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Department of Foreign Affairs and Trade

DFAT PROCUREMENT MANUAL 2005

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1 Introduction

General

1.1 This document describes the policy framework and procedures that DFAT officers must adhere to in conducting any procurement process. The principles and procedures for procurement and contract management in DFAT are derived from, and are subject to, the provisions of the [Finance Management Guidance No 1 - Commonwealth Procurement Guidelines \(CPGs\)](#) which forms a part of the Australian Commonwealth's Financial Management Framework. Officers are required by law to have regard to the CPGs when engaging in procurement.

1.2 The department attaches particular importance to accountability in the procurement process, which in practical terms means that staff procuring property or services are held responsible for their actions and decisions.

To meet the Department's objectives, staff undertaking procurement activities should:

- adhere to all Government policies and guidelines relating to efficient, effective and ethical use of resources, value for money, open and effective competition, ethics and fair dealing;
- use the standard departmental contracts in order to protect the department's interests and, where necessary, obtain advice from ADL on any legal issues of concern;
- create and maintain appropriate records to provide accountability and support future decision making;
- obtain advice from the department's Contract Management and Policy Unit (CPU);
- use the expertise of the Information Technology and Communications Branch (ICB) to coordinate technology related contracts and consultancies;
- obtain approval of SDB for the engagement of contractors
- abide by Government policy in relation to the employment of former APS employees; and
- provide staff involved with procurement with the training and information necessary to enable them to meet the standards required for undertaking procurement activities.

1.3 It is incumbent on all staff who are associated with procurement processes to display integrity, the highest ethical standards, and skills in relation to any procurement or contract transaction.

Scope

1.4 *Procurement* encompasses the whole process of acquiring property¹ or services. It begins when an agency has identified a need and decided on its procurement requirement. Procurement continues through the processes of risk assessment, seeking and evaluating alternative solutions, contract award, delivery of and payment for the

¹ The term *property* is used throughout this document to refer to 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.

property or services and, where relevant, the ongoing management of a contract and consideration of options related to the contract. Procurement also extends to the ultimate disposal of property at the end of its useful life.

- 1.5 In addition to the acquisition of property or services by an agency for its own use, *procurement* also covers a situation where an agency is responsible for the procurement of property or services for other agencies, or for third parties.
- 1.6 An integral part of the procurement cycle is the ongoing monitoring and assessment of the procurement, including the property or services procured and the tasks related to procurement.
- 1.7 While procurement relates to the acquisition of property or services, including consultancy services, it does not include grants (whether in the form of a contract or conditional gift), 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* or an agency's enabling legislation.
- 1.8 The procurement policy framework outlined in the CPGs applies to all matters related to the procurement of property or services, irrespective of whether those matters are specifically mentioned in the CPGs.
- 1.9 There are three key elements of the Government's procurement policy framework:
 - the CPGs, issued by the Finance Minister, which establish the procurement policy framework for agencies;
 - Finance Circulars, issued by the Department of Finance and Administration (Finance), which advise of key changes and developments in the Government's procurement policy framework; and
 - a range of web-based and printed guidance documents, developed by Finance to assist agencies and staff to implement the Government's procurement policy.

2 DFAT Procurement Delegations & Approvals

Delegations

- 2.1 Under the *Finance Management and Accountability Act 1997* (FMA Act) the Secretary is empowered to delegate authority to spend public money and enter into contracts or agreements to acquire property and services. Devolution of this authority enables staff to approve procurement appropriate to their respective outputs. In practice, an agent appointed by the delegate usually undertakes procurement activity.
- 2.2 There are three key points that are relevant to the understanding of the devolution of delegations:
 - Departmental financial delegations and authorisations are generally made to a specific position, (ex officio) rather than by name. This provides administrative flexibility, particularly where the temporary reassignment of duties and other absences of employees are likely to occur;

- the appointment of an agent to act on behalf of a delegate does not absolve the delegate of responsibility for the agent's decision; and
 - An agent cannot sub-delegate their appointment.
- 2.3 The Secretary has exercised his powers under the FMA Act (Regulation 9 and 13) to delegate authority to spend public money, enter into Commonwealth contracts, agreements or arrangements and to appoint agents to spend public money and/or enter into contracts, agreements and arrangements. For details of DFAT's delegations see FMM chapters 2 (Delegations and Authorisations) and 4 (Drawing Rights).
- 2.4 As delegates of the Secretary, occupants of these positions should act in a manner that is consistent with the FMM and follow procedures set out in this manual when procuring property and services.
- 2.5 Staff undertaking purchasing or procurement activities and whose positions are not listed are not the Secretary's delegates. The authority for their activities is as an agent of a delegate. It is usual practice for an agent's authority to have financial limits or be limited by the nature of a particular procurement. Agents, like delegates, are obliged to act in a manner consistent with the FMA Act, the FMM, the CPGs and the procedures set out in this manual when undertaking procurement functions. However, the delegate is only responsible for the action of their agents when the agent is acting within the capacity of the agency.

Role of Delegates

- 2.6 The role of the Delegate is to maintain the Commonwealth's reputation and credibility in all circumstances. The Delegate must adhere to the precepts of ethical behaviour to obtain value for money through open and effective competition, and must adhere to the requirements of the authorisation being exercised.
- 2.7 Staff involved in procurement activity should familiarise themselves with the delegations that apply to their work.
- 2.8 Further information on delegations and agents can be found in **Chapters 2 and 8** of the **Finance Management Manual (FMM)**.

3 Amendments

- 3.1 Amendments will be issued to the DFAT Procurement Manual from time to time and will be notified on the Corporate Information Database (CID).

4 Terminology

- 4.1 Prior to reading this document, it may be useful to become familiar with the terminology used throughout the manual. Definitions can be found in [Attachment A](#).

5 The Procurement Policy Framework

5.1 Government agencies, staff and agents operate within an environment of legislation and relevant Government policy. Within this broad context, the financial management framework consists of the legislation and policy governing the management of the Australian Government’s resources.

5.2 The procurement framework is a subset of the financial management framework related to the procurement of property and services. The FMM supports the Secretary’s Instructions, commonly known as the Chief Executive’s Instructions (CEIs), available on the Corporate Database.

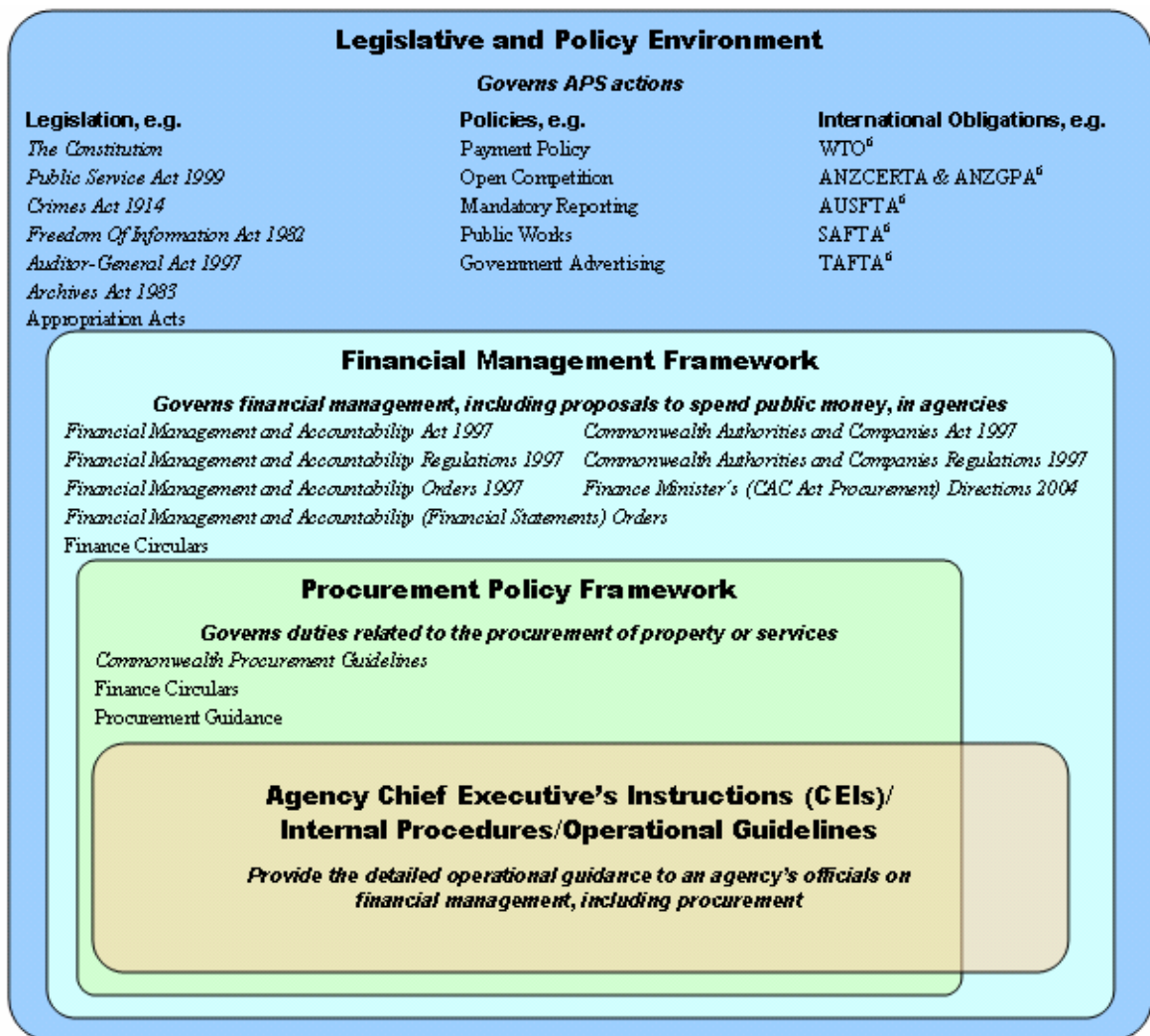


Figure 1 Chief Executive’s Instructions build on the procurement and financial management frameworks and the policy and legislative environment and provide operational guidance focussing on the agency’s particular needs.

