantee or warranty on behalf of the Commonwealth. This power has been delegated by the Finance Minister to accountable authorities of non-corporate Commonwealth entities. However, the Finance Minister has not delegated the power to enter into debt guarantees (including equity and loan guarantees), as these are significant and have whole-of-government and whole-of-economy impacts.
- 2.6.1.2** RMG No. 414, *Indemnities, guarantees or warranties* states that section 60 of the PGPA Act applies to indemnities, guarantees and warranties that create a contingent liability for the Commonwealth. A ‘contingent liability’ means a liability that exists at any given point in time that may crystallise if a particular future event occurs. Protecting the Commonwealth’s interests and managing the Commonwealth’s exposure to risk is the prime consideration for officials approving a contingent liability.
- 2.6.1.3** Indemnities, guarantees, warranties and some liability caps in contracts between the Commonwealth and other parties may create a contingent liability. Refer to RMG No. 414 for the definition of and guidance on indemnities, guarantees and warranties.
- 2.6.1.4** A limitation of liability provision (which may include a liability cap) does not require approval under section 60 of the PGPA Act unless it has the effect of creating an indemnity involving a contingent liability. RMG No. 414 states that a liability cap should be treated as an indemnity involving a contingent liability if it:
- a) limits a contractor’s contingent liability to a third party so that the Commonwealth is liable to the third party for any excess above the cap; or
 - b) limits a contractor’s exposure for damage the contractor has suffered itself, so that the Commonwealth is liable to the contractor for any excess.
- 2.6.1.5** A liability cap does not have the effect of creating a contingent obligation to pay another party. As a result, a liability cap does not require approval under section 60 of the PGPA Act and can be approved as part of the approval process for the commitment of relevant money under part 2.3 of this AAI (FINMAN 2 schedule 1) or paragraph 2.4.1.8 of this AAI (FINMAN 2 schedule 2), as applicable.
- 2.6.1.6** A liability cap does not create a contingent liability to the extent that it limits a contractor’s liability to the Commonwealth under an arrangement with the Commonwealth:
- a) so that the Commonwealth cannot recover damages from the contractor if the Commonwealth is sued by a third party; or
 - b) for damage it directly causes the Commonwealth.

Instructions – All officials

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| 2.6.1.7 | You must not agree to an indemnity, guarantee, or warranty, or a liability cap that creates a contingent liability for the Commonwealth, or a liability cap that has the effect of creating an indemnity involving a contingent liability for the Commonwealth, unless the contingent liability has been approved in accordance with part 2.6 of this AAI 2 and part 1 of schedule 1 of FINMAN 2. |
| 2.6.1.8 | All Defence officials must ensure that an indemnity, guarantee or warranty that creates a contingent liability for the Commonwealth, or a liability cap that has the effect of creating an indemnity involving a contingent liability for the Commonwealth, is considered as part of the FINMAN 2 schedule 1 delegate commitment of relevant money approval. |
| 2.6.1.9 | You must not enter into an arrangement with another non-corporate Commonwealth entity that involves an indemnity, guarantee or warranty. |
| 2.6.1.10 | Prior to obtaining delegate approval for an arrangement that involves a contingent liability for the Commonwealth, you must undertake a liability risk |

	assessment in accordance with FINMAN 5 and the DPPM to assess the risk exposure for the Commonwealth and to determine if the contingent liability meets the materiality and remoteness conditions specified in FINMAN 2 schedule 1.
2.6.1.11	You should seek legal advice if you are unsure whether your proposed arrangement contains a contingent liability or as to the nature and extent of the risks that would be assumed by the Commonwealth if the contingent liability were agreed.
2.6.1.12	You must consult the Directorate of Financial Operations if an arrangement involves a bank guarantee, prior to entering into the arrangement.
2.6.1.13	If you are responsible for an arrangement that contains a contingent liability you must ensure that details are recorded in the ROMAN Indemnity Register and any claims against the contingent liability are also recorded in the ROMAN Indemnity Register.

Instructions – All delegates

2.6.1.14	When approving an indemnity, guarantee or warranty that creates a contingent liability for the Commonwealth, or a liability cap that has the effect of creating an indemnity involving a contingent liability for the Commonwealth, you must comply with all relevant directions (Finance Minister's Directions and Secretary's Directions) and conditions (including limits) contained within FINMAN 2 delegations schedule 1.
2.6.1.15	You should refer to paragraph 44 of RMG 414 for the matters to consider when approving an indemnity involving a contingent liability for the Commonwealth.

2.7 GIFTS, HOSPITALITY AND SPONSORSHIP

- 2.7.1.1** Official hospitality generally involves the use of public resources to provide hospitality to persons other than Defence officials to facilitate the achievement of one or more Defence objectives. Official hospitality may include the provision of refreshments, entertainment, or other benefits.

Instructions – All officials

2.7.1.2	You must comply with DI(G) PERS 25-7 <i>Gifts, Hospitality and Sponsorship</i> .
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2.8 OFFICIAL TRAVEL

- 2.8.1.1** Official travel is any travel where the Commonwealth is responsible for any of the direct or indirect costs associated with that travel. This includes travel by officials to undertake work duties and travel where Defence pays for, or reimburses, the travel of other persons to achieve one or more Commonwealth policy objectives.
- 2.8.1.2** Official travel should only be undertaken where there is a business need and other communication tools, such as teleconferencing and videoconferencing, are not appropriate.

Instructions – All officials

2.8.1.3	You must comply with the policies and have regard to the procedures contained within the Defence Travel Website when entering into an arrangement for official travel.
2.8.1.4	You must not enter into or vary an arrangement (e.g. make a booking) for official travel unless you have confirmed that the Section 23 Commitment Approval delegation (FINMAN 2, schedule 1) has been exercised.
2.8.1.5	You must not exercise the Section 23 Commitment Approval delegation (FINMAN 2, schedule 1) for your own travel.

ACCOUNTABLE AUTHORITY INSTRUCTION 2 – APPROVAL AND COMMITMENT OF RELEVANT MONEY

2.8.1.6	Where the Government has established coordinated procurements for a particular travel activity, you must use the arrangement established for that activity, unless an exemption has been provided by the Finance Minister.
2.8.1.7	You must use Defence's contracted travel management company to book domestic and ex-Australia international airfares under the <i>Deed of Standing Offer for the Provision of Whole of Australian Government Travel Management Services</i> .
2.8.1.8	You must use the contracted accommodation program management services provider for accommodation arrangements under the <i>Deed for the Provision of Accommodation Program Management Services to the Australian Government</i> .
2.8.1.9	You must use the contracted car rental services providers for car rental arrangements under the <i>Deed for the Provision of Car Rental Services to the Australian Government</i> .
2.8.1.10	For official international travel, you must obtain approval for the need to travel in accordance with the approval requirements in Resource Management Guide: 405: <i>Official International Travel - Approval and Use of the Best Fare of the Day</i> policy (<i>International Travel Policy</i>). Further information and guidance including a process flow, list of exemptions and templates for seeking this approval is provided on the Defence Travel website - See Defence Travel: International - Before you Travel webpage.

2.9 FOREIGN MILITARY SALES

- 2.9.1.1 The Foreign Military Sales (FMS) program is a key mechanism for Defence to procure defence materiel and services from the United States of America (USA) Government and is to be managed as a complex procurement by CASG.

Instructions – All Officials

2.9.1.2	You must comply with relevant Australian and US Government policies relating to Foreign Military Sales.
2.9.1.3	All proposals for FMS cases must be passed through the Counsellor Defence Material (CONDMAT) Washington and must be accompanied by a clearly identifiable case with appropriate documentation.
2.9.1.4	You must consult with DEFMAT Washington prior to establishing or amending an FMS Case.
2.9.1.5	Financial aspects of FMS must be managed in accordance with Chapter 14 of FINMAN 5.

2.10 DELEGATIONS ISSUED TO CONSULTANTS AND INDEPENDENT CONTRACTORS (PRESCRIBED OFFICIALS)

2.10.1 Introduction

- 2.10.1.1 The Secretary has determined that consultants and independent contractors may be issued with delegations relating to the approval and commitment of relevant money for Defence under the PGPA Act. This applies to the following FINMAN 2 delegations schedules:

- **FINMAN 2 schedule 1** - To approve the commitment of relevant money (PGPA Act section 23(3), PGPA Rule 18 and PGPA Act section 60)
- **FINMAN 2 schedule 2** - To enter into an arrangement on behalf of the Commonwealth (PGPA Act section 23(1))

Instructions – All Officials

2.10.1.2	Before a prescribed official can exercise delegated authority, an Authority to Act Instrument must be:
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ACCOUNTABLE AUTHORITY INSTRUCTION 2 – APPROVAL AND COMMITMENT OF RELEVANT MONEY

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| a) | approved by the relevant SES or Star Ranked official in accordance with FINMAN 2 schedule 21A , using the template in FINMAN 5; |
| b) | acknowledged by the prescribed official, and |
| c) | recorded in the Prescribed Officials Register. |

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| 2.10.1.3 | Any revocation or amendment of an existing Authority to Act instrument must be approved by the relevant SES or Star Ranked official and is to be recorded in the Prescribed Officials Register. |
| 2.10.1.4 | You must comply with the requirements of schedules 1 and 21A of FINMAN 2 and FINMAN 5 in relation to responsibilities of prescribed officials. |

2.11 APPROVAL OF PROPOSED COMMITMENTS OF \$100 MILLION OR MORE

- 2.11.1** Rule 9 of the Budget Process Operational Rules (BPORs) effective from August 2017 states that the Finance Minister’s written authorisation must be sought for any proposed major commitment that exceeds the threshold of \$100 million, (unless the proposal has previously been considered by the National Security Committee of Cabinet or Cabinet itself).
- 2.11.2** In accordance with intention of this requirement, proposed commitments of relevant money of \$100 million or greater or amendments to existing arrangements that would increase the value of the existing arrangement to \$100 million or more are to be provided through the appropriate AS FIN to the Chief Finance Officer (CFO). AS FINs will provide advice if additional internal committee approvals are required.
- 2.11.3** The proposal must then be processed in accordance with the decision of the CFO (ie, forwarded for consideration by the NSC, Finance Minister or Cabinet, or consideration by the appropriate FINMAN 2 schedule 1 delegate).
- 2.11.4** This requirement does not apply where the proposed commitment (whether or not it is a new commitment or an amendment to an existing arrangement) has already been approved by the National Security Committee of Cabinet or Cabinet itself.
- 2.11.5** References in this part 2.11 to ‘\$100 million’ in relation to proposed expenditure by Defence are to be read as references to ‘\$50 million’ in relation to proposed major commitments utilising Australian Signals Directorate (ASD) funding.

Instructions – FINMAN 2 schedule 1 delegates

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| 2.11.6 | You must not approve a proposed commitment of relevant money of \$100 million or more or an amendment to an existing arrangement that would increase the value of the arrangement to \$100 million or more unless the proposal has been: | | | | |
| | <table border="1"> <tr> <td style="width: 5%;">a)</td> <td>considered by the National Security Committee of Cabinet and/or Cabinet itself as appropriate; or</td> </tr> <tr> <td>b)</td> <td>considered by the CFO and authorised by the Finance Minister (if required).</td> </tr> </table> | a) | considered by the National Security Committee of Cabinet and/or Cabinet itself as appropriate; or | b) | considered by the CFO and authorised by the Finance Minister (if required). |
| a) | considered by the National Security Committee of Cabinet and/or Cabinet itself as appropriate; or | | | | |
| b) | considered by the CFO and authorised by the Finance Minister (if required). | | | | |
| 2.11.7 | You must ensure that proposals requiring Finance Minister authorisation are submitted through the appropriate Group or Service AS FIN to the CFO for consideration. The CFO will determine if Finance Minister written authorisation is required and/or internal committee approvals are necessary. | | | | |
| 2.11.8 | When exercising a FINMAN 2 schedule 1 delegation in relation to proposed commitments of \$100 million or more, you must ensure that the proposal for the commitment of relevant money is consistent with the decision of the CFO, NSC of Cabinet, Cabinet, or the Finance Minister as appropriate. | | | | |
| 2.11.9 | If you are an official in ASD, references in paragraphs 2.11.7 to 2.11.9 to ‘\$100 million’ are to be read as if they were references to ‘\$50 million’. | | | | |

ACCOUNTABLE AUTHORITY INSTRUCTION

3 PROCUREMENT

3.1 INTRODUCTION

3.1.1 About this Accountable Authority Instruction (AAI)

3.1.1.1 This AAI is issued under section 20A of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). This AAI, together with AAI 2 – *Approval and Commitment of Relevant Money*, provides instructions to officials on undertaking a procurement and entering into a procurement contract.

