



Australian Government

Department of Finance

EXECUTIVE MINUTE

on

JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT

REPORT [No. 498]

'Commitment issues' - An inquiry into Commonwealth procurement

Recommendations 1 and 17

General comments

The Australian Government is committed to a strong procurement framework that supports the Australian economy, ensures the proper use of public resources, and promotes integrity and transparency. The Government has made several significant enhancements to the Commonwealth procurement framework over the last six months. In many instances, these updates address recommendations from various Parliamentary inquiry reports, Australian National Audit Office (ANAO) audits and Government-initiated independent reviews.

Changes to the Commonwealth Procurement Rules (CPRs)

Updated CPRs were released by the Minister for Finance on 17 June 2024, effective 1 July 2024. The updates reinforce the Government's commitments to small and medium enterprises (SMEs) in Commonwealth procurement, through:

- clarifying the definition of an SME. The change ensures that measures targeted at supporting SMEs target genuine, independent SMEs and not a small or medium sized business supported by the resources of a larger organisation.
- increasing SME targets. The first target (CPR paragraph 5.6) increased the target from 20 per cent of contracts by value to 25 per cent and clarified that the target will now apply to contracts with a value up to \$1 billion. The second target (CPR paragraph 5.7) increased the target from 35 per cent of contracts by value, with a value of up to \$20 million to 40 per cent. Both increases will require sustained effort by Commonwealth entities to meet those revised targets, resulting in more opportunities for SMEs.
- increasing the value of the SME Appendix A exemption. Text has been amended to allow all relevant entities to directly engage an SME for procurements valued up to \$500,000 (increased from \$200,000).

The Government clarified its expectation that Ministers were not to be (unless required by law) involved in the conduct of procurement processes, or to direct officials about the conduct of a procurement process. This was supported by the release of guidance to assist officials implement and comply with the new requirements.

Other changes included strengthening officials' consideration of the economic benefits of a broader range of procurement through a reduction in the applicable threshold, new text referencing preventing corrupt behaviour and including this paragraph as a relevant paragraph for the purpose of the *Government Procurement (Judicial Review) Act 2018*, and clarifications of text, to support Recommendation 1 of the ANAO's performance audit *Procurement Complaints Handling (Report No. 19 of 2022-23)*.

Commonwealth Supplier Code of Conduct (Code)

The Code outlines the Commonwealth's minimum expectations of suppliers and their subcontractors while under contract with the Commonwealth. The Code came into effect on 1 July 2024, and the CPRs require that all relevant entities incorporate the Code into all Commonwealth forms of contract (noting an Accountable Authority, or their delegate, can exempt the application of the Code to a contract). The Code was released for public consultation in December 2023.

Significant supporting material has been developed to support the implementation of the Code, including draft contract clauses in the Commonwealth Contracting Suite and ClauseBank, and guidance for both officials and suppliers.

Other guidance

The Department of Finance (Finance) is currently revising its guidance with regard to economic benefits to ensure that guidance supports both officials and suppliers. Finance undertook a public consultation process in June 2024, and anticipates the revised guidance will be released later in 2024.

Finance has progressed work on guidance relating to application of the threshold for Construction Services in response to Recommendation 1 of the ANAO's performance audit *Procurement by the National Capital Authority (Report No. 30 of 2021-22)*. Finance has been consulting with select entities on the development of the guidance, which is expected to be released by the end of July 2024.

Whole of Australian Government Panels

Finance has commenced the first refresh process of part of the Management Advisory Services (MAS) Panel and is currently at the evaluation stage. The second refresh process for the remainder of the MAS Panel will be released in late 2024. **(Report 498, Recommendation 8)**

In addition, to complement the release of the CPRs, and to further support SMEs, from 1 July 2024, Commonwealth entities will also be required to include at least one SME in every request for quote from the mandated MAS and the People Panels. Further, the panels also introduced an additional five per cent flexibility allowance for entities to directly engage First Nation businesses who are not on the panel.