6 The Principle of Value for Money

6.1 Fundamental to Commonwealth procurement practices is the expectation that all purchasing activities are fully transparent so that the Government, Parliament and the public maintain confidence in the process and to ensure that Chief Executives and agencies meet their obligations in promoting the efficient, effective and ethical use of resources as required by the FMA Act 1997 Section 44.

6.2 *Value for money* is the core principle underpinning Australian Government procurement. In a competitive procurement process this principle requires a comparative analysis of *all* relevant costs and benefits of each compliant proposal throughout the whole procurement cycle (whole-of-life costing).

6.3 Value for money is enhanced in Government procurement by:

- encouraging competition by ensuring non-discrimination in procurement and using competitive procurement processes;
- promoting the use of resources in an efficient, effective and ethical manner²; and
- making decisions in an accountable and transparent manner.

6.4 Cost alone is not the only determining factor in assessing value for money. Rather, when assessing alternative procurement processes or solutions, a whole-of-life assessment should be undertaken including consideration of factors such as:

- the maturity of the market for the property or service sought;
- the performance history of each prospective supplier;
- the relative risk of each proposal;
- the flexibility to adapt to possible change over the lifecycle of the property or service;
- financial considerations including all relevant direct and indirect benefits and costs over the whole procurement cycle;
- the anticipated price that could be obtained, or cost that may be incurred, at the point of disposal; and
- the evaluation of contract options (for example, contract extension options).³

6.5 Additionally, staff must ensure that procurement complies with other Government policies that interact with the procurement in accordance with FMA regulation 9(1)(a).

² This requirement is consistent with section 44 of the FMA Act for FMA agencies, sections 22 and 23 of the CAC Act for Commonwealth authorities and relevant provisions of the *Corporations Act 2001* for Commonwealth companies.

³ Procurement Circular 03/3 *Evaluating Options in Procurement Contracts*, available from www.finance.gov.au, provides further guidance on the consideration of options.

7 Encouraging Competition

- 7.1 Competition is a key element of the Australian Government's procurement framework. Effective competition requires non-discrimination in procurement and the use of competitive procurement processes.

Non-discrimination

- 7.2 The Australian Government procurement framework is non-discriminatory. All potential suppliers should have the same opportunities to compete for Government business and should be treated equally based on their legal, commercial, technical, and financial abilities, and not on their degree of foreign affiliation or ownership, location or size. The property and services on offer should be considered on the basis of their suitability for their intended purpose, and not on the basis of their origin.

Small and Medium Enterprises (SMEs)

- 7.3 To ensure that small and medium enterprises (SMEs)⁴ are able to engage in fair competition for Government business, staff undertaking procurement should ensure that procurement methods do not unfairly discriminate against SMEs.

Competitive Procurement Processes

- 7.4 The procurement process itself is an important consideration in achieving value for money. Participation in a procurement process imposes costs on agencies and potential suppliers and these costs should be considered when determining a process commensurate with the scale, scope and relative risk of the proposed procurement.
- 7.5 When undertaking a procurement process, agencies should consider whether an open procurement process is appropriate, and where an alternative process is implemented, staff should record the reasons for not undertaking an open procurement process.
- 7.6 It is Government policy that specific procurement procedures are followed when the value of a particular procurement is above a certain threshold. These specific procedures, which further encourage competition and in many circumstances require an open procurement process, are outlined in section 8 of the CPGs and section 12 of this manual.

⁴ An SME is an Australian or New Zealand registered firm with fewer than 200 full time equivalent employees.

8 Effective, Efficient, and Ethical Use of Resources

- 8.1 Section 44 of the FMA Act requires Chief Executives to promote the efficient, effective and ethical use of the Commonwealth resources for which they are responsible. Chief Executives mainly discharge this responsibility for procurement by ensuring that their agencies have appropriate policies, procedures and guidelines in place to achieve value for money in procurement processes.
- 8.2 The devolved environments under the FMA Act and CAC Act give agencies considerable scope to determine specific practices and procedures in order to achieve value for money in procurement. However, many procurement processes will be consistent with Figure 2 below.

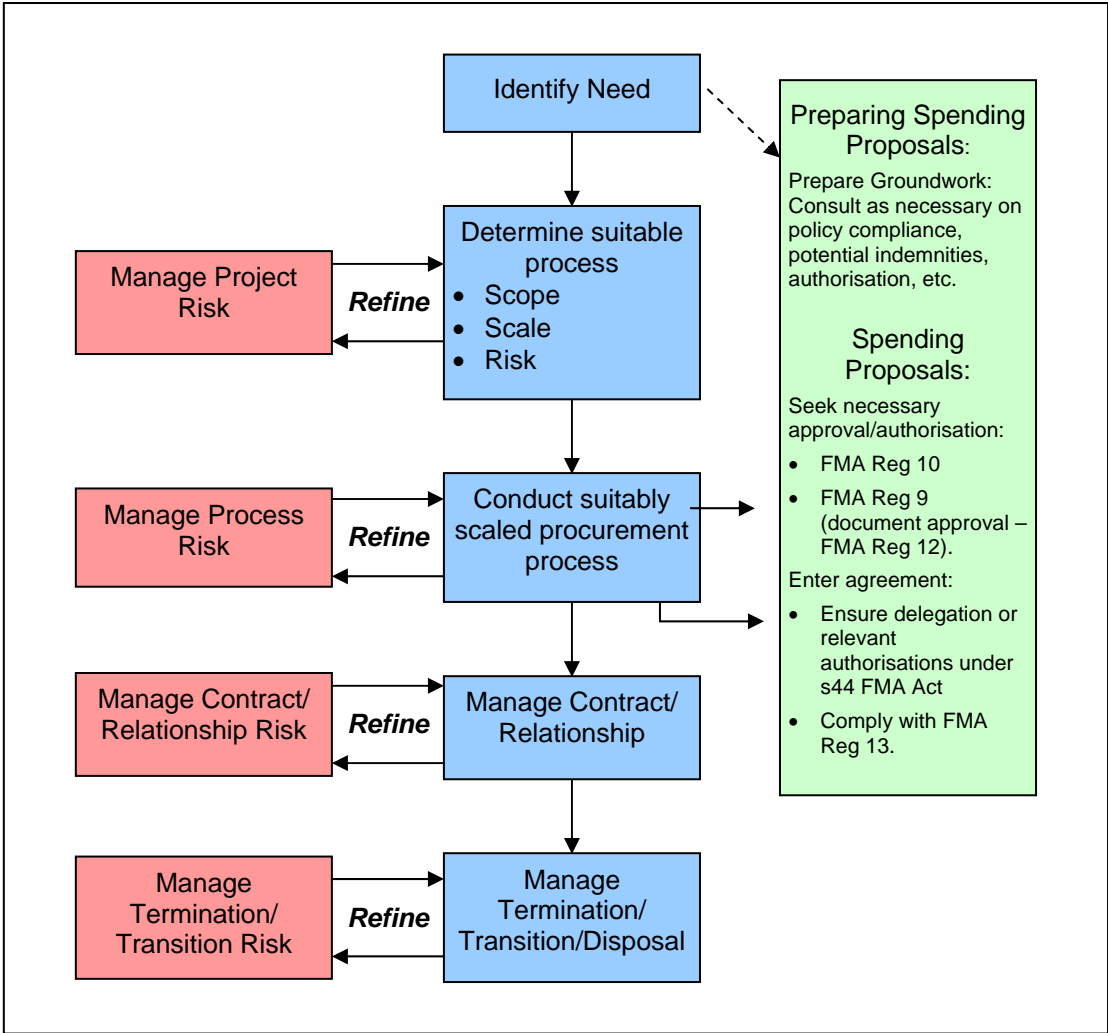


Figure 2 An efficient and effective procurement process incorporates rigorous risk management, enabling issues to be identified early in the process. – see sections 8.3 to 8.15 for more information.

Efficiency and Effectiveness

- 8.3 *Efficiency* relates to the productivity of the resources used to conduct an activity in order to achieve the maximum value for the resources used. In relation to procurement, it includes the selection of a procurement process that is consistent with Government policy and is the most appropriate to the procurement objective under the prevailing circumstances.
- 8.4 *Effectiveness* relates to how well outcomes meet objectives. It concerns the immediate characteristics of an agency's outputs, especially in terms of price, quality and quantity, and the degree to which outputs contribute to specified outcomes. Staff may refer to the Finance publication [Guidance on Complying with Legislation and Government Policy in Procurement](#) for further assistance on policies that interact with procurement.
- 8.5 Staff approving expenditure proposals must satisfy themselves that the expenditure will make efficient and effective use of public money (FMA Act 1997 Regulation 9 (b)).