3.1.2 What is procurement?

3.1.2.1 Procurement includes the whole process of acquiring goods or services. It begins when an entity has identified a need to procure a good or service, continues through to the signing of the procurement contract and its ongoing management, including expiry, termination and/or consideration of disposal.

3.1.2.2 Procurement also covers a situation where an entity acquires goods or services on behalf of another entity or a third party.

3.1.2.3 If you are unsure whether a particular financial arrangement is a procurement or another type of activity, email financial.policy@defence.gov.au.

3.1.3 The procurement policy framework

3.1.3.1 The Commonwealth Procurement Rules (CPRs) are a legislative instrument issued by the Finance Minister under section 102(c) of the PGPA Act. The CPRs set out the rules that officials must comply with when they procure goods and services. Where a third party undertakes a procurement on behalf of the Defence, the third party must comply with the CPRs to the greatest extent possible.

3.1.3.2 The CPRs set out the rules for Australian Government procurement and are underpinned by the PGPA Act. Value for money is the core rule of the CPRs. It is achieved by: encouraging competition and non-discriminatory processes; using public resources properly; making decisions in an accountable and transparent manner; considering the risks; and conducting a procurement process proportional to the scale and scope of the procurement.

3.1.3.3 Where the Government has established a coordinated procurement, Defence must use the coordinated procurement. Exemptions from a coordinated procurement can only be granted jointly by the Defence Minister and the Finance Minister where a special need for an alternative process can be demonstrated or where the coordinated procurement allows for an alternative approach.

3.1.4 References

3.1.4.1 [Public Governance, Performance and Accountability Act 2013](#), sections 23, 60 and 102(c)

3.1.4.2 [Commonwealth Procurement Rules](#) (CPRs)

3.1.4.3 [Comcover Better Practice Guide – Risk Management](#)

3.1.4.4 [Whole-of-Government Procurement Contracts, Arrangements and Initiatives](#)

3.1.4.5 [Procurement connected policies](#) (Department of Finance website)

3.1.4.6 Financial Delegations Manual ([FINMAN 2](#)) (Attachment 1 to AAI 15 – *Financial Delegations in Defence*, hereafter referred to as FINMAN 2)

3.1.4.7 *Defence Procurement Policy Manual* (DPPM)

3.1.4.8 Defence Instruction 'Administrative Policy' (DIAP).

ACCOUNTABLE AUTHORITY INSTRUCTION 3 – PROCUREMENT

3.2 PROCESS

- 3.2.1.1** Within Defence the *Defence Procurement Policy Manual* (DPPM) is the primary source of guidance on all process, procedures, forms and templates related to procurement. The DPPM incorporates the CPRs and additional Defence policy in relation to procurement. Defence policy supplements specific CPRs in the context of the particular circumstances and needs of Defence.
- 3.2.1.2** Consistent with paragraph 2.12 of the CPRs, the AAls, FINMAN 2 and the DPPM represent internal control systems for the purposes of section 16 of the PGPA Act.

Instructions – All Officials performing duties in relation to procurement

- 3.2.1.3** You must determine whether a proposed arrangement is a procurement, prior to applying the CPRs.
- 3.2.1.4** When undertaking a procurement, you must comply with:
- a) the CPRs;
 - b) the requirements of the PGPA Act and Rule;
 - c) FINMAN 2; and
 - d) the DPPM, subject to paragraph 3.2.1.14 below;
- 3.2.1.5** You must use a Whole of Government arrangement, where applicable.
- 3.2.1.6** You must not use third-party arrangements to avoid the rules in the CPRs when procuring goods and services.
- 3.2.1.7** You must treat all potential suppliers to government fairly and equitably.
- 3.2.1.8** You must act ethically throughout a procurement.
- 3.2.1.9** You must not seek to obtain benefit from supplier practices that may be dishonest, unethical or unsafe.
- 3.2.1.10** If a procurement does not involve the ordinary services and functions of government, you must ensure it is authorised by Schedule 1AA or Schedule 1AB to the FF(SP) Regulations or other specific legislation, or that you have legal advice that the procurement can be done without legislative authority. You must ensure that any the requirements relating to the commitment of relevant money for procurements (including any procurement related requirements specific to your Group or the types of procurement) specified in part 2.3 of AAI 2 are satisfied.
- 3.2.1.11** You must document your decisions in writing to meet the requirements of the CPRs. You must take a 'whole-of-life procurement and contract management' approach and apply the financial management and procurement frameworks.
- 3.2.1.12** Where a standing offer already exists within Defence that has been assessed as meeting the procurement requirement you must use the standing offer unless a Group Head has approved not doing so.
- 3.2.1.13** If the proposed commitment of relevant money is for a Foreign Military Sales procurement you must comply with part 2.9 – Foreign Military Sales of AAI 2.
- 3.2.1.14** You must act in accordance with the requirements of the DPPM (other than for travel) unless the DPPM is inconsistent with the requirements of a higher level instruction. In that case, you are required to comply with the higher level instruction (higher level instructions include the PGPA Act, PGPA Rule, CPRs, Defence's AAls and FINMAN 2).
- 3.2.1.15** Defence officials **must** obtain an 'Endorsement to Proceed' prior to approaching the market for:
- a) procurements to establish a standing offer arrangement; and
 - b) all other procurements that are valued at or above \$200,000 (including GST).

ACCOUNTABLE AUTHORITY INSTRUCTION

2 APPROVAL AND COMMITMENT OF RELEVANT MONEY

2.1 INTRODUCTION

2.1.1 About this Accountable Authority Instruction (AAI)

2.1.1.1 This AAI is issued under section 20A of the PGPA Act. It provides instruction to officials on approving and committing relevant money and entering into, varying or administering arrangements. It includes instructions in relation to:

- a) approving proposed commitments of relevant money and entering into arrangements;
- b) tax;
- c) guarantees, indemnities and warranties on behalf of the Commonwealth;
- d) gifts, hospitality and sponsorship;
- e) official hospitality;
- f) official travel; and
- g) foreign military sales.

2.1.2 Proper use of public resources

2.1.2.1 Section 15 of the PGPA Act imposes a duty on the Secretary to promote the proper use and management of public resources for which he is responsible. Consistent with this duty, the Secretary has established controls that ensure officials consider the proper use (i.e. efficient, effective, economical and ethical use) of public resources when making decisions regarding the commitment of relevant money.

2.1.3 Before committing relevant money

2.1.3.1 Before you enter into an arrangement that may commit relevant money, you must be satisfied that:

- a) you have authority to enter into the arrangement;
- b) the commitment has been approved, (if required) in accordance with these instructions;
- c) you have acted in accordance with the Commonwealth Procurement Rules or Commonwealth Grants Rules and Guidelines, where relevant; and
- d) you have acted in a manner which is not inconsistent with the policies of the Australian Government.

2.1.3.2 For Defence, the authority to enter into, vary or administer an arrangement generally comes from legislation. The authority can come from section 23 of the PGPA Act, section 32B of the *Financial Framework (Supplementary Powers) Act 1997* (FFSP Act) or other specific legislation.

2.1.3.3 The Secretary has delegated the power to Defence officials under FINMAN 2 schedules 2 and 3 to enter into, vary or administer an arrangement.

2.1.3.4 For Defence, where a commitment of relevant money relates to the ordinary services and functions of government, the authority to enter into, vary or administer an arrangement is conferred on the Secretary by section 23 of the PGPA Act. This power has been delegated to officials under FINMAN 2 schedule 2.

2.1.3.5 Section 18 of the PGPA Rule (Approving commitments of relevant money) sets out the requirements that apply to all Commonwealth officials approving the commitment of relevant money.

2.1.3.6 Expenditure for purposes other than the ordinary services and functions of government should be authorised by specific legislation (for example, section 32B of the FFSP Act for Defence grants).

- 2.1.3.7** Officials in Defence have been delegated powers, under the PGPA Act and the FFSP Act to enter into and administer arrangements. For example, section 32B of the FFSP Act provides the Commonwealth with the power to enter into, vary or administer an arrangement of a grant of financial assistance ONLY if the arrangement or grant is either specified in, is in a class of arrangements or grants specified in, or is for the purposes of a program specified in Schedule 1AA to the FFSP Regulations.
- 2.1.4 What is a commitment of relevant money?**
- 2.1.4.1** Relevant money becomes ‘committed’ when Defence undertakes an activity that results in an obligation to pay relevant money. For example, entering into an arrangement under which relevant money will or may become payable, including obligations that are contingent upon certain events occurring, such as indemnities, guarantees and warranties. The Secretary has established controls relevant to the approval of commitments that must be followed before an arrangement is entered into (or a payment is made), based on risk and proportionality appropriate to the circumstances of the proposed commitment.
- 2.1.5 What is an arrangement?**
- 2.1.5.1** Section 23 of the PGPA Act refers to an arrangement as including a contract, agreement, deed or understanding. This is a broad definition and includes a range of agreements, such as MOUs, standing offers and grant agreements. It also includes any arrangement that involves a contingent liability (i.e. a commitment that may give rise to a cost as a result of a future event), such as an indemnity or guarantee.
- 2.1.5.2** Arrangements for the engagement of an employee or the payment of an entitlement or allowance are to be managed in accordance with the applicable employment framework.
- 2.1.6 Who can enter into an arrangement?**
- 2.1.6.1** Arrangements may be entered into, varied and administered under section 23 of the PGPA Act or other specific legislation (e.g. section 32B of the FFSP Act for grants).
- 2.1.6.2** Section 23 of the PGPA Act provides the Secretary with the power to enter into, vary or administer an arrangement, on behalf of the Commonwealth, in relation to the affairs of Defence. It also allows Defence to work cooperatively in a range of areas, including where Defence enters into an arrangement and the services can be accessed by other Commonwealth entities.
- 2.1.6.3** Delegations and authorisations are an important way in which the Secretary enables officials within Defence or another Commonwealth entity to enter into an arrangement.
- 2.1.7 References**
- 2.1.7.1** [Public Governance, Performance and Accountability Act 2013](#), sections 15, 21 23 and 60
- 2.1.7.2** *Public Governance, Performance and Accountability Rule 2014*, section 18
- 2.1.7.3** *Charter of Budget Honesty Act 1988*, sections 5(1)(a) and 12(1)(e)
- 2.1.7.4** *Financial Framework (Supplementary Powers) Act 1997*, section 32B
- 2.1.7.5** *Financial Framework (Supplementary Powers) Regulations 1997*, Schedule 1AA
- 2.1.7.6** Resource Management Guide No 400: Approving commitments of relevant money

- 2.1.7.7 Resource Management Guide No 405: Official International Travel - Approval and Use of the Best Fare of the Day
- 2.1.7.8 Resource Management Guide No 404: Official Domestic Air Travel - Use of the Lowest Practical Fare
- 2.1.7.9 Resource Management Guide No 414: Indemnities, Guarantees or Warranties granted by the Commonwealth
- 2.1.7.10 Resource Management Guide: Prescribing officials for non-corporate Commonwealth entities.
- 2.1.7.11 FINMAN 2 Financial Delegations Manual
- 2.1.7.12 Defence Procurement Policy Manual
- 2.1.7.13 Defence Travel Website
- 2.1.7.14 DI(G) PERS 25-7 *Gifts, Hospitality and Sponsorship*

2.2 APPROVING COMMITMENTS OF RELEVANT MONEY AND ENTERING INTO ARRANGEMENTS

- 2.2.1.1 Section 15 of the PGPA Act imposes duties on the Secretary regarding the governance of Defence; including managing Defence in a way that promotes the proper use and management of public resources.
- 2.2.1.2 Section 23 of the PGPA Act confers on the Secretary the power to approve proposals for the commitment of relevant money.
- 2.2.1.3 Section 18 of the PGPA Rule (Approving commitments of relevant money) sets out the core legal requirements that apply to approvals for the commitment of relevant money. Section 18 of the PGPA Rule applies to all Commonwealth entities under the PGPA Act and to all officials involved in the commitment of relevant money.
- 2.2.1.4 The PGPA framework allows flexibility in the approval of relevant money that allows the Secretary to apply controls that are appropriate to Defence. Before committing relevant money you should consider the requirements, under sections 15 (to ensure that the proposal is a proper use of Commonwealth resources) and 21 (to ensure that is not inconsistent with the policies of the Commonwealth) of the PGPA Act.

2.3 APPROVING COMMITMENTS OF RELEVANT MONEY

- 2.3.1.1 Unless specifically provided by other legislation, the decision to approve a proposed commitment of relevant money (a proposal) is made under section 23 of the PGPA Act and PGPA Rule 18. This rule requires an approver—whether a Minister, the Secretary of Defence or a delegate under FINMAN 2, Schedule 1—to be satisfied that giving effect to the pending proposal would be a proper use of public resources.