The Joint Committee of Public Accounts and Audit (the Committee) requested, as part of Recommendations 1 and 17 of this Report (Report 498), that Finance reports back to the Committee on its progress against each of the two recommendations, specifically in relation to

the development of a procurement professional stream, expansion of the definition of procurement in the CPRs, and development and revision of procurement guidance.

Response to each specific recommendation

Recommendation No: 1.

The Committee recommends that the Department of Finance work to advance public sector procurement capability and professionalisation by:

- prioritising the development and rollout of a procurement professional stream within the Australian Public Service, to facilitate the creation of procurement and contracting specialists, and
- expanding the current definition of procurement in the Commonwealth Procurement Rules, to empower and better reflect modern, professionalised procurement practices, including more active management of supply markets and supply chains to maximise value for money.

Finance should report back to the Committee within 12 months on its progress to develop and deliver these outcomes.

Summary of response: *Agreed.*

The Government has established a Procurement and Contract Management Profession under the APS Professional Streams in line with the existing Professional Streams (HR, Data and Digital) for the APS with the Australian Public Service Commission.

The definition of procurement in the CPRs covers the full procurement lifecycle. The lifecycle starts at identifying the need and making a decision on the procurement requirement (paragraph 2.7 of the CPRs). Market evaluation is a fundamental consideration for many procurements, and is already captured by the definition of procurement within the CPRs. Finance will expand the definition of procurement at the next update of the CPRs in line with the Committee's recommendation.

Supporting rationale:

This Recommendation has been implemented.

The Government has established a Procurement and Contract Management Profession under the Australian Public Service (APS) Professions. The Profession will increase the capability of the APS in procurement and contract management through a number of initiatives including workforce strategies, accelerated training and reskilling programs and increased engagement with professional associations. The Profession will also assist in bringing procurement and contract management officials across the Commonwealth together to share best practice and learn from one another. To complement the work of the Profession, Finance has begun to deliver Foundational and Practitioner level courses under the Commonwealth Procurement and Contract Management Training Suite. Additional short courses and refresher modules are planned for release over the next 12 months. Additional eLearning modules that provide helpful information based on best practice procurement and contract management approaches, that highlight new procurement related policies or requirements are also planned.

In support of the Committee's Recommendation, the updated CPRs effective 1 July 2024, include amendments to the definition of procurement. This definition (paragraph 2.7 refers) now includes a reference to 'the analysis of markets and their supply chains'.

Recommendation No: 17.

The Committee recommends that the Department of Finance report back to the Committee within six months of the tabling of this report with the outcomes of its review of its Commonwealth procurement guidance, including a list of changes made to the guidance as a result of the review.

Summary of response: *Agreed.*

Finance will report back to the Committee six months after the tabling of this response.

Supporting rationale:

Finance notes that Recommendation 17, regarding reporting back to the Committee on the outcome of our review of procurement guidance, is specifically seeking an update on Recommendations 3, 5, 6, 7 and 9.

As at July 2024, Finance:

- **Recommendation 3:** has updated the CPRs to include a footnote to paragraph 2.6 to remind officials that obligations under the *Public Governance, Performance and Accountability Act 2013* continue to apply in relation to the proper use and management of public resources. Given the clarity of this statement, consultation is currently underway as to whether any further guidance for officials is required.
- **Recommendation 9:** has reviewed and updated *Resource Management Guide 423: Procurement Publishing and Reporting Obligations* to incorporate the changes in the updated CPRs, and reporting requirements and enhancements to AusTender reporting capabilities. A new AusTender reporting specification has been developed which will require entities (by 1 July 2025) to report the number of suppliers that were invited when a contract has been reported as being procured from a standing offer notice / panel arrangement. The specification also requires entities, by 1 July 2025, to provide standardised amendment reporting reasons that better reflect the amendment undertaken.
- **Recommendations 5, 6 and 7:** will refresh or develop guidance in relation to audit committees, ethics and probity and the use of panels. Finance regularly reviews its procurement guidance and has a rolling program of updates and additions to the suite of procurement guidance. Finance has prioritised the development of this guidance and expects to release guidance on these matters in the coming six months.

Signed by

Jenny Wilkinson
Secretary