Risk Management

- 8.6 Risk is part of the environment within which the department operates. Risk management involves the systematic identification, analysis, treatment, and, where appropriate, acceptance of risks. It is integral to efficiency, effectiveness and accountability.
- 8.7 Risk management should be built into all procurement processes. The extent of risk management required will vary from following routine procurement processes, to a significant undertaking involving a high level of planning, analysis and documentation.
- 8.8 As shown in figure 2 above, a variety of risks may arise from each stage of the procurement process. Staff should ensure that appropriate procedures are in place to identify and consider all relevant risks throughout the procurement cycle. The department's risk management policy and toolkit (which can be found on the Corporate Information Database under Risk Management) provide guidance to staff on when and how to undertake risk assessments.⁵
- 8.9 As a general principle, risks should be borne by the party best placed to manage them – that is, the Australian Government should generally not accept risks which another party is better placed to manage.
- 8.10 Staff should carefully review the terms and conditions, including pricing, on which risk allocations are determined, to ensure that they reflect value for money.
- 8.11 In circumstances where it is appropriate to limit the liability of a contractor to Government, for example through providing an indemnity or liability cap, then staff **must** consider the requirements set out in Administrative Circular PO546 on

⁵ More information on risk management processes can be found in:

- Australian and New Zealand Standard, AS/NZS 4360:2004 *Risk Management*, Standards Australia 2004; and
- Management Advisory Board, MAB/MIAC Report No. 22 *Guidelines for Managing Risk in the Australian Public Service*, October 1996.

*Guarantees, Warranties, Indemnities and Letters of Comfort.*⁶ In most cases, each indemnity, liability cap or similar arrangement, should be on a per event basis, limited in scope and to a clearly defined amount.

- 8.12 For each arrangement to limit a contractor's liability, a formal risk management process **must** be undertaken. Staff should protect the interests of the department and the Australian Government by undertaking a risk assessment, preparing a risk management plan as appropriate, and seeking legal advice where necessary, appropriate to the complexity of the purchase.
- 8.13 Arrangements to limit liability carry direct and/or indirect costs which should be considered within the determination of value for money. Request documentation should include a draft contract with clear liability provisions, with suppliers required to indicate compliance against each clause of the draft contract, including liability provisions, and to clearly state any intention to negotiate alternative clauses. Where negotiations to limit a contractor's liability occur after the selection of a preferred supplier, tender documentation should allow for any additional direct or indirect costs borne by the Commonwealth to be reflected in a commensurate adjustment to the terms of the contract.
- 8.14 An indemnity, guarantee, warranty or letter of comfort provided by the Commonwealth comes within the scope of a 'contract, agreement or arrangement under which public money ... *may* become payable' under FMA regulation 13. The full potential cost to the Commonwealth as a result of the indemnity, guarantee, warrantee or letter of comfort **must** be considered, and if necessary, authorised under FMA regulation 10, before the spending proposal can be approved under FMA regulation 9.
- 8.15 Further guidance on the treatment of limitations of liability under FMA regulation 10 can be found in the Finance Circular 2004/10 [Using the Financial Management and Accountability Regulation 10 Delegation](#).

Ethics

- 8.16 *Ethics* are the moral boundaries or values within which staff work. Ethical behaviour encompasses the concepts of honesty, integrity, probity, diligence, fairness, trust, respect and consistency. Ethical behaviour identifies and avoids conflicts of interests, and does not make improper use of an individual's position.
- 8.17 Procurement **must** be conducted ethically to enable purchasers and suppliers to deal with each other on the basis of mutual trust and respect. Adopting an ethical, transparent approach enables business to be conducted fairly, reasonably and with integrity.
- 8.18 A specific aspect of ethical behaviour relevant to procurement is an overarching obligation to treat all participating suppliers as equally as possible. For example, when providing further information to suppliers during the course of a procurement, staff should ensure that procedures are in place to treat all suppliers fairly. The procurement process rules should be clear, open, well understood and applied equally to all parties to the process.

⁶ Finance Circular 2003/02 [Guidelines for Issuing and Managing Indemnities, Guarantees, Warranties and Letters of Comfort](#) also provides information on these issues.

- 8.19 Agencies should ensure that staff involved in procurement, particularly those dealing directly with suppliers:
- recognise and deal with any conflicts of interests, including perceived conflicts of interests;
 - deal with suppliers even-handedly;
 - consider seeking advice where probity issues arise;
 - do not compromise the Australian Government's standing by accepting inappropriate gifts or hospitality;
 - are scrupulous in their use of public property; and
 - comply with the duties and obligations including the agency's CEIs, the information privacy principles of the *Privacy Act 1988*, the security provisions of the *Crimes Act 1914* and, where applicable, the Australian Public Service's Code of Conduct as set out in the *Public Service Act 1999*.
- 8.20 DFAT staff should not seek to benefit from supplier practices that are objectionable, dishonest, unethical or unsafe.
- 8.21 Procurement of services should be conducted in a way that imposes the same level of accountability and responsibility on a service provider as would exist if the agency carried out the service itself.

Probity

- 8.22 In conducting a procurement process, staff need to ensure that there is no bias, conflict of interest, or any perception of these. Strategies to address this issue include:
- Obtain signed declarations of 'no conflict of interest' from all staff and contracted expert advisers involved in the process. A Conflict of Interest form can be found under Templates >>Contracts;
 - Obtain signed confidentiality agreements from all staff and contracted expert advisers involved in the process;
 - Develop, document and apply tender/bid evaluation criteria and methodologies;
 - Appoint Probity auditor(s) for complex procurement processes where appropriate;
 - Appoint expert technical adviser(s) for complex procurement processes.
- 8.25 The aim of these practices is to safeguard the procurement process and avoid legal complications later. Probity auditors take particular interest in consistent application of the established evaluation methodology and therefore help to ensure that the best decision is made.

9 Accountability and Transparency

- 9.1 Accountability and transparency encourage the efficient, effective and ethical use of Commonwealth resources. An agency and its staff have the responsibility of ensuring that any procurement process is open, transparent and that decisions are justified. Agencies should have procedures in place to ensure that procurement processes are conducted soundly and that procurement related actions are documented, defensible and substantiated in accordance with legislation and Government policy.
- 9.2 Accountability and transparency should be primary considerations throughout the procurement process from the initial identification of need through to the final disposal of any property (whole-of-life).
- 9.3 *Accountability* means that staff are responsible for the actions and decisions that they take in relation to procurement and for the resulting outcomes. Staff are answerable for such activity through established lines of accountability including the agency's executive and senior management, the Government and the Parliament.
- 9.4 *Transparency* provides assurance that procurement processes undertaken by agencies are appropriate and that policy and legislative obligations are being met. Transparency involves agencies taking steps to support appropriate scrutiny of their procurement activity.
- 9.5 The fundamental elements of accountability and transparency, which are outlined below, are policy and legislative obligations, documentation, disclosure and review.
- 9.6 To preserve the integrity of departmental procurement activities it is important that staff observe the following principles:
- **Disclosure of Interest:** Individuals should not allow their conduct to warrant any suspicion of conflict between their official duty and their private interest. Where there is or might be a conflict it should be disclosed in writing to their supervisor and a copy of the correspondence kept on file. A draft proforma for disclosing conflict of interest is located on Satin under Templates>>Contracts.
 - **Gifts and Hospitality:** Individuals and/or project teams should avoid the acceptance of any gift, benefit or consideration to show favour or disfavour to any person or organisation. Any gifts that are received should be declared and dealt with in accordance with departmental policy as outlined in Administrative Circular P0354; and
 - **Confidentiality of information:** Staff must ensure that the confidentiality of commercially sensitive material is maintained. Staff should also be aware that the disclosure of personal information relating to individuals and business affairs is prohibited under the Privacy Act 1988.

Policy and Legislative Obligations

- 9.7 Staff undertaking procurement are accountable for complying with relevant Government policies and legislative requirements.

- 9.8 Section 3 of the CPGs identifies key elements of the procurement framework, including provisions of the FMA Act and FMA Regulations.
- 9.9 Before commencement of a procurement, staff should ensure that they are aware of all relevant policies, legislation and agency-specific requirements that affect procurement. An overview of policies and legislation that interact with procurement is provided in Section 9 of the CPGs, which is expanded upon in the Finance publication [*Guidance on Complying with Legislation and Government Policy in Procurement*](#).

Documentation

- 9.10 Documentation is critical to accountability and transparency. The FMA Act requires that a written record be made of all decisions to spend public money. Documentation provides a record of DFAT's procurement activities and how they have been conducted, and facilitates scrutiny of these activities. All such documentation might be available to the public through FOI provisions.
- 9.11 The appropriate mix and level of documentation depends on the nature and risk profile of the procurement being undertaken. In all cases, staff should ensure that there is sufficient documentation to provide an understanding of the reasons for the procurement, the process that was followed and all relevant decisions, including authorisations, and the basis of those decisions.
- 9.12 Best practice for tender and contract record keeping is:
- *Create one file for the tendering process.* This file should include the final request for tender and background information leading up to it, including advertising details, evaluation methodology, procurement plan, risk assessment, confidentiality and conflict of interest declarations, original bids from suppliers, minutes of tender board meetings, recommendations to the delegate, letters to successful and unsuccessful bidders;
 - *Create a separate file for contract management.* This file should contain a copy of the final signed contract. When placing the original contract on file, please insert a plastic sleeve and hole punch the sleeve, not the contract, as the original contract must not be changed in any way. This file should also contain details of contract negotiations, a copy of the gazettal notice, correspondence with the contractor, contract amendments, contract performance reviews, minutes/notes of contract management meetings and management information reports.
 - The tendering and contract management files should be classified at least "Commercial in Confidence". Protected or Highly Protected classifications may be appropriate for strategic or sensitive contracts.
- 9.13 Documentation relating to a procurement process **must** be retained for a period of three years after the award of a contract. In addition, the *Archives Act 1983* sets out requirements in relation to Commonwealth records, including dealings with, and access to, such records.
- 9.14 Some specific requirements for the preparation of documentation that supports the spending of public money, are set out in the FMA Regulations:

- **FMA regulation 8(2)** requires that any official who takes an action that is not consistent with the CPGs *must* make a written record of his or her reasons for doing so; and
- **FMA regulations 9 and 12** specify that, where approval of a proposal to spend public money is not given in writing, the approver *must* make a record of the terms of the approval in a document as soon as possible after giving the approval.