Instructions – All officials

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| 2.3.1.2 | When considering a proposed commitment of relevant money, you must determine whether it is a grant, procurement or other type of financial arrangement. |
| 2.3.1.3 | You must consult with your Group Chief Finance Officer (GCFO) where you are unsure what type of financial arrangement the proposed commitment of relevant money is. |
| 2.3.1.4 | You must not approve a proposed commitment of relevant money, unless you have been delegated powers to do so. |
| 2.3.1.5 | Proposed commitments of relevant money must be approved in a manner consistent with any written requirements specified in these instructions or the terms of the relevant delegation or authorisation instrument. |

2.3.1.6 You must provide the delegate with sufficient information to enable the delegate to consider the proposed commitment of relevant money, commensurate with the risk and purpose of the proposal.

Instructions – All delegates

- 2.3.1.7** You must comply with the requirements of section 18 of the PGPA Rule (Approving commitments of relevant money), and approve the proposed commitment of relevant money in a manner consistent with any written requirements, specified in these instructions or the terms of the relevant delegation (contained in FINMAN 2).
- 2.3.1.8** You must be satisfied that the proposed commitment of relevant money promotes a 'proper' use (i.e value for money including efficient, effective, economical and ethical) of relevant money that is not inconsistent with the policies of the Australian Government.
- 2.3.1.9** If a commitment of relevant money involves procurement, you must ensure it complies with the CPRs (see AAI 3 - *Procurement*).
- 2.3.1.10** If a commitment of relevant money involves a grant, you must ensure it is approved by the Minister for Defence (see AAI 4 - *Grants*).
- 2.3.1.11** If you provide verbal approval for a commitment of relevant money, you must record in writing the approval as soon as practicable after giving it (section 18 of the PGPA Rule). The documentation must specify the date and details of the verbal approval.
- 2.3.1.12** Approvals for proposed commitments of relevant money must be properly recorded.
- 2.3.1.13** You must not approve a commitment of relevant money that is subject to conditions without seeking advice from your Group CFO area.
- 2.3.1.14** Section 23(3) Commitment approval delegates must ensure that any conditions that attach to a proposed commitment of relevant money are met prior to the arrangement being entered into. You may provide approval for a group of proposals to commit relevant money (e.g. 'bulk approval').
- 2.3.1.15** You must not approve a payment to yourself.
- 2.3.1.16** For each proposal to commit relevant money you must be satisfied that:
- a) sufficient funds are available within the relevant budget to support all proposed payments under the proposed arrangement
 - b) costing assumptions are sound;
 - c) costing calculations are accurate; and
 - d) the benefits of entering into the arrangement outweigh the risk of locking away future budget flexibility.
- 2.3.1.17** You must consult with your Group CFO to seek specialist financial advice on proposals that include any of the following:
- a) a commitment of relevant money that has long term financial implications (i.e. over 12 months in duration or across multiple financial years); or
 - b) expenditure that will exceed your current financial year budget allocation.

2.3.2 Software Purchases (Commitments of Relevant Money for Software Procurement)

2.3.2.1 The Chief Information Officer Group (CIOG) undertakes the role of Capability Coordination Manager for software assets in Defence, to ensure Defence effectively manages all software asset savings and compliance.

- 2.3.2.2** CIOG is responsible for the approval of all commitments of relevant money for the procurement of software for use on the Single Information Environment (SIE), other than procurements relating to weapons systems or embedded platform software or 'Urgent Operational Procurement'.

Instructions – All officials

2.3.2.3	You must seek approval from a CIOG delegate listed in FINMAN 2 schedule 1 part 3 for all commitments of relevant money for the procurement of software.
2.3.2.4	You must ensure that all requests for approval of the commitment of relevant money for the procurement of software are logged through the SIE Service desk and submitted on a completed form available from the Hardware and Software Branch website or Directorate of Procurement and Contracting Services website or a higher delegation submission.
2.3.2.5	You must provide information to CIOG on any Urgent Operation Procurement of software as soon as practicable.
2.3.2.6	You must ensure that all transactions pertaining to the procurement of software are accurately documented and recorded in ROMAN.

Instructions – Intelligence and Security Group Officials

2.3.2.7	You must provide information to CIOG on any procurement of software as stipulated in the Software Asset Management Plan.
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Instructions – Defence Science and Technology Organisation (DSTO) Officials

2.3.2.8	You must advise CIOG of the software details prior to procuring software.
2.3.2.9	You must provide all software licensing details including licensing terms and conditions, type and quantity of licenses purchased and Purchase Order number to CIOG within 5 business days of entering into the arrangement.

2.3.3 ICT Hardware Purchases (Commitments of Relevant Money for ICT Hardware Procurement)

- 2.3.3.1** The Chief Information Officer is the Coordinating Capability Manager for Defence ICT.
- 2.3.3.2** CIOG is responsible for the approval of all commitments of relevant money for the procurement of ICT hardware for use on the Single Information Environment (SIE), other than procurement at Australian overseas posts, procurement relating to weapons systems or embedded platforms, 'Urgent Operational Procurement' or High Grade Cryptographic Equipment.
- 2.3.3.3** ICT hardware that is not approved in accordance with the below instructions and FINMAN 2 Schedule 1 may be removed at the discretion of the CIOG. Any costs associated with the removal may be recovered by the CIOG from the Group, Service or individual who approved the commitment of relevant money for the procurement. The Intelligence and Security Group and DSTO have this authority with regard to Intelligence Networks and DSTO Research Networks respectively.

Instructions – All officials

2.3.3.4	You must seek approval from a CIOG delegate listed in FINMAN 2 Schedule 1 Part 4 for all commitments of relevant money for the procurement of ICT hardware.
2.3.3.5	You must ensure that Whole-of-Government procurement arrangements are used where they apply to ICT hardware assets. This includes desktop hardware and major office machines.

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| 2.3.3.6 | You must provide information to CIOG on any Urgent Operation Procurement of ICT hardware within 5 business days of entering into the arrangement. |
| 2.3.3.7 | You must ensure that all transactions pertaining to ICT hardware purchases are accurately documented and recorded in the appropriate asset register. |

Instructions – All Delegates responsible for approving the commitment of relevant money for the procurement of ICT hardware.

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| 2.3.3.8 | You may approve the commitment of relevant money for the procurement of software where:

a) The software is bundled with the hardware provided by the Original Equipment Manufacturer (OEM); and
b) The hardware cannot be purchased without the software; and
c) The software is required for the essential functioning of the hardware and does not provide additional functionality. |
| 2.3.3.9 | You must ensure that approval of relevant money for software provides additional functionality, software that is not part of the OEM and contracts and renewals of software maintenance are approved by a CIOG software delegate in accordance with FINMAN 2 Schedule 1. |

Instructions – DSTO Officials

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| 2.3.3.10 | When procuring ICT hardware for DSTO Research Networks, you must notify the CIOG prior to entering into any arrangement. |
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Instructions – Defence Attaches at Australian overseas posts

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| 2.3.3.11 | You must provide information to the CIOG on any procurement of ICT hardware within 5 business days of entering into the arrangement. |
| 2.3.3.12 | You must ensure that all procurements are within the limits set by the International Policy Division in the <i>Form Payment Limit Advice</i> and comply with AAI 13 - <i>Finance and Administration at Overseas Posts</i> . |

2.3.4 Additional Instructions for Commitments of Relevant Money in CASG

Instructions – All CASG officials

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| 2.3.4.1 | If a proposed commitment of relevant money contains a contingent liability you must comply with AAI 2.6 and FINMAN 2 Schedule 1A before the commitment is approved. |
| 2.3.4.2 | You must not approve a proposed commitment of relevant money unless you satisfy the delegation competency requirements contained in Chapter 1.4 of the DPPM. |

2.4 ENTERING INTO ARRANGEMENTS

- 2.4.1.1** The authority to enter into, vary or administer an arrangement on behalf of the Commonwealth comes from either section 23 of the PGPA Act, (for all arrangements other than grants) or section 32B of the FFSP Act (for grants). These authorities are delegated to officials to enable them to enter into, vary or administer arrangements.

Instructions - All officials

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| 2.4.1.2 | You must not enter into, vary or administer an arrangement, unless you have been delegated powers to do so (see FINMAN 2 schedules 2 or 3). |
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ACCOUNTABLE AUTHORITY INSTRUCTION 2 – APPROVAL AND COMMITMENT OF RELEVANT MONEY

2.4.1.3	Before entering into, varying or administering an arrangement that may commit relevant money, you must be satisfied that: a) The proposed commitment of relevant money has been approved by a section 23 Commitment Approval Delegate (see FINMAN 2 Schedule 1) or for a grant, the Minister for Defence; and b) the value does not exceed the amount approved
2.4.1.4	If the arrangement involves procurement, you must act in accordance with the CPRs, including the reporting and publishing requirements (see AAI 3 - <i>Procurement</i>).
2.4.1.5	If the arrangement involves a grant, you must act in accordance with the CGRG, including the reporting and publishing requirements (see AAI 4 - <i>Grants</i>).
2.4.1.6	You must ensure that any payments to be made under the arrangement, including prepayments, have been considered by the FINMAN 2 schedule 1 delegate.

Additional Instructions – All CASG Delegates

2.4.1.7 CASG officials sometimes enter into arrangements that do not involve the commitment of relevant money, for example novation deeds, licence deeds, non-disclosure deeds and 'nil-cost' contract change proposals. Notwithstanding these arrangements do not involve payment of relevant money, they can carry significant risk for the Commonwealth

2.4.1.8	If a proposed arrangement does not involve a commitment of relevant money (and therefore does not require a section 23 (3) Commitment Approval delegation to be exercised under FINMAN 2 Schedule 1), you must not enter into or vary the arrangement (as applicable) unless you: a) hold a rank or level of EL2/O-6 (COL(E)) or above, and b) are satisfied that the proposed arrangement or variation represents proper use and management of public resources and is not inconsistent with the policies of the Australian Government.
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2.5 TAX

2.5.1.1 Defence is required to comply with Commonwealth taxation laws including Goods and Services Tax and Fringe Benefits Tax. The Defence Tax Management Office (DTMO) manages the taxation compliance and advisory function within Defence.

Instructions – All officials

2.5.1.2	You must ensure that Defence meets its taxation obligations.
2.5.1.3	You must respect the confidentiality of tax information acquired in the course of your work and not use or disclose tax information or associated personal information, except in accordance with relevant legislation.
2.5.1.4	You must ensure that all contracts for the acquisition or sale of goods and services by Defence appropriately address taxation issues.
2.5.1.5	DTMO must approve the discussion of any taxation matters with the Australian Taxation Office prior to the discussion occurring.
2.5.1.6	Unless reverse charging arrangement approved by DTMO are in place, you must ensure that a valid tax invoice which separately identifies any

GST component is obtained for each purchase to enable Defence to claim input tax credits for the purposes of GST, where applicable.

