

Procurement Policy Note

Procurement Policy Note - Ethical conduct of tenderers and suppliers

Purpose

This procurement policy note is to remind entities that the [Commonwealth Procurement Rules](#) (CPRs) states that officials **must** consider, among other things, a potential supplier's relevant experience and performance history when assessing value for money. This could include consideration of any unethical behaviour and/or deficiencies in performance under prior contracts (including failure of the tenderer to abide by substantive requirements such as confidentiality provisions). Officials must factor these matters into the evaluation of tenderers, ensuring any decisions are documented as appropriate.

Officials should monitor the ethical behaviour of suppliers throughout the term of the contract. Provisions that allow for the termination of a contract for a material breach, including breaches of confidentiality and security requirements, should be included in all Commonwealth contracts.

Approaching the Market

The Government expects that all suppliers to the Commonwealth abide by the highest ethical standard.

The Accountable Authority of the entity is responsible for the procurement decisions undertaken by the entity. In undertaking a procurement, entities need to consider whether the reputation and behaviour of tenderers needs to be factored into the procurement process. In doing so, entities should consider the nature of the work to be conducted, sensitivities and risks arising from the reputation of the tenderer, the technical expertise of the tenderer, and market competition.

The CPRs allow entities to 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 (refer [CPR paragraph 10.18](#)).

Procuring entities must not seek to benefit from supplier practices that may be dishonest, unethical or unsafe. Dishonest, unethical or unsafe supplier practices may include tax avoidance, fraud, corruption, exploitation, unmanaged conflicts of interest and modern slavery practices.

For example, a procuring entity must not enter 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. When approaching the market

officials should seek declarations from all tenderers confirming that they have no such unsettled orders against them (refer [CPR paragraph 6.7](#)).

Procuring officials must also make reasonable enquiries that the procurement is carried out considering relevant regulations and/or regulatory frameworks, including but not limited to tenderers' practices regarding (refer [CPR paragraph 10.19](#)):

- labour regulations, including ethical employment practices;
- workplace health and safety; and
- environmental impacts.

Appropriate due diligence activities, commensurate with the scale, scope and risk of the procurement, should be undertaken to ensure information provided by tenderers and suppliers is current and accurate. Finance publishes guidance for Commonwealth entities on [Ethics and Probity in Procurement](#) on the Finance [Procurement](#) website.

Awarding a Contract

Officials should monitor the ethical behaviour of suppliers throughout the term of a contract. This could be performed as part of periodic performance reporting under the contract, including managing the ongoing risks and that may occur over the lifecycle of a contract. Finance publishes guidance for Commonwealth entities on [Contract Management](#) on the Finance [Procurement](#) website.

To strengthen the Commonwealth expectations regarding the ethical conduct of suppliers, the Commonwealth Contracting Suite and ClauseBank have been updated to include Notification of Significant Event Clauses. The clauses require a service provider to notify the entity managing the contract immediately upon becoming aware of any adverse findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct of the service provider or its capacity to deliver the agreed services.

The Commonwealth will be able to request a remediation plan from the supplier in response to the notification. Where the contract manager considers the supplier's proposed remediation activity unsatisfactory, the clause allows the Commonwealth to terminate the contract.

Entities are encouraged to reflect the Notification of Significant Event Clauses in all new procurement contracts. Entities who seek to establish a new panel arrangement should include the new clauses in the Deed of Standing Offer/Head Agreement. Inclusion of these clauses in Commonwealth contracts will allow contract managers to have greater access to information on the ethical behaviour of the contracted supplier, and provide the contract manager with more options on how to manage the relationship with the supplier, should there be a notification of a significant event.

Further Advice

Should you have any specific questions relating to these matters please contact Finance via the email: procurementagencyadvice@finance.gov.au. Entities may also consider seeking specialist advice on procurement and contractual matters where appropriate.

Protections for the Commonwealth are incorporated into the contract templates available to entities through the:

- [Commonwealth Contracting Suite](#), a suite of templates that are mandatory for procurements up to \$200,000 and recommended for procurements up to \$1 million; and
- [ClauseBank](#), a bank of pre-drafted contract terms that can be used by entities within their existing templates or in bespoke contracts when appropriate.