9.15 Documentation requirements vary throughout the procurement cycle. Documentation that may be appropriate for each stage includes, but is not limited to, that shown in Table 1. It is an agency’s responsibility to ensure that adequate and appropriate documentation is kept for each stage of a procurement process.

Stage	Example of Documentation Requirements
Identify Need	<ul style="list-style-type: none"> • annual procurement plan and revisions • budget papers • business case • risk assessment • legal advice
Determine Suitable Process	<ul style="list-style-type: none"> • procurement method decision • evaluation plan, including selection criteria • procurement budget • value for money assessment • time limits and timetable • advertisements, tender notices and other invitations to quote, tender or express an interest
Conduct Procurement Process	<ul style="list-style-type: none"> • tender documentation • tenders received and acknowledgements • submission evaluation plan • submission evaluation report and recommended decision • probity report • contract negotiations and contract • decisions (including relevant approvals/ authorisations, eg FMA regulations 9 and 10 where appropriate) and their basis
Manage Contract/Relationship	<ul style="list-style-type: none"> • performance indicators • milestones • performance reports • correspondence between the parties • requests for variation of the contract • decisions regarding variation, records of the receipt of orders • evaluations of property and/or services • payment information
Manage Termination/ Transition/Disposal	<ul style="list-style-type: none"> • declaration of surplus asset • valuation • record of special disposal requirements • disposal strategy • engagement of sales agent and instructions • risk assessment • evaluation plan • advertisements or other invitations to do business • responses from prospective buyers • evaluation report • probity report • decisions and their basis • contract documents • payment information, including records of deposits

Table 1 Samples of documentation requirements at different stages of the procurement process.

9.16 Where DFAT has outsourced the provision of services, it should maintain appropriate systems for recording decisions relating to the outsourced services, and the reasons for those decisions.

Disclosure

Definition

- 9.17 Disclosure is the mechanism by which agencies make their procurement activities visible and transparent. The broad aim of disclosure is to provide confidence in the processes that an agency intends to undertake, or has undertaken and reassurance that the Chief Executive is promoting the efficient, effective and ethical use of resources.

Notification

- 9.18 DFAT *must* publish all open approaches to the market on [AusTender](#) in accordance with the requirements set out in the [Procurement Publishing Obligations](#). For details see chapter 13.
- 9.19 It is Government policy that all open approaches to the market, including requests for tender, requests for expressions of interest and requests for application for a multi-use list, *must* be published on [AusTender](#). Furthermore, any documentation providing information on the request (request documentation) *must* be available, to the extent practicable, for download from AusTender.
- 9.20 For select tenders, DFAT *must* issue all invitations to tender electronically and, to the extent practicable, make tender documentation available electronically to invited suppliers.
- 9.21 The Contract Management and Policy Unit (CPU) *must* clear all tender documentation before it is advertised. CPU may require additional approvals from Administrative and Domestic Law Group (ADL). DFAT staff *must* allow a minimum of 24 hours for CPU to review all the documentation. However staff should not expect that last minute advice will be available or useful.

Process

- 9.22 DFAT should promptly provide, on request, to any supplier participating in a procurement process, documentation that includes all information necessary to permit suppliers to prepare and lodge responsive submissions to any approach to the market.
- 9.23 Where DFAT rejects a supplier's application to participate in a procurement process, DFAT *must* promptly advise the supplier, and on request provide written explanation for that rejection.
- 9.24 Following the awarding of a contract, DFAT *must* promptly inform all suppliers that submitted tenders of the tender decision and, on request, provide an unsuccessful supplier with the reasons their submission was not successful. On request, debriefings should also be provided to successful suppliers.

Reporting

- 9.25 DFAT is required to comply with a range of specific reporting obligations, detailed below, to provide broader visibility of its procurement, including to the Parliament and its Committees, and to the public.

Senate Order on Departmental and Agency Contracts

- 9.26 DFAT *must* place lists of contracts with a consideration of \$100,000 or more, which have not been fully performed or which have been entered into during the previous

12 months, on the Internet with access through their home page. The information to be included, the timeframes for reporting, and the terms of compliance are set out in Finance's [Guidance on the Listing of Contract Details on the Internet \(Meeting the Senate Order on Departmental and Agency Contracts\)](#)⁷. DFAT staff should note that the requirements for listing contract details on the Internet extend to grants and funding agreements.

- 9.27 The Secretary is required to advise portfolio ministers of any sensitivity in relation to disclosure before publishing information on contracts entered into by DFAT.

Commonwealth Contracts and Agency Agreements (including Standing Offers)

- 9.28 DFAT *must* report agency agreements and Commonwealth contracts⁸, including supply on demand contracts, with an estimated liability of \$10,000 or more, in accordance with the requirements set out in the [Procurement Publishing Obligations](#), within six weeks of entering into the agreement. Should an agency become aware of a failure to report within the prescribed six weeks, it *must* remedy that failure immediately by reporting the arrangement in the Gazette.
- 9.29 If the Secretary decides that details of a DFAT agreement or Commonwealth contract (including a standing offer) are exempt matters under the *Freedom of Information Act 1982*, the Secretary may then direct, in writing, that the details are not to be notified in the Gazette.

Consultancy Services

- 9.30 Consultancy services are one particular type of service delivered under a contract for services. They are distinguished from other contracts for services by the nature of the work performed. A consultant is an entity, whether an individual, a partnership or a corporation, engaged to provide professional independent and expert advice or services. Typically, the term consultancy services is used to describe the application of expert professional skills to: investigate or diagnose a defined issue or problem, carry out defined research, reviews or evaluations; or provide independent advice, information or creative solutions to assist the agency in management decision making. For more detail please refer to the Department of Finance and Administration's '[Guidance on identifying consultancies for Annual Reporting Purposes, July 2004](#)'.
- 9.31 For Annual Report purposes DFAT is required to provide the following information on consultancy services for the year in question:
- The total number of consultants under engagement during the year;
 - The total amount paid to the consultants;
 - A list of all consultancy contracts let during the year to the value of \$10,000 or more, with details as follows for each individual consultancy:
 - The name of the consultant;
 - A summary description of the nature and purpose of the consultancy;

⁷ Available from www.finance.gov.au.

⁸ FMA regulation 3 defines a Commonwealth contract as "an agreement for the procurement of property and services under which the Commonwealth is obliged, or may become obliged, to make a payment of public money."

- The agreed total cost of the consultancy;
- Whether the consultant was publicly advertised; and
- A concise statement of reasons for the decision to employ consultancy services.

Other Reporting and Disclosure Obligations

9.32 Annual reports are an important accountability mechanism, informing the Parliament and other stakeholders of DFAT's performance in relation to the services that they provide. The [Requirements for Annual Reports](#), issued by the Department of the Prime Minister and Cabinet, provides a framework for the major aspects of certain FMA agencies' annual reports. For example, DFAT has typically been required to report a range of procurement information, including:

- performance against core purchasing policies and principles, as set out in the CPGs;
- consultancy services contracts;
- competitive tendering and contracting (CTC)⁹ undertaken;
- CTC contracts that do not provide for the Auditor-General to have access to the contractor's premises; and
- exemptions from publishing contracts of \$10,000 or more.

9.33 Various other reporting and disclosure obligations apply to all Australian Government activities, including procurement. These include:

- disclosure to the Parliament and its Committees, as appropriate, in line with the [Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters](#);
- provision of information required by the Public Service Commissioner, under section 44 of the *Public Service Act 1999*, for the purposes of preparing the annual report on the *State of the Service*;
- 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.

9.34 Areas with doubts about proposals to disclose sensitive contractual information should contact the CPU in the first instance. The CPU may refer you to the department's Freedom of Information Unit or ADL for further advice.

Confidentiality

9.35 Consistent with the policy of transparency, the Government has indicated that agencies are to list on the Internet contracts of \$100,000 or more, including whether they contain confidentiality clauses.

9.36 The principles of accountability and transparency suggests that contracting information should not be confidential unless there is a sound reason, informed by legal principle, for maintenance of the confidentiality of information. It places an

⁹ The term *CTC* is defined in [Requirements for Annual Reports](#)

onus on officers to make an assessment of whether information should be kept confidential before agreeing to make any contractual commitment of confidentiality.

- 9.37 In undertaking this assessment, Commonwealth staff will first need to determine whether commercial information supplied by a prospective contractor should properly be regarded as confidential. The next step that needs to be addressed is whether it is appropriate to contract on that basis or, alternatively, to attempt to negotiate a withdrawal of the request for a confidentiality clause or to turn to another supplier. For further guidance please refer to the Department of Finance and Administration's '[Guidance on Confidentiality of Contractors' Commercial Information February 2003](#)'.