2.6 GUARANTEES, INDEMNITIES AND WARRANTIES ON BEHALF OF THE COMMONWEALTH

- 2.6.1.1** Section 60 of the PGPA Act authorises the Finance Minister to grant an indemnity, guarantee or warranty on behalf of the Commonwealth. This power has been delegated by the Finance Minister to accountable authorities of non-corporate Commonwealth entities. However, the Finance Minister has not delegated the power to enter into debt guarantees (including equity and loan guarantees), as these are significant and have whole-of-government and whole-of-economy impacts.
- 2.6.1.2** A contingent liability means a liability that exists at any given point in time that may arise as a result of the occurrence (or non-occurrence) of a particular future event that is *outside* Defence's control. If the particular event occurs, the contingent liability is said to 'crystallise'. Protecting the Commonwealth's interests and managing the Commonwealth's exposure to risk is the prime consideration for officials approving a contingent liability.
- 2.6.1.3** Contingent liabilities often result from indemnities, guarantees, warranties and *some* liability caps in contracts between the Commonwealth and another party. Contingent liabilities are generally used to allocate risk between parties to an arrangement. Refer to Resource Management Guide No 414: Indemnities, Guarantees or Warranties on behalf of the Commonwealth for the definition of and guidance on, indemnities, guarantees and warranties.
- 2.6.1.4** In relation to any provision of a contract that operates to cap (or limit) a contractor's liability, this provision amounts to a contingent liability and requires approval under section 60 of the PGPA Act if it has the effect of indemnifying another party by:
- a) limiting a contractor's **liability to a third party** so that the Commonwealth is liable to the third party for any excess above the cap; or
 - b) limiting a contractor's exposure for damage the contractor has suffered itself, so that the Commonwealth is liable to the contractor for any excess.
- 2.6.1.5** A contractor liability cap does not create a contingent liability to the extent that it limits a contractor's **liability to the Commonwealth** under an arrangement with the Commonwealth:
- a) so that the Commonwealth cannot recover damages from the contractor if the Commonwealth is sued by a third party; or
 - b) for damage it directly causes the Commonwealth

Instructions – All officials

- 2.6.1.6** You must not agree to an indemnity, guarantee, or warranty, or a liability cap that creates a contingent liability, unless the contingent liability has been approved in accordance with this AAI 2.6.1 and:
- a) for CASG official, FINMAN 2 Delegation Schedule 1A; and
 - b) or all other Defence officials, FINMAN 2 Delegation Schedule 1.
- 2.6.1.7** For all Defence officials other than CASG, you must ensure that the contingent liability is considered as part of the FINMAN 2 Schedule 1 Delegate commitment of relevant money approval.
- 2.6.1.8** For CASG officials, you must ensure that contingent liabilities are approved by a FINMAN 2 Delegation Schedule 1A delegate **before**

	obtaining commitment approval from a FINMAN 2 Delegation Schedule 1, Part 6 delegate.
2.6.1.9	You must not enter into an arrangement that involves an indemnity, guarantee or warranty with another non-corporate Commonwealth entity.
2.6.1.10	Except for the categories of procurement identified in the DPPM (for CASG Officials) and FINMAN 5 (for all other Defence officials), a liability risk assessment must be undertaken prior to obtaining delegate approval for the contingent liability to assess the risk exposure for the Commonwealth and to determine if the contingent liability meets the materiality and remoteness conditions specified in FINMAN 2 schedule 1 and 1A.
2.6.1.11	You must seek legal advice if you are unsure whether your proposed arrangement contains a contingent liability or of the nature and extent of the risks that would be assumed by the Commonwealth in agreeing to the contingent liability. CASG officials must comply with the DPPM in relation to the circumstances when legal advice must be sought.
2.6.1.12	You must consult the Directorate of Treasury and Banking if an arrangement involves a bank guarantee, prior to entering into the arrangement.
2.6.1.13	If you are responsible for an arrangement that contains a contingent liability you must ensure that details are recorded in the ROMAN Indemnity Register and any claims against the contingent liability are also recorded in the ROMAN Indemnity Register.

Instructions – All Delegates

2.6.1.14	When approving an indemnity, guarantee, warranty or liability cap involving a contingent liability, you must comply with all directions (Finance Minister's Directions and Secretary's Directions) and conditions (including limits) contained within the relevant FINMAN 2 delegation (for all Defence groups other than CASG refer to FINMAN 2 Delegation Schedule 1; for CASG refer to FINMAN 2 Delegation Schedule 1A)
2.6.1.15	You should refer to paragraph 44 of RMG 414 for the matters to consider when approving an indemnity.

2.7 GIFTS, HOSPITALITY AND SPONSORSHIP

- 2.7.1.1** Official hospitality generally involves the use of public resources to provide hospitality to persons other than Defence officials to facilitate the achievement of one or more Defence objectives. Official hospitality may include the provision of refreshments, entertainment, or other benefits.

Instructions – All officials

2.7.1.2	You must comply with DI(G) PERS 25-7 <i>Gifts, Hospitality and Sponsorship</i> .
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2.8 OFFICIAL TRAVEL

- 2.8.1.1** Official travel is any travel where the Commonwealth is responsible for any of the direct or indirect costs associated with that travel. This includes travel by officials to undertake work duties and travel where Defence pays for, or reimburses, the travel of other persons to achieve one or more Commonwealth policy objectives.
- 2.8.1.2** Official travel should only be undertaken where there is a business need and other communication tools, such as teleconferencing and videoconferencing, are not appropriate.

Instructions – All officials

2.8.1.3	You must comply with the policies and have regard to the procedures contained within the Defence Travel Website when entering into an arrangement for official travel.
2.8.1.4	You must not enter into or vary an arrangement (eg. make a booking) for official travel unless you have confirmed that the Section 23 Commitment Approval delegation (FINMAN 2, Schedule 1) has been exercised.
2.8.1.5	You must not exercise the Section 23 Commitment Approval delegation (FINMAN 2, Schedule 1) for your own travel.
2.8.1.6	Where the Government has established coordinated procurements for a particular travel activity, you must use the arrangement established for that activity, unless an exemption has been provided by the Finance Minister.
2.8.1.7	You must use Defence's contracted travel management company to book domestic and ex-Australia international airfares under the <i>Deed of Standing Offer for the Provision of Whole of Australian Government Travel Management Services</i> .
2.8.1.8	You must use the contracted accommodation program management services provider for accommodation arrangements under the <i>Deed for the Provision of Accommodation Program Management Services to the Australian Government</i> .
2.8.1.9	You must use the contracted car rental services providers for car rental arrangements under the <i>Deed for the Provision of Car Rental Services to the Australian Government</i> .
2.8.1.10	For official international travel, you must obtain approval for the need to travel in accordance with the approval requirements in Resource Management Guide: 405: <i>Official International Travel - Approval and Use of the Best Fare of the Day policy (International Travel Policy)</i> . Further information and guidance including a process flow, list of exemptions and templates for seeking this approval is provided on the Defence Travel website - See Defence Travel: International - Before you Travel webpage.

2.9 FOREIGN MILITARY SALES

- 2.9.1.1** The Foreign Military Sales (FMS) program is a key mechanism for Defence to procure defence materiel and **services** from the United States of America (USA) Government and is to be managed as a complex procurement by CASG..

Instructions – All Officials

2.9.1.2	You must comply with relevant Australian and US Government policies relating to Foreign Military Sales.
2.9.1.3	All proposals for FMS cases must be passed through the Counsellor Defence Materiel (CONDMAT) Washington and must be accompanied by a clearly identifiable case with appropriate documentation.
2.9.1.4	You must comply with the DPPM Chapter 4.2 – Overseas Procurement when purchasing FMS.
2.9.1.5	Financial aspects of FMS must be managed in accordance with DMM (FIN) 01-0-004 – Foreign Military Sales Financial Management Manual.

2.10 DELEGATIONS ISSUED TO CONSULTANTS AND INDEPENDENT CONTRACTORS (PRESCRIBED OFFICIALS)

2.10.1 Introduction

2.10.1.1 From 1 July 2015, the Secretary has determined that consultants and independent contractors may be issued with delegations relating to the approval and commitment of relevant money and/or granting contingent liabilities for Defence under the PGPA Act. This applies to the following FINMAN 2 Delegation Schedules:

- **FINMAN 2 Schedule 1** - To approve the commitment of relevant money (PGPA Act section 23(3), PGPA Rule 18 and PGPA Act section 60)
- **FINMAN 2 Schedule 1 or Schedule 1A** (as applicable) - To grant an indemnity, guarantee, warranty on behalf of the Commonwealth (PGPA Act section 60)
- **FINMAN 2 Schedule 2** - To enter into an arrangement on behalf of the Commonwealth (PGPA Act section 23(1))

Instructions – All Officials

2.10.1.2	Before a prescribed official can exercise delegated authority, an Authority to Act Instrument must be: <ol style="list-style-type: none">Approved by a SES Band 1 O-7 (1 Star) level or above in accordance with FINMAN 2 Schedule 21A, using the template in FINMAN 5.Acknowledged by the prescribed official.Recorded in the Prescribed Officials Register.
2.10.1.3	Comply with the requirements of FINMAN 5 in relation to responsibilities of prescribed officials.

ACCOUNTABLE AUTHORITY INSTRUCTION

3 PROCUREMENT

3.1 INTRODUCTION

3.1.1 About this Accountable Authority Instruction (AAI)

3.1.1.1 This AAI is issued under section 20A of the PGPA Act. This AAI, together with AAI 2 – *Approval and Commitment of Relevant Money*, provides instructions to officials on undertaking a procurement and entering into a procurement contract.

3.1.2 What is procurement?

3.1.2.1 Procurement includes the whole process of acquiring goods or services. It begins when an entity has identified a need to procure a good or service, continues through to the signing of the procurement contract and its ongoing management, including expiry, termination and/or consideration of disposal.

3.1.2.2 Procurement also covers a situation where an entity acquires goods or services on behalf of another entity or a third party.

3.1.2.3 If you are unsure whether a particular financial arrangement is a procurement or another type of activity, email financial.policy@defence.gov.au.

3.1.3 The procurement policy framework

3.1.3.1 The Commonwealth Procurement Rules (CPRs) are a legislative instrument issued by the Finance Minister under section 102(c) of the PGPA Act. The CPRs set out the rules that officials must comply with when they procure goods and services. Where a third party undertakes a procurement on behalf of the Defence, the third party must comply with the CPRs to the greatest extent possible.

3.1.3.2 The CPRs set out the rules for Australian Government procurement and are underpinned by the PGPA Act. Value for money is the core rule of the CPRs. It is achieved by encouraging competition and non-discriminatory processes; using public resources properly; making decisions in an accountable and transparent manner; considering the risks; and conducting a procurement process proportional to the scale and scope of the procurement.

3.1.3.3 Where the Government has established a coordinated procurement, Defence must use the coordinated procurement. Exemptions from a coordinated procurement can only be granted jointly by the Defence Minister and the Finance Minister where a special need for an alternative process can be demonstrated or where the coordinated procurement allows for an alternative approach.

3.1.4 References

3.1.4.1 [Public Governance, Performance and Accountability Act 2013](#), sections 23, 60 and 102(c)

3.1.4.2 [Commonwealth Procurement Rules](#) (CPRs)

3.1.4.3 [Comcover Better Practice Guide – Risk Management](#)

3.1.4.4 [Whole-of-Government Procurement Contracts, Arrangements and Initiatives](#)

3.1.4.5 [Procurement connected policies](#) (Department of Finance website)

3.1.4.6 Defence Procurement Policy Manual (DPPM)

3.2 PROCESS

3.2.1.1 Within Defence the *Defence Procurement Policy Manual* (DPPM) is the primary source of guidance on all process, procedures, forms and templates related to procurement.

ACCOUNTABLE AUTHORITY INSTRUCTION 3 – PROCUREMENT

Instructions – Officials performing duties in relation to procurement

3.2.1.2	You must determine whether a proposed arrangement is a procurement, prior to applying the CPRs.
3.2.1.3	When undertaking a procurement, you must: a) comply with the CPRs; b) comply with the requirements of the PGPA Act and Rule; c) act in accordance with FINMAN 2; and d) act in accordance with the Defence Procurement Policy Manual (DPPM);
3.2.1.4	You must use a Whole of Government arrangement, where applicable.
3.2.1.5	You must not use third-party arrangements to avoid the rules in the CPRs when procuring goods and services.
3.2.1.6	You must treat all potential suppliers to government fairly and equitably.
3.2.1.7	You must act ethically throughout a procurement.
3.2.1.8	You must not seek to obtain benefit from supplier practices that may be dishonest, unethical or unsafe.
3.2.1.9	If a procurement does not involve the ordinary services and functions of government, you must ensure it is authorised by Schedule 1AA or Schedule 1AB to the FFSP Regulations or other specific legislation, or that you have legal advice that the procurement can be done without legislative authority. You must ensure that any the requirements relating to the commitment of relevant money for procurements (including any procurement related requirements specific to your Group or the types of procurement) specified in AAI 2.3 are satisfied.
3.2.1.10	You must document your decisions in writing to meet the requirements of the CPRs. You must take a 'whole-of-life procurement and contract management' approach and apply the financial management and procurement frameworks.
3.2.1.11	Where a standing offer already exists within Defence that has been assessed as meeting the procurement requirement you must use the standing offer unless there is a valid reason for not doing so.
3.2.1.12	If the proposed commitment of relevant money is for a Foreign Military Sales procurement you must comply with AAI 2.9 – Foreign Military Sales

***Note:** You must act in accordance with the requirements of the DPPM (other than for travel) unless the DPPM is inconsistent with the requirements of a higher level instruction, in which case the official is required to comply with the higher level instruction (higher level instructions are the PGPA Act, PGPA Rule, CPRs or FINMAN 2).