Dealing with Complaints

- 9.38 Procurement processes should be based on clearly articulated and defensible evaluation criteria consistent with the procurement policy framework. DFAT staff should be aware of DFAT's procurement policies and practices so that their actions are robust and defensible.
- 9.39 In particular, to enhance the transparency of procurement processes, DFAT staff **must**, on request, provide an unsuccessful supplier with the reasons their submission was not successful. Debriefings should also be provided to successful suppliers on request.
- 9.40 In the event that a complaint is received staff should aim to manage this process internally, where possible, through communication and conciliation with the supplier. DFAT should have fair, equitable and non-discriminatory complaint handling procedures that take account of the following:
- the process should be systematic and be well understood by the parties involved;
 - senior management and officers independent from the process should be involved as appropriate;
 - complaints should be dealt with in writing;
 - each party should have sufficient time to appropriately respond to developments (no less than 10 days);
 - if a matter has been referred to an external body for review, DFAT staff **must** provide all relevant documents to that body; and
 - DFAT staff **must** ensure that the initiation of a complaint process does not prejudice the supplier's participation in future processes.
- 9.41 External options are available if further independent review of a complaint is necessary. The primary external complaint mechanism is the civil legal system, which can be used to settle disputes through a formal judicial process.
- 9.42 The Commonwealth Ombudsman also has limited powers to investigate procurement complaints. The Ombudsman cannot override agency decisions, but aims to resolve disputes by negotiation and persuasion, and if necessary, by making formal recommendations to the most senior levels of Government.

10 Updated Tender and Contract Documentation

- 10.1 Administrative and Domestic Law Section (ADL) has updated tender and contract documentation to fully comply with the requirements of the CPGs and with industry best practice. The updated tender and contract documentation is available on SATIN Low (Corporate Templates) and must be used unless otherwise agreed by the Contracts Management and Policy Unit (CPU) and ADL.
- 10.2 These documents include:
- Request for Tender
 - Short Form Contract
 - Long Form Contract
 - Expression of Interest
 - Approval to enter multi year contract (Reg 10 approval)
 - Letter of Variation
 - Conflict of Interest Declaration
 - Tendering Checklist
 - Tender Evaluation Plan
 - Tender Board Appointment Minute
 - Risk Assessment Matrix
 - Tender Board Report
- 10.3 The standard long form contract **must** be used for all procurement greater than \$80,000 or for high risk property or services.

11 Procurement Thresholds

11.1 Procurement thresholds under the new CPGs are as follows:

Value	Procurement Method (Minimum Requirement)
Under \$1,000	not applicable
\$1,001 to \$9,999	two verbal quotes
\$10,000 to \$49,999	three written quotes
\$50,000 to \$79,999	three written quotes supported by a business case and risk assessment
over \$80,000 (property and services)	Covered Procurement
over \$6,000,000 (construction services)	Covered Procurement

Valuing the Procurement

11.2 The total value of each procurement must be estimated at the start of the process and include the following:

- all forms of remuneration, including any premiums, fees, commissions, interest and other revenue streams that may be provided for in the final contract;
- all taxes and charges, including GST; and
- any options or extensions that may be provided for in the proposed contract.

11.3 Procurements above the threshold, are considered to be “covered procurements” and must comply with the mandatory procurement procedures specified in Division 2 of the CPGs.

11.4 Where the total maximum value of a contract over its entire duration cannot be estimated, the procurement must be treated as a covered procurement.

11.5 A procurement must not be divided into separate parts for the purpose of avoiding a procurement threshold.

12 Mandatory Procurement Procedures

- 12.1 DFAT is required to comply with a number of mandatory procurement procedures when conducting covered procurements. *Covered procurements* are procurements, other than those which the Government has decided are exempt in accordance with Chapter 16, which exceed the following procurement thresholds. **Procurement with a total value over \$80,000 (for property and services) or over \$6 million (for construction services).**
- 12.2 The mandatory procurement procedures enhance the delivery of value for money through a more consistent and transparent application of procedures.
- 12.3 The mandatory procurement procedures also incorporate the Government’s policy with respect to discharging specific international obligations in Government procurement. DFAT is required to apply these mandatory procurement procedures in accordance with FMA Regulation 9, which requires an approver to be satisfied after making such inquiries as are reasonable that a spending proposal for a proposed contract, agreement or arrangement is in accordance with the policies of the Commonwealth, as well as FMA Regulation 8(1) which deals with compliance with the CPGs.
- 12.4 DFAT staff must ensure that they comply with the mandatory procurement procedures where the estimated value of the property or services subject to a procurement indicates that it may be a covered procurement.¹⁰

Procurement Procedures for Posts

- 12.5 Posts should note that as “procurement of property or services (including construction) outside Australian territory, for consumption outside Australian territory” are exempt from the mandatory procurement processes, the following steps should be considered as “best practice” only.
- 12.6 Procurements which are exempt from the mandatory procurement procedures are still required to be undertaken in accordance with the principle of value for money, encouraging competition and non-discrimination.

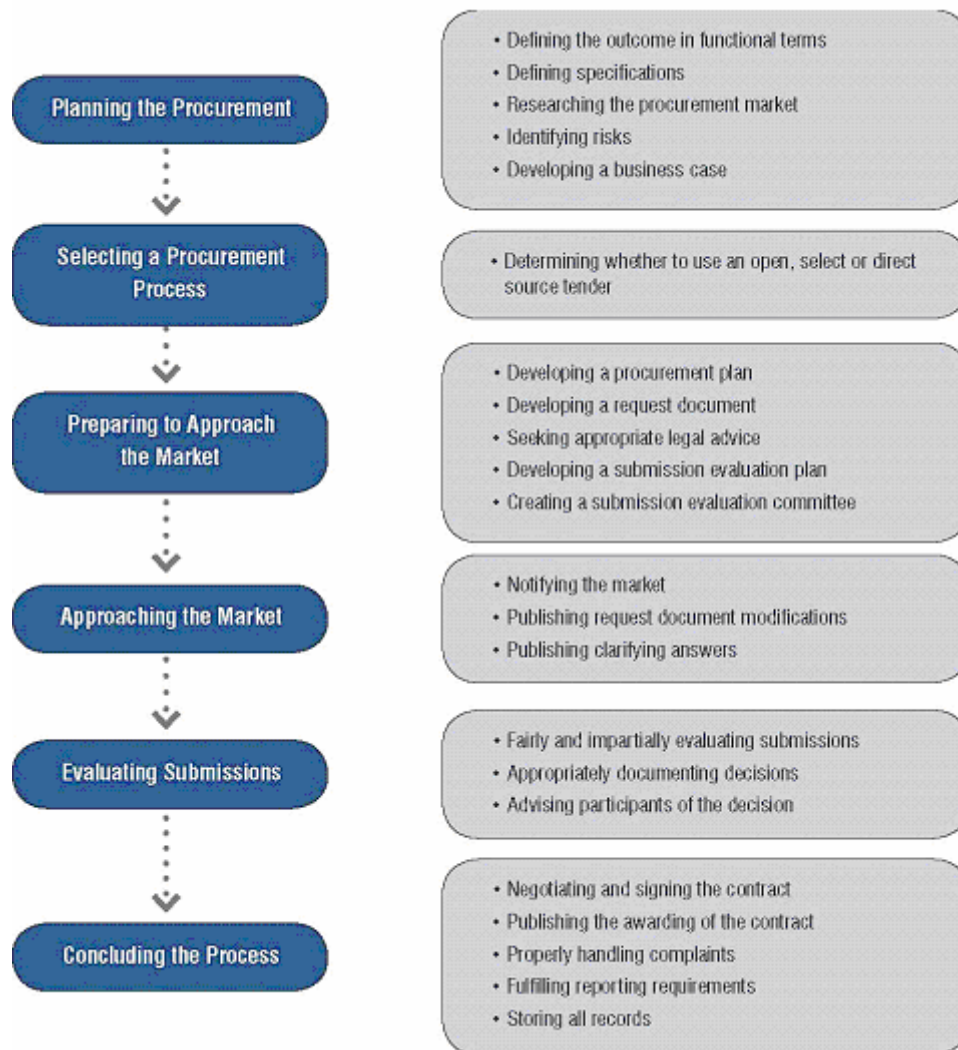
Tendering Checklist

- 12.7 There are six major steps that are generally followed when procuring a property or service. Within each of these steps there are also a number of decisions or actions that are usually taken. These are outlined in the following diagram.

¹⁰ [Guidance on the Mandatory Procurement Procedures](#) .

STEPS

EXAMPLES OF DECISIONS/ACTIONS



12.8 CPU have developed a Tendering Checklist to assist staff in conducting a fully compliant procurement process. The checklist covers all the major steps in the procurement process including;

- Planning the Procurement
- Selecting a Procurement Process
- Preparing to Approach the Market
- Approaching the Market
- Evaluating Submissions, and
- Concluding the Process

12.9 It is **mandatory** for staff to use the Tendering Checklist for all covered procurement processes.

Approaching the Market

12.10 An approach to the market is when an agency issues a notice inviting potential suppliers to participate in a procurement. Open approaches to the market include

requests for tender, requests for expression of interest and requests for application for inclusion on a multi-use list which are published on AusTender.

- 12.11 Select approaches to the market include invitations to tender in a select process in accordance with the requirements for select tendering.
- 12.12 Any formally submitted response from a potential supplier to an open or select approach to the market is referred to as a submission.

Conditions for Participation

- 12.13 DFAT staff may specify *conditions for participation* which are basic requirements with which potential suppliers must be able to demonstrate compliance 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.
- 12.14 Conditions for participation may require relevant prior experience where essential to meet the requirements of the procurement but must not specify, as a requirement, that potential suppliers have previous experience with DFAT, with the Australian Government or in a particular location.
- 12.15 In assessing whether a potential supplier satisfies the conditions for participation, DFAT staff must:
- a. evaluate financial, commercial, and technical abilities on the basis of the potential supplier's business activities, wherever they have occurred; and
 - b. base its determination solely on the conditions for participation that the agency has specified in either the approach to the market or the tender documentation.
- 12.16 Staff may exclude a potential supplier on grounds such as bankruptcy, insolvency, false declarations, or significant deficiencies in performance of any substantive requirement or obligation under a prior contract.
- 12.17 The Request for Tender templates found under the SATIN Welcome Page > Templates, contains some example *conditions of participation* which staff may wish to use.

Request Documentation

- 12.18 Request documentation refers to documentation provided to potential suppliers to enable them to understand and assess DFAT's requirements and to prepare submissions in response to an approach to the market. Request documentation must include the information necessary to permit potential suppliers to prepare and lodge responsive submissions. However, this obligation does not extend to the release of confidential information, information sensitive to essential security or information which may impede competition.
- 12.19 Where practicable, request documentation for an open or select tender process must be distributed electronically. Where electronic distribution is not practicable DFAT must promptly provide the request documentation, on request from any potential supplier.
- 12.20 In addition to the approach to the market, request documentation must include a complete description of:

- a. the procurement, including the nature, scope and, where known, the quantity of the property or services to be procured 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. all evaluation criteria to be considered in assessing submissions; and
- d. any other terms or conditions relevant to the evaluation of submissions.

12.21 Staff need to ensure that potential suppliers are dealt with fairly and in a non-discriminatory manner when providing information leading to, or following, an approach to the market. DFAT staff must promptly reply to any reasonable request for relevant information by a potential supplier participating in a procurement and need to take particular care when responding to enquiries from potential suppliers to avoid practices that would lead to a potential supplier, or group of potential suppliers, gaining an unfair advantage in a competitive procurement process.

12.22 When approaching the market with a Request for Tender (RFT), staff must ensure that a Draft Long Form Contract is released with the RFT and any other tender documentation.

12.23 It is recommended that the Draft Contract contain the following information specific to the procurement;

- Statement of Requirements (this should mirror the Statement of Requirements from the RFT; NB: the SOR must be updated in the contract, once the successful tenderer is chosen, to take account of the solution approved by the Tender Board)
- Performance Standards (including any Service Credits)
- Specific contact/escalation details

Technical Specifications

12.24 Technical specifications describe the features of the property or services to be procured.

12.25 In prescribing technical specifications for property or services, staff must:

- a. where possible, specify the technical specifications in terms of performance and functional requirements, rather than design or descriptive characteristics; and
- b. base technical specifications on international standards, where they exist and apply to the relevant procurement, except where the use of international standards would fail to meet the DFAT's requirements or would impose greater burdens than the use of recognised Australian standards.

12.26 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. Where this type of specification is absolutely necessary words such as 'or equivalent' must be included in the specification.

- 12.27 Staff are encouraged to ensure that requirements and specifications are developed based on a sound and unbiased understanding of market capabilities and commercial practices.
- 12.28 DFAT staff 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. Staff need to take positive steps to ensure that such a supplier will not have an unfair advantage over other potential suppliers.
- 12.29 DFAT staff may not use technical specification or prescribe any conformity assessment procedure in order to create an unnecessary obstacle to trade.

Modification of Criteria or Technical Requirements

- 12.30 Where, during the course of a procurement, staff modify the evaluation criteria or technical requirements set out in an approach to the market or in response documentation, or amends or reissues an approach to the market or request documentation, it must transmit all modifications or amended or re-issued 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 initial submissions.

Receipt and Opening of Submissions

- 12.31 Procedures to receive and open all submissions must guarantee fairness and impartiality, and must treat submissions in confidence.
- 12.32 Staff must not penalise any potential supplier whose submission is received after the specified deadline if the delay is due solely to mishandling by the agency.
- 12.33 Where staff provide potential suppliers with opportunities to correct unintentional errors of form between the opening of submissions and any decision, staff must provide the same opportunity to all participating potential suppliers.
- 12.34 Staff must only give further consideration to a submission where, at the time of opening, the submission includes the minimum content and format of submissions as stated in all notices and documentation issued during the course of the procurement. That is, the submission must be in a form meeting the required format and must include all required information, statements, certifications and declarations.

Evaluating the Submissions

- 12.30 Staff are encouraged to use the Tender Evaluation Plan template developed by CPU, to assist the Tender Board in evaluating tender submissions.
- 12.31 It is vital that, like all stages of a procurement process, the evaluations along with the justification of any tender board decision and/or action are fully documented in accordance with clause 9.10-9.16 of this manual.

Awarding of Contracts

12.35 Unless DFAT determines that it is not in the public interest¹¹ to award a contract, it must award a contract to the supplier that DFAT has determined:

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

12.36 DFAT may not cancel a procurement, or terminate or modify an awarded contract, so as to circumvent the requirements of the CPGs.

Notification of Decisions

12.37 Where a potential supplier makes a submission in response to an approach to the market, staff must promptly advise the potential supplier of its final decision regarding the submission.

12.38 On request, staff must provide an unsuccessful potential supplier with the reasons that its submission was not successful.

12.39 Where DFAT staff reject an expression of interest or an application for inclusion on a multi-use list, or ceases to recognise a potential supplier as having satisfied the conditions for participation in either, the agency must promptly inform the potential supplier and, on request, promptly provide the potential supplier with a written explanation of the reasons for its decision.

Open Tendering

12.40 An open tender process involves publishing a request for tender and accepting all submissions received before the deadline for submissions from any potential suppliers who satisfy the conditions for participation.

Select Tendering

12.41 A select tender process involves issuing an invitation to tender to those potential suppliers selected in accordance with the procedures outlined below.

12.42 When using a select tender process staff are still required to ensure that the process is non-discriminatory.

12.43 Three methods are permitted for conducting a select tender process. In the first two, an initial open approach to the market must be, or have been, undertaken to identify potential suppliers eligible and interested in participating in the select tender process. DFAT may conduct a select tender process from:

- a. a multi-use list;
- b. a list of potential suppliers that have responded to a request for expressions of interest; or

¹¹ [Guidance on the Mandatory Procurement Procedures.](#)

- c. a list of all potential suppliers that have been granted a specific licence or comply with a legal requirement, where the licence or compliance with the legal requirement is essential to the conduct of the procurement.

Selecting From a Multi-Use list

- 12.44 DFAT may invite businesses selected from a multi-use list to participate in a procurement, providing that the property or services sought are consistent with those described in the notice of multi-use list.
- 12.45 In such cases, the DFAT may invite all or some of the listed businesses to submit tenders, provided that the largest number of potential suppliers is selected that is consistent with an efficient procurement process.

Selecting From an Expression of Interest

- 12.46 DFAT may publish a request for expressions of interest, and use the list of businesses who lodge a compliant submission as the basis for inviting potential suppliers to submit tenders.
- 12.47 A request for expressions of interest may include requests for information and/or proposals to be considered in selecting potential suppliers to be invited to make submissions. Providing that relevant requirements and evaluation criteria have been specified in the request for expressions of interest or the associated request documentation, staff may:
- a. assess the extent to which a submission meets the technical and performance specifications of the procurement; and
 - b. limit the number of businesses that it invites to tender, based on its rating of submissions, provided that the largest number of potential suppliers is selected that is consistent with an efficient procurement process.
- 12.48 In all other cases, the DFAT must invite all businesses that have responded to the request for expressions of interest and meet the conditions for participation to submit a tender.

Selecting on the Basis of a Licence or Specific Legal Requirement

- 12.49 DFAT may conduct a select tender from a list of all potential suppliers that have been granted a licence, or that have been determined by the appropriate agency, authority or organisation to comply with specific legal requirements that exist independent of the procurement process, provided that:
- a. the requirement for a licence or compliance with specific legal requirements is essential to the conduct of the procurement; and
 - b. the complete list of such potential suppliers is maintained by the appropriate agency, authority, or organisation and is available to the agency.
- 12.50 Under such circumstances, DFAT staff must invite all potential suppliers on the list to submit tenders.

Direct Sourcing

- 12.51 Direct sourcing refers to a procurement process, permitted only under certain conditions for direct sourcing, in which an agency may invite a potential supplier or suppliers of its choice to make submissions.

12.52 Direct sourcing must not be used for the purposes of avoiding competition, or to discriminate against any domestic or foreign business and in all such circumstances, the general procurement policy framework still applies, including the requirement to achieve value for money.

12.53 Areas proposing to conduct a covered procurement via direct sourcing in accordance with the conditions provided for under the CPGs, must make a written request in the form of a Minute signed by a Branch Head, for CPU's approval.