Instructions – All Officials (excluding CASG Officials)

3.2.1.13	If you are procuring goods or services that fall within any Defence Non-Materiel Procurement (NMP) category (including all corporate and domestic goods and services, but excluding major capital facilities) you must ensure that prior to approaching the market, an Endorsement to Proceed (as defined in the DPPM) has been obtained from the Defence Chief Procurement Officer (DCPO) in the following circumstances: a) for all procurements valued at more than \$200,000 (including GST); b) establishing a standing offer arrangement; and c) where a contract extension option is being considered and is available under the contract terms, and where the contract extension is valued at more than \$200,000
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Instructions - All CASG Officials performing duties in relation to procurement

ACCOUNTABLE AUTHORITY INSTRUCTION 3 – PROCUREMENT

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| 3.2.1.14 | For all complex procurement, you must ensure that an 'Endorsement to Proceed' has been obtained prior to approaching the market – see Chapter 1.4 of the DPPM. |
| 3.2.1.15 | You must comply with the DPPM and Defence Materiel Instructions (Procurement) when planning and conducting procurement. |

ACCOUNTABLE AUTHORITY INSTRUCTION

2 APPROVAL AND COMMITMENT OF RELEVANT MONEY

2.1 INTRODUCTION

2.1.1 About this Accountable Authority Instruction (AAI)

2.1.1.1 This AAI is issued under section 20A of the PGPA Act. It provides instruction to officials on approving and committing relevant money and entering into, varying or administering arrangements. It includes instructions in relation to:

- a) approving proposed commitments of relevant money and entering into arrangements;
- b) tax;
- c) guarantees, indemnities and warranties on behalf of the Commonwealth;
- d) gifts, hospitality and sponsorship;
- e) official hospitality;
- f) official travel; and
- g) Foreign Military Sales.

2.1.2 Proper use of public resources

2.1.2.1 Section 15 of the PGPA Act imposes a duty on the Secretary to promote the proper use and management of public resources for which he is responsible. Consistent with this duty, the Secretary has established controls that ensure officials consider the proper use (i.e. efficient, effective, economical and ethical use) of public resources when making decisions regarding the commitment of relevant money.

2.1.3 Before committing relevant money

2.1.3.1 Before you enter into an arrangement that may commit relevant money, you must be satisfied that:

- a) you have authority to enter into the arrangement;
- b) the commitment has been approved, (if required) in accordance with these instructions;
- c) you have acted in accordance with the Commonwealth Procurement Rules or Commonwealth Grants Rules and Guidelines, where relevant; and
- d) you have acted in a manner which is not inconsistent with the policies of the Australian Government.

2.1.3.2 For Defence, the authority to enter into, vary or administer an arrangement generally comes from legislation. The authority can come from section 23 of the PGPA Act, section 32B of the *Financial Framework (Supplementary Powers) Act 1997* (FF(SP) Act) or other specific legislation.

2.1.3.3 The Secretary has delegated the power to Defence officials under FINMAN 2 schedules 2 and 3 to enter into, vary or administer an arrangement.

2.1.3.4 For Defence, where a commitment of relevant money relates to the ordinary services and functions of government, the authority to enter into, vary or administer an arrangement is conferred on the Secretary by section 23 of the PGPA Act. This power has been delegated to officials under FINMAN 2 schedule 2.

2.1.3.5 Section 18 of the PGPA Rule (Approving commitments of relevant money) sets out the requirements that apply to all Commonwealth officials approving the commitment of relevant money.

2.1.3.6 Expenditure for purposes other than the ordinary services and functions of government should be authorised by specific legislation (for example, section 32B of the FF(SP) Act for Defence grants).

- 2.1.3.7** Officials in Defence have been delegated powers, under the PGPA Act and the FF(SP) Act to enter into and administer arrangements. For example, section 32B of the FF(SP) Act provides the Commonwealth with the power to enter into, vary or administer an arrangement of a grant of financial assistance ONLY if the arrangement or grant is either specified in, is in a class of arrangements or grants specified in, or is for the purposes of a program specified in Schedule 1AA to the FF(SP) Regulations.
- 2.1.4 What is a commitment of relevant money?**
- 2.1.4.1** Relevant money becomes ‘committed’ when Defence undertakes an activity that results in an obligation to pay relevant money. For example, entering into an arrangement under which relevant money will or may become payable, including obligations that are contingent upon certain events occurring, such as indemnities, guarantees and warranties. The Secretary has established controls relevant to the approval of commitments that must be followed before an arrangement is entered into (or a payment is made), based on risk and proportionality appropriate to the circumstances of the proposed commitment.
- 2.1.5 What is an arrangement?**
- 2.1.5.1** Section 23 of the PGPA Act refers to an arrangement as including a contract, agreement, deed or understanding. This is a broad definition and includes a range of agreements, such as MOUs, standing offers and grant agreements. It also includes any arrangement that involves a contingent liability (i.e. a commitment that may give rise to a cost as a result of a future event), such as an indemnity or guarantee.
- 2.1.5.2** Arrangements for the engagement of an employee or the payment of an entitlement or allowance are to be managed in accordance with the applicable employment framework.
- 2.1.6 Who can enter into an arrangement?**
- 2.1.6.1** Arrangements may be entered into, varied and administered under section 23 of the PGPA Act or other specific legislation (e.g. section 32B of the FF(SP) Act for grants).
- 2.1.6.2** Section 23 of the PGPA Act provides the Secretary with the power to enter into, vary or administer an arrangement, on behalf of the Commonwealth, in relation to the affairs of Defence. It also allows Defence to work cooperatively in a range of areas, including where Defence enters into an arrangement and the services can be accessed by other Commonwealth entities.
- 2.1.6.3** Delegations and authorisations are an important way in which the Secretary enables officials within Defence or another Commonwealth entity to enter into an arrangement.
- 2.1.7 References**
- 2.1.7.1** [Public Governance, Performance and Accountability Act 2013](#), sections 15, 21 23 and 60
- 2.1.7.2** *Public Governance, Performance and Accountability Rule 2014*, section 18
- 2.1.7.3** *Charter of Budget Honesty Act 1988*, sections 5(1)(a) and 12(1)(e)
- 2.1.7.4** *Financial Framework (Supplementary Powers) Act 1997*, section 32B
- 2.1.7.5** *Financial Framework (Supplementary Powers) Regulations 1997*, Schedule 1AA
- 2.1.7.6** Resource Management Guide No 400: Approving commitments of relevant money

- 2.1.7.7 Resource Management Guide No 405: Official International Travel - Approval and Use of the Best Fare of the Day
- 2.1.7.8 Resource Management Guide No 404: Official Domestic Air Travel - Use of the Lowest Practical Fare
- 2.1.7.9 Resource Management Guide No 414: Indemnities, Guarantees or Warranties granted by the Commonwealth
- 2.1.7.10 Resource Management Guide: Prescribing officials for non-corporate Commonwealth entities.
- 2.1.7.11 FINMAN 2 Financial Delegations Manual
- 2.1.7.12 Defence Procurement Policy Manual
- 2.1.7.13 Defence Travel Website
- 2.1.7.14 DI(G) PERS 25-7 *Gifts, Hospitality and Sponsorship*

2.2 APPROVING COMMITMENTS OF RELEVANT MONEY AND ENTERING INTO ARRANGEMENTS

- 2.2.1.1 Section 15 of the PGPA Act imposes duties on the Secretary regarding the governance of Defence; including managing Defence in a way that promotes the proper use and management of public resources.
- 2.2.1.2 Section 23 of the PGPA Act confers on the Secretary the power to approve proposals for the commitment of relevant money.
- 2.2.1.3 Section 18 of the PGPA Rule (Approving commitments of relevant money) sets out the core legal requirements that apply to approvals for the commitment of relevant money. Section 18 of the PGPA Rule applies to all Commonwealth entities under the PGPA Act and to all officials involved in the commitment of relevant money.
- 2.2.1.4 The PGPA framework allows flexibility in the approval of relevant money that allows the Secretary to apply controls that are appropriate to Defence. Before committing relevant money you should consider the requirements, under sections 15 (to ensure that the proposal is a proper use of Commonwealth resources) and 21 (to ensure that is not inconsistent with the policies of the Commonwealth) of the PGPA Act.

2.3 APPROVING COMMITMENTS OF RELEVANT MONEY

- 2.3.1.1 Unless specifically provided by other legislation, the decision to approve a proposed commitment of relevant money (a proposal) is made under section 23 of the PGPA Act and PGPA Rule 18. This rule requires an approver - whether a Minister, the Secretary of Defence or a delegate under FINMAN 2, schedule 1 - to be satisfied that giving effect to the spending proposal would be a proper use of public resources.

Instructions – All officials

2.3.1.2	When considering a proposed commitment of relevant money, you must determine whether it is a grant, procurement or other type of financial arrangement.
2.3.1.3	You must consult with your Group Chief Finance Officer (GCFO) where you are unsure what type of financial arrangement the proposed commitment of relevant money is.
2.3.1.4	You must not approve a proposed commitment of relevant money, unless you have been delegated powers to do so.
2.3.1.5	Proposed commitments of relevant money must be approved in a manner consistent with any written requirements specified in these instructions or the terms of the relevant delegation or authorisation instrument.

ACCOUNTABLE AUTHORITY INSTRUCTION 2 – APPROVAL AND COMMITMENT OF RELEVANT MONEY

2.3.1.6 You must provide the delegate with sufficient information to enable the delegate to consider the proposed commitment of relevant money, commensurate with the risk and purpose of the proposal.

Instructions – All delegates

2.3.1.7 You must comply with the requirements of section 18 of the PGPA Rule (Approving commitments of relevant money), and approve the proposed commitment of relevant money in a manner consistent with any written requirements, specified in these instructions or the terms of the relevant delegation (contained in FINMAN 2).

2.3.1.8 You must be satisfied that the proposed commitment of relevant money promotes a 'proper' use (i.e. value for money including efficient, effective, economical and ethical) of relevant money that is not inconsistent with the policies of the Australian Government.

2.3.1.9 If a commitment of relevant money involves procurement, you must ensure it complies with the CPRs (see AAI 3 - *Procurement*).

2.3.1.10 If a commitment of relevant money involves a grant, you must ensure it is approved by the Minister for Defence (see AAI 4 - *Grants*).

2.3.1.11 If you provide verbal approval for a commitment of relevant money, you must record in writing the approval as soon as practicable after giving it (section 18 of the PGPA Rule). The documentation must specify the date and details of the verbal approval.

2.3.1.12 Approvals for proposed commitments of relevant money must be properly recorded.

2.3.1.13 You must not approve a commitment of relevant money that is subject to conditions without seeking advice from your Group CFO area.

2.3.1.14 FINMAN 2 schedule 1 'Commitment approval' delegates must ensure that any conditions that attach to a proposed commitment of relevant money are met prior to the arrangement being entered into. You may provide approval for a group of proposals to commit relevant money (e.g. 'bulk approval').

2.3.1.15 You must not approve a payment to yourself.

2.3.1.16 For each proposal to commit relevant money you must be satisfied that:

- a) sufficient funds are available within the relevant budget to support all proposed payments under the proposed arrangement
- b) costing assumptions are sound;
- c) costing calculations are accurate; and
- d) the benefits of entering into the arrangement outweigh the risk of locking away future budget flexibility.

2.3.1.17 You must consult with your Group CFO to seek specialist financial advice on proposals that include any of the following:

- a) a commitment of relevant money that has long term financial implications (i.e. over 12 months in duration or across multiple financial years); or
- b) expenditure that will exceed your current financial year budget allocation.

2.3.2 Software Purchases (Commitments of Relevant Money for Software Procurement)

2.3.2.1 The Chief Information Officer Group (CIOG) undertakes the role of Capability Coordination Manager for software assets in Defence, to ensure Defence effectively manages all software asset savings and compliance.

- 2.3.2.2** Subject to FINMAN 2 schedule 1, parts 2 and 3, CIOG is responsible for the approval of commitments of relevant money for the procurement of software for use on the Single Information Environment (SIE), other than procurements relating to weapons systems or embedded platform software or 'Urgent Operational Procurement'.

Instructions – All officials (including Australian Signals Directorate officials)

2.3.2.3	You must seek approval from a delegate listed in FINMAN 2 schedule 1 part 2 with the authority to approve commitments of relevant money under FINMAN 2 schedule 1 part 3 or a CIOG delegate listed in FINMAN 2 schedule 1 part 3 for all commitments of relevant money for the procurement of software.
2.3.2.4	You must ensure that all requests for approval of the commitment of relevant money for the procurement of software are logged through the SIE Service desk and submitted on a completed form available from the Hardware and Software Branch website or Directorate of Procurement and Contracting Services website or a higher delegation submission.
2.3.2.5	You must provide information to CIOG on any Urgent Operation Procurement of software as soon as practicable.
2.3.2.6	You must ensure that all transactions pertaining to the procurement of software are accurately documented and recorded in ROMAN.

Instructions – Intelligence and Security Group Officials

2.3.2.7	You must provide information to CIOG on any procurement of software as stipulated in the Software Asset Management Plan.
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Instructions – Defence Science and Technology Organisation (DSTO) Officials

2.3.2.8	You must advise CIOG of the software details prior to procuring software.
2.3.2.9	You must provide all software licensing details including licensing terms and conditions, type and quantity of licenses purchased and Purchase Order number to CIOG within 5 business days of entering into the arrangement.

2.3.3 ICT Hardware Purchases (Commitments of Relevant Money for ICT Hardware Procurement)

- 2.3.3.1** The Chief Information Officer is the Coordinating Capability Manager for Defence ICT.
- 2.3.3.2** Subject to FINMAN 2 schedule 1, parts 2 and 4, CIOG is responsible for the approval of commitments of relevant money for the procurement of ICT hardware for use on the Single Information Environment (SIE), other than procurement at Australian overseas posts, procurement relating to weapons systems or embedded platforms, 'Urgent Operational Procurement' or High Grade Cryptographic Equipment.
- 2.3.3.3** ICT hardware that is not approved in accordance with the below instructions and FINMAN 2 schedule 1 may be removed at the discretion of the CIOG. Any costs associated with the removal may be recovered by the CIOG from the Group, Service or individual who approved the commitment of relevant money for the procurement. The Intelligence and Security Group and DSTO have this authority with regard to Intelligence Networks and DSTO Research Networks respectively.

Instructions – All officials (including Australian Signals Directorate officials)

2.3.3.4	You must seek approval from a delegate listed in FINMAN 2 schedule 1 part 2 with the authority to approve commitments of relevant money under
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	FINMAN 2 schedule 1 part 4 or a CIOG delegate listed in FINMAN 2 schedule 1 part 4 for all commitments of relevant money for the procurement of ICT hardware.
2.3.3.5	You must ensure that Whole-of-Government procurement arrangements are used where they apply to ICT hardware assets. This includes desktop hardware and major office machines.
2.3.3.6	You must provide information to CIOG on any Urgent Operation Procurement of ICT hardware within 5 business days of entering into the arrangement.
2.3.3.7	You must ensure that all transactions pertaining to ICT hardware purchases are accurately documented and recorded in the appropriate asset register.

Instructions – All delegates responsible for approving the commitment of relevant money for the procurement of ICT hardware.

2.3.3.8	You may approve the commitment of relevant money for the procurement of software where: a) The software is bundled with the hardware provided by the Original Equipment Manufacturer (OEM); and b) The hardware cannot be purchased without the software; and c) The software is required for the essential functioning of the hardware and does not provide additional functionality.
2.3.3.9	You must ensure that approval of relevant money for software provides additional functionality, software that is not part of the OEM and contracts and renewals of software maintenance are approved by a CIOG software delegate in accordance with FINMAN 2 schedule 1.

Instructions – DSTO Officials

2.3.3.10	When procuring ICT hardware for DSTO Research Networks, you must notify the CIOG prior to entering into any arrangement.
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Instructions – Defence Attaches at Australian overseas posts

2.3.3.11	You must provide information to the CIOG on any procurement of ICT hardware within 5 business days of entering into the arrangement.
2.3.3.12	You must ensure that all procurements are within the limits set by the International Policy Division in the Form <i>Payment Limit Advice</i> and comply with AAI 13 - <i>Finance and Administration at Overseas Posts</i> .

2.3.4 Additional Instructions for Commitments of Relevant Money in CASG

Instructions – All CASG officials

2.3.4.1	If a proposed commitment of relevant money contains a contingent liability you must comply with part 2.6 of this AAI and FINMAN 2 schedule 1A before the commitment is approved.
2.3.4.2	You must not approve a proposed commitment of relevant money unless you satisfy the delegation competency requirements contained in Chapter 1.4 of the DPPM.

2.4 ENTERING INTO ARRANGEMENTS

- 2.4.1.1** The authority to enter into, vary or administer an arrangement on behalf of the Commonwealth comes from either section 23 of the PGPA Act, (for all

ACCOUNTABLE AUTHORITY INSTRUCTION 2 – APPROVAL AND COMMITMENT OF RELEVANT MONEY

arrangements other than grants) or section 32B of the FF(SP) Act (for grants). These authorities are delegated to officials to enable them to enter into, vary or administer arrangements.

Instructions - All officials

2.4.1.2	You must not enter into, vary or administer an arrangement, unless you have been delegated powers to do so (see FINMAN 2 schedules 2 or 3).
2.4.1.3	Before entering into, varying or administering an arrangement that may commit relevant money, you must be satisfied that: a) The proposed commitment of relevant money has been approved by a FINMAN 2 schedule 1 'Commitment Approval' delegate, or for a grant, the Minister for Defence; and b) the value does not exceed the amount approved
2.4.1.4	If the arrangement involves procurement, you must act in accordance with the CPRs, including the reporting and publishing requirements (see AAI 3 - <i>Procurement</i>).
2.4.1.5	If the arrangement involves a grant, you must act in accordance with the CGRG, including the reporting and publishing requirements (see AAI 4 - <i>Grants</i>).
2.4.1.6	You must ensure that any payments to be made under the arrangement, including prepayments, have been considered by the FINMAN 2 schedule 1 delegate.

Additional Instructions – All CASG delegates

2.4.1.7 CASG officials sometimes enter into arrangements that do not involve the commitment of relevant money, for example novation deeds, licence deeds, non-disclosure deeds and 'nil-cost' contract change proposals. Notwithstanding these arrangements do not involve payment of relevant money, they can carry significant risk for the Commonwealth

2.4.1.8	If a proposed arrangement does not involve a commitment of relevant money (and therefore does not require a section 23 (3) Commitment Approval delegation to be exercised under FINMAN 2 schedule 1), you must not enter into or vary the arrangement (as applicable) unless you: a) hold a rank or level of EL2/O-6 (COL(E)) or above, and b) are satisfied that the proposed arrangement or variation represents proper use and management of public resources and is not inconsistent with the policies of the Australian Government.
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2.5 TAX

2.5.1.1 Defence is required to comply with Commonwealth taxation laws including Goods and Services Tax and Fringe Benefits Tax. The Defence Tax Management Office (DTMO) manages the taxation compliance and advisory function within Defence.

Instructions – All officials

2.5.1.2	You must ensure that Defence meets its taxation obligations.
2.5.1.3	You must respect the confidentiality of tax information acquired in the course of your work and not use or disclose tax information or associated personal information, except in accordance with relevant legislation.

2.5.1.4	You must ensure that all contracts for the acquisition or sale of goods and services by Defence appropriately address taxation issues.
2.5.1.5	DTMO must approve the discussion of any taxation matters with the Australian Taxation Office prior to the discussion occurring.
2.5.1.6	Unless reverse charging arrangement approved by DTMO are in place, you must ensure that a valid tax invoice which separately identifies any GST component is obtained for each purchase to enable Defence to claim input tax credits for the purposes of GST, where applicable.

2.6 GUARANTEES, INDEMNITIES AND WARRANTIES ON BEHALF OF THE COMMONWEALTH

- 2.6.1.1 Section 60 of the PGPA Act authorises the Finance Minister to grant an indemnity, guarantee or warranty on behalf of the Commonwealth. This power has been delegated by the Finance Minister to accountable authorities of non-corporate Commonwealth entities. However, the Finance Minister has not delegated the power to enter into debt guarantees (including equity and loan guarantees), as these are significant and have whole-of-government and whole-of-economy impacts.
- 2.6.1.2 A contingent liability means a liability that exists at any given point in time that may arise as a result of the occurrence (or non-occurrence) of a particular future event that is *outside* Defence's control. If the particular event occurs, the contingent liability is said to 'crystallise'. Protecting the Commonwealth's interests and managing the Commonwealth's exposure to risk is the prime consideration for officials approving a contingent liability.
- 2.6.1.3 Contingent liabilities often result from indemnities, guarantees, warranties and *some* liability caps in contracts between the Commonwealth and another party. Contingent liabilities are generally used to allocate risk between parties to an arrangement. Refer to Resource Management Guide No 414: Indemnities, Guarantees or Warranties on behalf of the Commonwealth for the definition of and guidance on, indemnities, guarantees and warranties.
- 2.6.1.4 In relation to any provision of a contract that operates to cap (or limit) a contractor's liability, this provision amounts to a contingent liability and requires approval under section 60 of the PGPA Act if it has the effect of indemnifying another party by:
- limiting a contractor's **liability to a third party** so that the Commonwealth is liable to the third party for any excess above the cap; or
 - limiting a contractor's exposure for damage the contractor has suffered itself, so that the Commonwealth is liable to the contractor for any excess.
- 2.6.1.5 A contractor liability cap does not create a contingent liability to the extent that it limits a contractor's **liability to the Commonwealth** under an arrangement with the Commonwealth:
- so that the Commonwealth cannot recover damages from the contractor if the Commonwealth is sued by a third party; or
 - for damage it directly causes the Commonwealth

Instructions – All officials

2.6.1.6	You must not agree to an indemnity, guarantee, or warranty, or a liability cap that creates a contingent liability, unless the contingent liability has been approved in accordance with part 2.6 of this AAI and: <ol style="list-style-type: none">for CASG official, FINMAN 2 Delegation schedule 1A; and
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	b) or all other Defence officials, FINMAN 2 delegation schedule 1.
2.6.1.7	For all Defence officials other than CASG, you must ensure that the contingent liability is considered as part of the FINMAN 2 schedule 1 delegate commitment of relevant money approval.
2.6.1.8	For CASG officials, you must ensure that contingent liabilities are approved by a FINMAN 2 Delegation schedule 1A delegate before obtaining commitment approval from a FINMAN 2 delegation schedule 1, part 6 delegate.
2.6.1.9	You must not enter into an arrangement that involves an indemnity, guarantee or warranty with another non-corporate Commonwealth entity.
2.6.1.10	Except for the categories of procurement identified in the DPPM (for CASG Officials) and FINMAN 5 (for all other Defence officials), a liability risk assessment must be undertaken prior to obtaining delegate approval for the contingent liability to assess the risk exposure for the Commonwealth and to determine if the contingent liability meets the materiality and remoteness conditions specified in FINMAN 2 schedules 1 and 1A.
2.6.1.11	You must seek legal advice if you are unsure whether your proposed arrangement contains a contingent liability or of the nature and extent of the risks that would be assumed by the Commonwealth in agreeing to the contingent liability. CASG officials must comply with the DPPM in relation to the circumstances when legal advice must be sought.
2.6.1.12	You must consult the Directorate of Treasury and Banking if an arrangement involves a bank guarantee, prior to entering into the arrangement.
2.6.1.13	If you are responsible for an arrangement that contains a contingent liability you must ensure that details are recorded in the ROMAN Indemnity Register and any claims against the contingent liability are also recorded in the ROMAN Indemnity Register.

Instructions – All delegates

2.6.1.14	When approving an indemnity, guarantee, warranty or liability cap involving a contingent liability, you must comply with all directions (Finance Minister’s Directions and Secretary’s Directions) and conditions (including limits) contained within the relevant FINMAN 2 delegation (for all Defence groups other than CASG refer to FINMAN 2 delegation schedule 1; for CASG refer to FINMAN 2 delegation schedule 1A).
2.6.1.15	You should refer to paragraph 44 of RMG 414 for the matters to consider when approving an indemnity.

2.7 GIFTS, HOSPITALITY AND SPONSORSHIP

- 2.7.1.1** Official hospitality generally involves the use of public resources to provide hospitality to persons other than Defence officials to facilitate the achievement of one or more Defence objectives. Official hospitality may include the provision of refreshments, entertainment, or other benefits.

Instructions – All officials

2.7.1.2	You must comply with DI(G) PERS 25-7 <i>Gifts, Hospitality and Sponsorship</i> .
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2.8 OFFICIAL TRAVEL

- 2.8.1.1** Official travel is any travel where the Commonwealth is responsible for any of the direct or indirect costs associated with that travel. This includes travel by officials to undertake work duties and travel where Defence pays

for, or reimburses, the travel of other persons to achieve one or more Commonwealth policy objectives.

- 2.8.1.2** Official travel should only be undertaken where there is a business need and other communication tools, such as teleconferencing and videoconferencing, are not appropriate.

Instructions – All officials

2.8.1.3	You must comply with the policies and have regard to the procedures contained within the Defence Travel Website when entering into an arrangement for official travel.
2.8.1.4	You must not enter into or vary an arrangement (e.g. make a booking) for official travel unless you have confirmed that the Section 23 Commitment Approval delegation (FINMAN 2, schedule 1) has been exercised.
2.8.1.5	You must not exercise the Section 23 Commitment Approval delegation (FINMAN 2, schedule 1) for your own travel.
2.8.1.6	Where the Government has established coordinated procurements for a particular travel activity, you must use the arrangement established for that activity, unless an exemption has been provided by the Finance Minister.
2.8.1.7	You must use Defence’s contracted travel management company to book domestic and ex-Australia international airfares under the <i>Deed of Standing Offer for the Provision of Whole of Australian Government Travel Management Services</i> .
2.8.1.8	You must use the contracted accommodation program management services provider for accommodation arrangements under the <i>Deed for the Provision of Accommodation Program Management Services to the Australian Government</i> .
2.8.1.9	You must use the contracted car rental services providers for car rental arrangements under the <i>Deed for the Provision of Car Rental Services to the Australian Government</i> .
2.8.1.10	For official international travel, you must obtain approval for the need to travel in accordance with the approval requirements in Resource Management Guide: 405: <i>Official International Travel - Approval and Use of the Best Fare of the Day</i> policy (<i>International Travel Policy</i>). Further information and guidance including a process flow, list of exemptions and templates for seeking this approval is provided on the Defence Travel website - See Defence Travel: International - Before you Travel webpage.