Conditions for Direct Sourcing

12.54 DFAT staff may only conduct procurement through direct sourcing in the following circumstances:

- a. where, in response to an approach to the market:
 - i. no submissions were received;
 - ii. no submissions were received that conform to the minimum content and format of submission as stated in the request documentation; or
 - iii. no potential suppliers satisfied the conditions for participation;

and DFAT does not substantially modify the essential requirements of the procurement;

- b. where, for reasons of extreme urgency brought about by events unforeseen by DFAT, the property or services could not be obtained in time under open tendering procedures;
- c. for purchases made under exceptionally advantageous conditions that only arise in the very short term, such as from unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy, or receivership and which are not routine purchases from regular suppliers;
- d. where the property or services can only be supplied by a particular business and there is no reasonable alternative or substitute for the following reason:
 - i. the requirement is for works of art;
 - ii. the protection of patents, copyrights, or other exclusive rights, or proprietary information; or
 - iii. due to an absence of competition for technical reasons;
- e. for additional deliveries of property or 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, where a change of supplier would compel the agency to procure property or services that do not meet requirements of compatibility with existing equipment or services;
- f. for purchases on a commodity market¹²;

¹² For the purposes of these CPGs a *commodity market* is a recognised exchange dealing in generic, largely unprocessed, goods that can be processed and resold.

- g. where DFAT procures a prototype or a first good or service that is intended for limited trial or that is developed at its request in the course of, and for, a particular contract for research, experiment, study, or original development;
- 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 the CPGs; and
 - ii. the contest is judged by an independent jury with a view to a design contract being awarded to the winner; or
- i. for new construction services consisting of the repetition of similar construction services that conform to a basic project for which an initial contract was awarded following an open or select tender process, and where the initial approach to the market indicated that direct sourcing might be used for those subsequent construction services.

12.55 In accordance with the general accountability requirements set out in the CPGs, for each contract awarded through direct sourcing, staff must prepare and appropriately file within DFAT's central filing system, a written report that includes:

- a. the value and kind of property or services procured; and
- b. a statement indicating the circumstances and conditions that justify the use of a procedure other than an open or select tender process.

13 Multi-Use Lists & Panels

What is a multi-use list?

- 13.1 A multi-use list is a list of pre-qualified suppliers who have satisfied the conditions for participation for inclusion on the list which is intended for use in more than one procurement process. Conditions for participation are minimum conditions that potential suppliers must meet. The conditions of participation are not discretionary criteria. They can only be assessed as being either 'met' or 'not met', rather than being a condition that can be partially demonstrated.
- 13.2 Multi-use lists are subject to specific rules set out in the CPGs. Once the multi-use list is developed and applicants assessed, it may be used as part of a procurement process either as a condition for participation in an open tender, or as the basis for selecting participants in a select tender process, consistent with the mandatory procurement procedures. A multi-use list would typically be developed for property or services that an agency frequently procures. An example of a whole of government multi-use list is the Endorsed Supplier Arrangement.
- 13.3 To establish and maintain a multi-use list, staff must:
- publish on AusTender a request for application for inclusion on the multi-use list, consistent with the requirements outlined in the CPGs;
 - ensure requests for application are published continuously or republished annually on AusTender; and
 - include all potential suppliers that satisfy the conditions for participation on the multi-use list as soon as practicable. DFAT staff have no discretion to exclude potential suppliers who meet conditions for participation.

How is a multi-use list different to a panel?

- 13.4 A multi-use list differs from a panel in a number of ways:
- A multi-use list is a facility for pre-qualifying interested suppliers prior to conducting a tender process. A panel is the appointment of suppliers through a contract or deed of standing offer following a tender process conducted in accordance with the CPGs.
 - A multi-use list can grow as large as the number of suppliers who request to join the list and meet the stated conditions of participation for inclusion. A panel is formed on the basis of assessment of suppliers against evaluation criteria and any other terms and conditions relevant to the evaluation of submissions. Only suppliers that represent value for money should be included on a panel.
 - Staff may not procure property/services from a multi-use list without conducting an open or select tender process from the list in accordance with the CPGs. When setting up a panel, a deed of standing offer or a contract is established between an

agency and each supplier on the panel. Procurement occurs directly between the supplier and the agency. A select tender is not undertaken from a panel.

- d. The opportunity for suppliers to join a multi-use list must be either advertised continuously on AusTender or annually. Request documentation for the establishment of a panel need only be advertised on AusTender on one occasion.

14 Publishing Procurement Activities

Advertising a Tender

- 14.1 In Australia, the extent to which a tender is to be advertised will depend on the nature of the procurement and the likelihood of finding an appropriate range of quality suppliers. The minimum requirement for government agencies is that all open approaches to the market, including requests for tender, requests for expressions of interest and requests for inclusion on a multi-use list must be published on the Australian Government Tender System – AusTender www.tenders.gov.au and on the departmental tender site www.dfat.gov.au/tenders/
- 14.2 With high value complex procurement it is best practice to also advertise the tender in one or more major national newspapers. Relevant industry trade journals and international press can also be used. Actual advertisements should be kept to a minimum (to reduce costs) and should refer interested parties to the departmental or post internet website for more details [please see attachment xx for an advertisement example].
- 14.3 It should be noted that advertising of all Australian procurement must be channelled through HmaBlaze. HmaBlaze is the sole Commonwealth Government agent for non-campaign advertising and is responsible for the placement of all advertising on behalf of the Commonwealth Government.
- 14.4 To facilitate all contract and tendering publishing, staff need to contact the CPU (CPU@dfat.gov.au), who can arrange for the details to be published on AusTender and the DFAT website, and, if required, in national and/or international newspapers through HmaBlaze.
- Key Steps to Advertising:
- a. AusTender form (available under Templates >>Contracts) should be filled out and submitted to the CPU a minimum of three full days prior to the advertisement date for upload to the AusTender site (i.e. no later than Tuesday afternoon for a Saturday advertisement);
 - b. The Request for Tender document(s), including a copy of the draft contract, should be sent, via email, to the CPU no later than three full days prior to the advertisement date for upload to the DFAT tenders site;
 - c. The proposed newspaper advertisement should be sent, via email, to the CPU no later than three full days prior to the advertisement date complete with the name(s) and date(s) of the newspaper(s) in which the advertisement is to appear.
- 14.5 Briefing sessions should be used only if they will add value to the procurement process. Where a briefing session is necessary, the session details should appear in the tender advertisement.

Advertising a Contract

Gazettal

- 14.6 The Australian Commonwealth Government purchasing policy requires departments to publish details of its contracts in a central website called the Australian Government Tender System website, AusTender <http://www.contracts.gov.au/>

The AusTender site is a free service to the Australian public and provides information about the Commonwealth Government's purchasing activities. This assists the Government's objective of providing accountability and transparency in the spending of public monies. In general terms, contracts with an estimated liability of more than AUD10,000 (GST inclusive) and where the property and/or services were either procured and/or consumed in Australia, must be gazetted. For detailed information about what should be gazetted and what is exempt from gazettal see [Guidance on Procurement Publishing Obligations](#)

- 14.7 All contracts (over \$10,000 GST inclusive), including consultancy services must be entered into the Contracts Database for gazettal and reporting purposes. It is the responsibility of Contract Managers to pass on the details of all new contracts to their Budget Coordinator for entry into the Contracts Database within 5 days of signing a contract. The CPU in the Finance Services and Systems Branch (FSB) provides contract details to AusTender once the contract has been entered into the Department's Contracts Database. The gazettal of everyday purchases of property and/or services is performed monthly by the Financial Services Section (FSS) using gazettal data from SAP.
- 14.8 A contract and/or standing offer must be gazetted *within six weeks* of entering into the agreement. It is the responsibility of the Budget Co-ordinator to enter all relevant contracts into the Contracts Database so that they can be gazetted within this timeframe. If a contract or standing offer is not reported in the Contracts Database within the required timeframe agencies must still report it, however, failure to comply with the six week timeframe may result in DFAT being required to report the failure to notice in the Annual Reporting Guidelines issued by the Department of the Prime Minister and Cabinet.
- 14.9 Should a contract that has already been entered into the Contracts Database need to be amended, because the contract may have been extended for example or there is an error in the entered data, it is the Budget Co-ordinator's responsibility to email the CPU all new information as soon as possible to ensure that the gazettal data is amended.

Reporting

- 14.10 DFAT is required by Parliament to report twice annually during the Senate Estimates Committee (spring and autumn sessions) on contracts/consultancies entered into during the last financial year/calendar year (or are still current) with a value of \$100,000 or more (GST inclusive). This report is known as the [Senate Order on Departmental and Agency Contracts \(Murray Report\)](#).
- 14.11 DFAT is required by Parliament to publish a report on all consultancies (over \$10,000 in total value, GST inclusive) in the DFAT Annual Report

15 Time-limits

- 15.1 The new CPGs require ‘the time limit for potential suppliers to lodge a submission **must be at least 25 days** from the date and time that an agency publishes a notice of an open approach to the market or invites potential suppliers to participate in a select tender process, except under the following circumstances where an agency may establish a time limit that is less than 25 days but no less than 10 days:
- a. where the agency has published details of the procurement in an Annual Procurement Plan on AusTender, at least 30 days and not more than 12 months in advance, and these details include a description of the procurement, the estimated timing of the approach to the market, and the procedure to obtain request documentation;
 - b. where the agency procures commercial property or services ¹³;
 - c. in the case of second or subsequent approaches to the market for procurement of a recurring nature; or
 - d. where a genuine state of urgency renders the normal time limit impracticable.’

¹³ Property or services 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.