2.9 FOREIGN MILITARY SALES

- 2.9.1.1** The Foreign Military Sales (FMS) program is a key mechanism for Defence to procure defence materiel and **services** from the United States of America (USA) Government and is to be managed as a complex procurement by CASG.

Instructions – All Officials

2.9.1.2	You must comply with relevant Australian and US Government policies relating to Foreign Military Sales.
2.9.1.3	All proposals for FMS cases must be passed through the Counsellor Defence Materiel (CONDMAT) Washington and must be accompanied by a clearly identifiable case with appropriate documentation.
2.9.1.4	You must comply with the DPPM Chapter 4.2 – Overseas Procurement when purchasing FMS.

2.9.1.5 Financial aspects of FMS must be managed in accordance with DMM (FIN) 01-0-004 – Foreign Military Sales Financial Management Manual.

2.10 DELEGATIONS ISSUED TO CONSULTANTS AND INDEPENDENT CONTRACTORS (PRESCRIBED OFFICIALS)

2.10.1 Introduction

2.10.1.1 From 1 July 2015, the Secretary has determined that consultants and independent contractors may be issued with delegations relating to the approval and commitment of relevant money and/or granting contingent liabilities for Defence under the PGPA Act. This applies to the following FINMAN 2 Delegation schedules:

- **FINMAN 2 schedule 1** - To approve the commitment of relevant money (PGPA Act section 23(3), PGPA Rule 18 and PGPA Act section 60)
- **FINMAN 2 schedule 1** or **schedule 1A** (as applicable) - To grant an indemnity, guarantee, warranty on behalf of the Commonwealth (PGPA Act section 60)
- **FINMAN 2 schedule 2** - To enter into an arrangement on behalf of the Commonwealth (PGPA Act section 23(1))

Instructions – All Officials

2.10.1.2 Before a prescribed official can exercise delegated authority, an Authority to Act Instrument must be:

- a. Approved by a SES Band 1 O-7 (1 Star) level or above in accordance with [FINMAN 2 schedule 21A](#), using the template in FINMAN 5.
- b. Acknowledged by the prescribed official.
- c. Recorded in the **Prescribed Officials Register**.

2.10.1.3 Comply with the requirements of FINMAN 5 in relation to responsibilities of prescribed officials.



ACCOUNTABLE AUTHORITY INSTRUCTION (AAI) 2

SPENDING DEFENCE MONEY - PROCUREMENT

Authority

1. As the Accountable Authority, I am issuing this Accountable Authority Instruction (AAI) in accordance with Section 20A of the [Public Governance, Performance and Accountability Act 2013](#) (PGPA Act) and paragraph 2.5 of the [Commonwealth Procurement Rules](#) (CPRs).
2. You must comply with the directions in this AAI.
3. The Chief Finance Officer (CFO) may issue instructions or policies on the financial aspects of this AAI. You must comply with those instructions or policies.
4. The First Assistant Secretary Defence Commercial Division, Capability Acquisition and Sustainment Group (CASG) may issue instructions or policies on the procurement aspects of this AAI. You must comply with those instructions or policies.

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Greg Moriarty

Secretary

Effective date: 1 July 2020

Application

5. AAls apply to:
 - a. all persons engaged under the *Public Service Act 1999* in Defence;
 - b. all members of the Australian Defence Force (ADF);
 - c. persons on exchange with, or on loan to Defence, who perform financial tasks;
 - d. officials from other entities that use or manage public resources for which I as the Secretary of Defence am responsible;
 - e. contractors, consultants and outsourced service providers (CCOSPs) undertaking work duties at the direction of Defence; and
 - f. any other person who is defined as an official in accordance with section 13 of the *PGPA Act* and section 9 of the [Public Governance, Performance and Accountability Rule 2014](#) (*PGPA Rule*).

Context

6. Defence money cannot be spent without approval. Not all approvers hold a delegation for all spending types (e.g. international travel and ICT). Approvers also have different dollar limits may apply depending on the spending type. You can find these details in the *Defence Financial Delegations*.
7. This AAI focuses on procurement and also provides general instructions in relation to [approving commitments of Defence money, entering into, varying and managing arrangements](#) and [indemnities, guarantees and warranties](#). The general instructions apply to all arrangements and are not limited to procurement.
8. Other types of financial arrangements (e.g. grants and compensation payments) have different requirements. For a list of all types of financial arrangements refer to [Grants, Procurements and other financial arrangements \(RMG 411\)](#).
9. This AAI addresses:
 - a. Procurement:
 - i. The requirements of the [Commonwealth Procurement Rules](#) (CPRs) and [Commonwealth Procurement Connected Policies](#);
 - ii. General instructions for all Defence procurements; and
 - iii. Specific instructions relating to different Defence procurement categories (i.e. Gifts, Hospitality and Sponsorship, [CCOSPs, ICT, Military goods and services, Procurement at overseas posts](#));

- b. Approval of the spending commitment by a 'Commitment Approval')' delegate. This is the PGPA Act section 23(3) delegate;
- c. Entering or varying the arrangement by a 'Contract signatory and variation approver'. This is the PGPA Act s23(1) delegate; and
- d. Managing Arrangements and Payment Considerations. This is the payment considerations during and at the conclusion of the procurement process. Details of what to consider prior to making a payment are addressed in *AAI 5 - Making Payments including with Credit Cards*.

What is Procurement?

10. Procurement is the process of acquiring goods and services. It begins when a need has been identified and a decision has been made confirming the procurement requirement.
11. Procurement starts with planning the procurement and continues through the processes of risk assessment, seeking and evaluating alternative solutions, and the awarding and reporting of a contract.
12. This AAI provides instructions on:
 - a. [Commonwealth Procurement Rules and Policies](#);
 - b. [General Defence Procurement Requirements](#);
 - c. [Specific Defence Procurement Requirements by Procurement Category](#);
 - d. [Approving commitments of Defence money](#);
 - e. [Entering Into and Varying Arrangements](#);
 - f. [Managing Arrangements and Payment Considerations](#); and
 - g. [Indemnities, Guarantees and Warranties \(Contingent Liabilities\)](#).

Commonwealth Procurement Rules and Policies

13. The [Commonwealth Procurement Rules](#) (CPRs) must be complied with by all officials undertaking procurement. There is also a number of Government policies that apply across the Commonwealth that must be complied with, including the [Procurement Connected Policies](#).
14. Procurement Connected Policies support the achievement of Government objectives through the use of procurement activities. A key procurement connected policy is the Commonwealth [Indigenous Procurement Policy](#) (IPP). The [Defence Indigenous Procurement Strategy](#) aims to strengthen awareness of, and compliance with, the IPP across Defence. For advice contact indigenous.procurement@defence.gov.au.

15. As Defence is the Australian Government's largest procurer, the Government wants companies across Australia to have the best possible opportunity to compete for Defence work, recognising that providing the best capability to Defence and value for money will continue to drive procurement decision outcomes. Defence will maximise the opportunities for competitive Australian industry to compete on merit to meet Defence's capability needs. This applies to materiel, non-materiel and construction procurements that meet the relevant thresholds. You must comply with the [Australian Industry Capability program](#) mandatory requirements when planning for and undertaking procurement. You should refer to the [Defence Procurement Manual](#) (DPM) for details of relevant thresholds and industry policy.
16. The CPRs set out the rules that we must comply with when we procure goods and services. Achieving value for money is the core rule of the CPRs. Price is not the only factor when assessing value for money, and you must consider all relevant financial and non-financial costs and benefits associated with a procurement.
17. Value for money is achieved by:
 - a. encouraging competition and non-discriminatory processes;
 - b. using Commonwealth resources properly (efficient, effective, economical and ethical use of resources);
 - c. making decisions in an accountable and transparent manner;
 - d. considering and engaging with risks; and
 - e. conducting a procurement process proportional to the scale and scope of the procurement.Australian Government procurement is conducted by open tender or limited tender. A limited tender involves an official directly approaching one or more potential suppliers to make submissions or provide quotes. Limited tenders may only be used in accordance with the CPRs.

Instructions

Everyone

18. You must:
 - a. ensure a proposed arrangement is a procurement;
 - b. comply with the CPRs;
 - c. use endorsed contracting templates unless otherwise approved by Defence Commercial Division;

- d. estimate the maximum value (GST inclusive) of the proposed procurement prior to selecting a procurement method (i.e. – open tender or limited tender). Any taxes or charges, extension and other options, and all forms of remuneration must be included when estimating the value of the procurement;
 - e. ensure that any procurement will achieve a value for money outcome. Competitive procurement processes support value for money outcomes, such that where a condition for limited tender can be applied, or a Deed of Standing Offer is intended to be accessed, the number of quotes or submissions sought should be commensurate to the scale, scope and risk of the procurement; and
 - f. actively manage the risks associated with a procurement, including:
 - i. identifying, assessing, allocating and treating the risks, proportionate to the scale and scope of the procurement; and
 - ii. generally not accepting risks which another party is best placed to manage.
19. You must not divide a procurement into separate parts for the purpose of avoiding a relevant procurement threshold.
20. Where the goods and services you are procuring are covered by a mandated whole of government arrangement you must use that arrangement. Exemptions can only be granted jointly by the Minister for Defence and the Finance Minister where a special need for an alternative process can be demonstrated or the coordinated procurement allows for an alternative approach.
21. You must consider opportunities for indigenous suppliers and comply with mandatory requirements in relevant procurements.
22. You must comply with the Australian Industry Capability program mandatory requirements when planning for and undertaking procurement.
23. You must comply with the open tender requirements in the 'Additional Rules' in Division 2 of the CPRs for the procurement of goods or services valued at or above \$80,000 (GST inclusive)¹ except where the procurement meets one of the following:
- a. exemptions in Appendix A of the CPRs;
 - b. conditions for limited tender under paragraph 10.3 of Division 2 of the CPRs; or
 - c. conditions for exemption from Division 2 in accordance with the measure I have made under CPR 2.6.
24. Where the exemptions or conditions for limited tender set out in the previous paragraph apply, you must document which exemption or condition applies. In the case of conditions for limited tender under paragraph 10.3 of the CPRs or the measure under CPR 2.6, you must document the justification for conducting a limited tender; and how value for money will be achieved.

¹ \$7.5 million for procurements of construction services.

General Defence Procurement Requirements

25. The [Defence Commercial Framework](#) (DCF) is the primary source of operational guidance for procurement, including for approvals and contract templates. It sets out Defence specific procurement requirements.
26. The [Defence Procurement Manual](#) (DPM) is the mandatory procurement policy tier of the DCF. It provides directions on how Defence complies with the principles of the CPRs and other Commonwealth procurement requirements.

Instructions

Everyone

27. You must comply with any specific directions in the DPM.
28. You must obtain an Endorsement to Proceed (ETP), approved by the relevant delegate, prior to approaching the market for any procurement valued above \$200,000 (GST inclusive).
29. Where Defence has centralised procurement processes for specialised equipment (e.g. ICT), you must not procure equipment outside those processes.
30. You must consult with Infrastructure Division, Estate and Infrastructure Group (EIG) in relation to the acquisition of real property (i.e. land).
31. For panels/standing offer arrangements established by Defence you must use that arrangement unless a Group Head or Service Chief has approved otherwise or you are procuring from an indigenous supplier.
32. You must prepare a tender evaluation plan and obtain approval of that plan from the relevant official prior to the opening of submissions for all competitive procurement processes.
33. You ensure there is sufficient documentation to justify the procurement, demonstrate the processes followed and record relevant decisions. As a minimum you must retain:
 - a. a copy of all requests for quotes;
 - b. a copy of the responses received from suppliers; and
 - c. evidence of the evaluation process undertaken.
34. You should seek specialist legal or contracting advice prior to terminating a procurement process.
35. If you receive a complaint relating to a procurement, you must manage the complaint in accordance with the Defence Procurement Complaints Scheme.

Specific Defence Procurement Requirements by Procurement Category

36. There are specific requirements for the following categories:
- Gifts, hospitality and sponsorship (refer to AAI 1 – Managing Risk and Accountability);
 - [Contractors, Consultants and Outsourced Service Providers](#) (CCOSPs);
 - [ICT hardware and software](#);
 - [Military goods and services](#); and
 - [Procurement at overseas posts](#).

Contractors, Consultants and Outsourced Service Providers (CCOSPs)

37. The need to engage a CCOSP occurs because Defence does not have internal staff resources to fulfil a business need. CCOSP engagements are often linked to workforce planning considerations, particularly when the need is likely to be ongoing. SES Band 1/1 Star level or above officials are in the best position to make workforce planning decisions.

Instructions

Everyone

38. When procuring the services of contractors, consultants or outsourced service providers you must obtain and document approval from a Defence official at the SES Band 1/1 Star level or above. This approval should be sought prior to approaching the market.
39. When procuring the services of a contractor or consultant you must advise me where the estimated daily rate of an individual is at or above \$4,500 (GST inclusive) to ensure that I have oversight of high cost engagements.

ICT hardware and software

40. The Chief Information Officer Group (CIOG) is responsible for the approval of commitments for ICT software and hardware. The main purpose of this requirement is to closely control:
- expenditure on ICT;
 - the unauthorised proliferation of ICT; and
 - risks posed by ICT items to Defence security.
41. ICT hardware and software that is not approved in accordance with these instructions may be removed at the discretion of the Chief Information Officer. Any costs associated with the removal may be recovered from the Group, Service or individual who approved the spending commitment.

Instructions

Everyone

42. You must seek approval from 'Commitment approval – ICT (PGPA Act s23(3))' delegate before procuring ICT hardware or software. This includes procurement for nil cost of ICT Hardware, ICT Software or ICT software as a service.
43. You must inform CIOG of any urgent operational procurement of ICT software or hardware as soon as practicable.

Military Goods and Services

44. The Foreign Military Sales (FMS) program is a key mechanism for Defence to procure defence materiel and services from the United States of America (USA) Government. Advice should be sought from Defence Commercial Division when planning and undertaking FMS procurement.

Instructions

Everyone

45. You must comply with relevant Australian and US Government policies relating to FMS.

Procurement at overseas posts

46. When Defence personnel are posted overseas they may not have access to the same procurement arrangements that are available in Australia. At overseas posts, goods and services may be supplied by Defence, procured directly from local suppliers or purchased on behalf of Defence by the Department of Foreign Affairs and Trade (DFAT).

Instructions

Everyone

47. You must comply with DFAT instructions, rules and procedures when DFAT procures goods or services and pays accounts on behalf of Defence.
48. When entering into new or extending overseas office and residential leases managed by EIG, you must ensure that approval is provided by EIG and lease details are entered/updated in the Garrison and Estate Management System (GEMS) before signing the lease or exercising the extension option.'
49. You must ensure that all ICT procurements are within the limits set by the International Policy Division in the Budget Limit Advice.
50. You must inform CIOG of any procurement of ICT hardware as soon as practicable.

Approving commitments of Defence money

51. Approval of a spending commitment is the step where the 'Commitment Approval (PGPA Act s23(3))' delegate assesses the proposed expenditure and is satisfied, after reasonable inquiries, that:
 - a. giving effect to the spending proposal promotes the efficient, effective, economical and ethical use of public resources;
 - b. is not inconsistent with the policies of the Australian Government; and
 - c. for procurements, that the procurement was conducted in accordance with the CPRs.
52. Commitment approval is an internal decision making step. This step typically occurs after a preferred supplier is selected and includes the delegate confirming that the procurement represents value for money. It must occur **before** entering into an arrangement with a third party.
53. Where spending relates to the ordinary services and functions of government, spending is authorised using the powers in section 23 of the PGPA Act. Expenditure for purposes other than the ordinary services and functions of government must be authorised by specific legislation (for example, section 32B of the [Financial Framework \(Supplementary Powers\) Act 1997 \(FFSP Act\)](#)). The requirements in this AAI apply regardless of whether PGPAAs23(3) or FF(SP) Act s32B applies.

Instructions

Everyone

54. You must provide the 'Commitment Approval (PGPA Act s23(3))' with sufficient information, including about the purpose and risks, to enable the delegate to consider the proposed commitment.
55. You must ensure all commitment proposals consider:
 - a. whether there is available budget to support all proposed payments; and
 - b. Fringe Benefits Tax and Goods and Services Tax implications.
56. You must consult with your Assistant Secretary Finance (AS FIN) area, Financial Performance and Management Division, Defence Finance Group (DFG) on proposals that include any of the following:
 - a. a commitment that has long term financial implications (across multiple financial years); or
 - b. expenditure that will exceed the current financial year budget allocation.
57. You must ensure that your decision to approve a spending proposal is documented in writing as soon as practicable.

Commitments of \$100 million (GST Exclusive) or more

58. You must not approve a proposed commitment of \$100 million or more or a variation to a commitment that would increase the value of the arrangement to \$100 million or more unless the proposal has been:
 - a. considered by the National Security Committee (NSC) of Cabinet and/or Cabinet itself as appropriate; or
 - b. considered by the CFO and authorised, if required, by the Minister for Finance.
59. You must ensure that proposals requiring the Minister for Finance's authorisation are submitted through your Group or Service AS FIN to the CFO and the Defence Finance and Resourcing Committee (DFRC) for consideration. The CFO will determine if the Minister for Finance's written authorisation is required and/or internal committee approvals are necessary.
60. When exercising a delegation in relation to proposed commitments of \$100 million or more, you must ensure that the approval is consistent with the decision of the CFO, NSC of Cabinet, Cabinet, or the Minister for Finance as appropriate.

Entering Into and Varying Arrangements

61. Once a commitment is approved, an arrangement is entered into with a party external to Defence. Examples of situations where Defence enters into arrangements include:
 - a. signing a contract or a purchase order following a procurement process;
 - b. executing a grant agreement; and
 - c. executing memoranda of understanding with other Commonwealth Government entities in relation to the supply of goods, services or staff. While these arrangements are not legally binding they provide a basis for working together.
62. All arrangements must be entered into or varied by a 'Contract signatory and variation (PGPA Act s23(1) – Enter, Vary and Administer an arrangement)' delegate. This includes verbal arrangements and arrangements with no financial commitment such as innovation deeds.
63. When entering into an arrangement, consideration should be given to how the arrangement will be managed including payment terms.

Instructions

Everyone

64. Before entering into or varying contracts or other arrangements, you must be satisfied that:
 - a. 'Commitment Approval (PGPA Act s23(3))' delegate approval has been obtained (where required); and
 - b. any indemnities, guarantees, or warranties have been approved by a 'Contingent Liabilities (PGPA Act s60)' delegate.
65. You must not enter into an arrangement for the receipt, custody or payment of other CRF Money with a person outside of the Commonwealth, unless the arrangement is authorised in writing by a 'approve other CRF money arrangements (PGPA Rule s29)' delegate.
66. You must not enter into a credit card or banking arrangement unless you hold the relevant delegation:
 - a. 'Enter into agreements with banks and maintain official bank accounts (PGPA Act s53)'; or
 - b. 'Enter into a credit card agreement (PGPA Act s56)'.

Managing Arrangements and Payment Considerations

67. An official who makes decisions in relation to an arrangement will be 'administering' the arrangement as an Enter, Vary and Administer an arrangement delegate'. This is the PGPA Act s23(1) delegate. For example, a contract manager who decides that a contractor has reached a milestone and can receive their next payment will be 'administering' the contract.
68. If you are performing processing tasks (e.g. creating a purchase order) without making any decisions about the arrangement, this is not administering the arrangement and you will not need to be a financial delegate.
69. One of the key aspects of managing an arrangement is making payments. For arrangements of one-off expenditure less than \$10,000, Commonwealth policy is for payment to be made by credit card. Refer to AAI 5 - Making Payments including with Credit Cards.
70. For payments made by Electronic Funds Transfer, the setting up of purchase orders to make payments is encouraged as it:
 - a. provides transparency on the total cost of an arrangement enabling accurate Austender reporting and allowing tracking against commitment approvals;
 - b. provides data that allows Defence to more accurately forecast spending commitment and cash flow requirements; and
 - c. is more efficient, particularly for arrangements where there are multiple payments.
71. The timing of payments in relation to when a good or service is received is also a consideration. A prepayment occurs when Defence is required to provide payment prior to the delivery of goods or services.

Instructions

Everyone

72. You must actively manage procurement contracts for which you are responsible, including ensuring that any contractual obligations are being met and or any performance standards are being achieved.
73. You must not enter into an arrangement with payment terms of less than 20 calendar days without consulting with your Group or Service AS FIN.
74. If the procurement involves a prepayment, you must consider the following factors:
 - a. is it industry practice to require a payment in advance?

- b. is the benefit to Defence of making the prepayment more significant than any costs associated with making the prepayment?
 - c. are the risks associated with making the prepayment acceptable and have risk mitigation strategies (e.g. – financial undertaking) been identified?
75. When documenting your reasons for proceeding with a prepayment to a selected supplier you must include details of:
- a. whether it is an industry-wide practice; or
 - b. why an alternative supplier is unsuitable; and
 - c. the risk mitigation strategies put in place.

Indemnities, Guarantees and Warranties (Contingent Liabilities)

76. Providing an indemnity, guarantee or warranty may create a contingent liability. A contingent liability is a commitment that may give rise to liability on the occurrence of a future event. It involves Defence having to pay a third party should certain events occur. For example, with a car rental, the contingent liability would be the excess payable should the car be involved in an accident.
77. Contingent liabilities are generally used to allocate risk between parties to an arrangement. The Commonwealth's policy is that the party who can best manage the risk should bear the financial responsibility for the risk. The expected benefit of bearing responsibility for a risk is a reduction in the price to be paid for the goods or services.
78. Indemnities, guarantees and warranties that create a contingent liability for the Commonwealth must be approved by a 'Contingent Liabilities (PGPA Act s60)' delegate.

Refer to [Indemnities, guarantees and warranties by the Commonwealth \(RMG 414\)](#) for guidance on indemnities, guarantees and warranties.

Instructions

Everyone

79. You should seek legal advice if you are unsure whether your proposed arrangement contains a warranty, indemnity or guarantee or as to the nature and extent of the risks that would be assumed by the Commonwealth if the warranty, indemnity or guarantee were agreed.
80. You must assess materiality and likelihood of the risk occurring prior to obtaining 'Contingent Liabilities (PGPA Act s60)' delegate approval.

81. You must not enter into an arrangement with another non-corporate Commonwealth entity that involves an indemnity, guarantee or warranty.
82. You must consult Defence Treasury, Budgets and Financial Services Division (BFSD), DFG to obtain ministerial level approval if an arrangement involves a bank guarantee.
83. You must ensure that details of contingent liabilities and any claims against the contingent liability are recorded in the ROMAN Indemnity Register. Where the contingent liability is classified above PROTECTED, a generic entry must be made in the ROMAN Indemnity Register referencing more detailed records on the Defence Secret Network.

Relevant and related material

Legislative requirements	<p>Public Governance, Performance and Accountability Act 2013, sections 23, 60, 105B.</p> <p>Public Governance, Performance and Accountability Rule 2014, section 18.</p> <p>Financial Framework (Supplementary Powers) Act 1997, section 32B and 32C</p> <p>Financial Framework (Supplementary Powers) Regulations 1997, Schedules 1AA and 1AB</p>
Australian Government Policies	<p>Commonwealth Procurement Rules (CPRs)</p> <p>Grants, Procurements and other financial arrangements (RMG 411)</p> <p>Commitment of Relevant Money (RMG 400)</p> <p>Commonwealth Grants and Procurement Connected Policies (RMG 415)</p> <p>Mandatory use of the Commonwealth Contracting Suite for procurement under \$200,000 (RMG 420)</p> <p>Meeting the Senate Order for Entity Contracts (RMG 403)</p> <p>Indemnities, guarantees and warranties by the Commonwealth (RMG 414)</p> <p>Recruitment Advertising Policy (RMG 408)</p> <p>Restrictions on advertising for open Approaches to Market (ATMs) (RMG 407)</p> <p>Procurement connected policies (Department of Finance website)</p> <p>Indigenous Procurement Policy</p> <p>Australian Industry Capability program</p> <p>Defence Policy for Industry Participation</p>
Related AAls and Delegations	<p>AAI 1 – Managing Risk and Accountability</p> <p>AAI 3 – Spending Defence Money - Official Travel</p> <p>AAI 4 – Spending Defence Money - Grants</p> <p>AAI 5 - Making Payments including with Credit Cards</p> <p>AAI 8 – Managing Defence Property</p> <p>AAI 9 – Legal and compensation</p> <p>Defence Financial Delegations</p>
Other Internal Requirements	<p>Defence Procurement Manual (DPM)</p> <p>Integrity Policy Manual</p>
Other Relevant Information	<p>Defence Commercial Framework (DCF)</p>