16 Exemptions from Mandatory Procurement Procedures

- 16.1 There are a small number of procurements exempt from the CPGs mandatory procurement procedures. The exemptions of particular relevance to DFAT include (but are not limited to):
- leasing or purchase of real property or accommodation (note: the procurement of construction services is not exempt);
 - procurement of property or services (including construction) outside Australian territory, for consumption outside Australian territory;
 - procurement of motor vehicles; and
 - procurement of Government advertising services.
- 16.2 Procurements which are exempt from the mandatory procurement procedures are still required to be undertaken in accordance with the principle of value for money, encouraging competition and non-discrimination.
- 16.3 More information on these exemptions can be found in [Appendix B: Exemptions from Mandatory Procurement Procedures](#) of the CPG.
- 16.4 Areas proposing to claim any of the exemptions provided for under the CPGs must make a written request in the form of a Minute signed by a Branch Head, for CPU's approval.

17 Security Related Procurement

17.1 The CPG states:

8.2 Nothing in this Division (mandatory procurement procedures) of the CPGs prevents an agency from applying measures determined by their Chief Executive to be necessary to the maintenance or restoration of international peace and security or to protect human health or the protection of essential security interests or to protect national treasures of artistic, historic or archaeological value.

17.2 This paragraph authorises the Secretary to take measures to protect essential security interests, which may include departure from some, or all, of the mandatory procurement procedures of the CPG. If the Secretary determines that a measure is necessary to protect essential security interests, then any decision to depart from the mandatory procurement procedures due to that measure should be properly documented, including reasons for the decision. Please note that Section 8.2 only operates in respect of the mandatory procurement procedures and not the CPG as a whole. In other words, section 8.2 itself does not set aside requirements such as value-for-money, encouraging competition or non-discrimination. The application of section 8.2 should be assessed on a case-by-case basis.

18 Annual Procurement Plan (APP)

- 18.1 Agencies are encouraged to plan their forthcoming annual procurement and *must* publish on AusTender, by 1 July each year, an Annual Procurement Plan (APP) to draw business' early attention to potential procurement opportunities.
- 18.2 The APP should contain a short strategic procurement outlook for the agency supported by details of any planned procurement. The detail should include the subject matter of any planned procurement and the estimated date of the publication of the request for tender.
- 18.3 While the APP is an annual requirement, it should be maintained throughout the year, through the publication of regular updates on AusTender, to reflect changes in circumstances or requirements. Information, including dates of any revisions or amendments to the APP must be disclosed.
- 18.4 The CPU will coordinate the preparation of the department's Annual Procurement Plan and will issue guidance to Divisions.

Example Annual Procurement Plan

Department of Foreign Affairs & Trade Strategic Procurement Outlook

The department's aim is to advance the interests of Australia and Australians internationally. This aim is the driving force behind our work and underpins all the department's goals, priorities, values and culture.

The department's goals are to:

- enhance Australia's security
- contribute to growth in Australia's economy, employment and standard of living
- assist Australian travellers and Australians overseas
- strengthen global cooperation in ways that advance Australia's interests
- foster public understanding of Australia's foreign and trade policy and project a positive image of Australia internationally
- manage efficiently the Commonwealth's overseas owned estate.

It is the department's policy to prepare an annual forecast of expected contract opportunities, for each financial year, with the aim of increasing industry's advance knowledge of DFAT's requirements and to enhance competition.

2005-2006 will see some major procurement initiatives. DFAT expects a new accommodation and office fits out in the financial year in approximately 6 countries in which DFAT is located. There will also be a strategic review of document management with a view to moving to an electronic document management system.

The procurements described in this forecast are expected to be solicited in this financial year, based on the best information available at the time of publication.

Planned Procurement

Reference	Description	Estimated date of approach to the market
	Legal Services	
1	Renew legal services panel: <ul style="list-style-type: none"> • Corporate Law • Information Technology Law • Public International Law 	December 2005
	Accommodation	
2	Design services for clerical office environment	February 2006
3	Fitout – new systems and furniture in RG Casey Building	2 nd Quarter
	IT Services	
4	Design and construction of new electronic payment system	2 nd Quarter
5	Systems delivery/implementation and ongoing support for a new integrated payroll system	April 2006
6	Supply and maintenance of Personal Computers & Laptops	December 2005

Request documentation for all open procurements will be available electronically through AusTender and the DFAT website when the department approaches the market.

All planned procurements are subject to revision or cancellation. Final decisions will not be made until each procurement has been initiated. The data is for planning purposes only; it does not represent a pre solicitation or constitute an invitation for bid or request for proposal, nor is it a commitment by the department to purchase the described property and services.

19 Further Guidance Documents

19.1 DOFA have released the following Guidance documents to assist staff in their procurement processes:

- [Guidance on the Mandatory Procurement Procedures](#);
- [Guidance on Procurement Publishing Obligations](#);
- [Guidance on Complying with Legislation and Government Policy in Procurement](#); (please note that this document includes important information on DFAT's Environmental obligations in procurement as detailed further in **Chapter 20 Environmental Procurement Policy**)
- [Guidance on Ethics and Probity in Government Procurement](#);
- [Risk Management in Procurement](#);
- [Guidance on Identifying Consultancies for Annual Reporting Purposes](#); and
- [Confidentiality of Contractors' Commercial Information](#).

20 Environmental Procurement Policy

- 20.1 In 2001, environmental concerns prompted the Commonwealth Government to decide that government departments should lead by example. Departments are required to develop Environmental Management Systems (EMS), certified to the International Standard ISO 14001, to minimise their environmental impacts. The department's EMS includes a commitment to protecting the environment, complying with relevant environmental legislation and regulations and achieving continual improvement in its environmental performance. The EMS documents can be accessed through the Corporate Information Database.
- 20.2 The Commonwealth Government also attaches importance to the environmental sustainability of public sector operations. It has endorsed the Environmental Purchasing Guide and Checklists and other procurement guidelines developed by the Department of the Environment and Heritage (DEH) for use by government departments and agencies. The Environmental Purchasing Guide provides an introduction to the key environmental issues relevant to public procurement. For example, factors such as the operating energy consumption of an appliance and the costs of disposal at end-of-life, which are integral to both value for money and environmental policy.
- 20.3 The Checklists cover a range of goods including paper and cardboard, packaging, office equipment, office equipment consumables, some whitegoods, building management services et al. Officials should take into account these guidelines and

checklists when formulating procurement requirements. Each Checklist identifies key environmental performance criteria and provides model tender specifications.

- Access to the Environmental Purchasing Guide and Checklists (2004) can be found at the following link: <http://www.deh.gov.au/industry/agency-performance/purchasing/index.html>.
- Access to the Green Office Guide can be found at the following link:
<http://www.deh.gov.au/industry/agency-performance/purchasing/green-office-guide.html>.
- Access to the National Government waste reduction and purchasing guidelines (2004) can be found at the following link:

<http://www.deh.gov.au/industry/agency-performance/purchasing/waste-reduction.html>

20.4 Effective management of procurement and other administrative operations benefits the environment and can also achieve economies and cost savings. In addition to complying with relevant Australian and ACT legislation, departments and agencies are also required to report annually on their environmental performance and contribution to environmentally sustainable development. Officials should therefore include consideration of relevant environmental criteria in specifications and requests for tender. (<http://www.ea.gov.au>)

21 Contractors

Introduction

- 21.1 This provides guidance to work areas involved in the engagement of contractors.
- 21.2 The first point of contact when considering engaging a contractor is the Contractor Management Unit (CMU) in Staffing Development Branch (SDB).
- 21.3 Contractors **cannot** be engaged without the approval of CMU.
- 21.4 CMU will provide advice and guidance on the department's procedures for the engagement of any contractor. These include:
- completing appropriate market testing in line with Commonwealth Procurement Guidelines (CPGs):
 - if the total value of the contract for labour is \$80,000 or more, you are required by law to issue a request for tender;
 - if the total value of the contract for labour is less than \$80,000, three written quotes must be obtained.
 - providing CMU with an application to engage a contractor form (DFAT template page) signed by a branch head; and
 - providing CMU with an unsigned draft short form contract (DFAT template page).
- 21.5 Contractors should only be engaged to undertake a specific task, fill a short term vacancy as a stop-gap measure, or as representatives of a company that has a head agreement with the department.
- 21.6 Contractors are not employees of the department and must be managed accordingly.
- 21.7 Contractors and specified personnel are expected to conform with APS values and departmental codes of conduct.
- 21.8 Contractors should only be engaged through bona fide employment agencies or companies providing outsourced services.

Employment of Persons who have Received a Redundancy Benefit

- 21.9 APS Commission Circular 2003/05 provides that there is a 12 month prohibition on the re-engagement of a redundancy benefit recipient. However the circular states that this rule does **not** apply to engagement of a person as an independent contractor. However, it also states that "Agencies should, however, ensure that their policies and procedures on the engagement of independent contractors are consistent with the *spirit* of the Government's policy as expressed in clause 4.4A of the Directions."
- 21.10 Clause 4.4A of the Directions provides that such a person should only be engaged if "the Agency Head considers that the engagement is essential for the Agency's operations, having regards to the nature of the duties to be performed and the skills, experience or qualification of the person..." This direction is summarised in Admin Circ P0525. Therefore factors to consider when wanting to engage a contractor who

has taken a redundancy benefit include: why the person was offered a redundancy, and whether the duties are essential to DFAT's operations.

22 Consultants

Consultants

- 22.1 Consultants are defined as individuals, groups, partnerships, companies or corporations who, based on their knowledge and expertise, provide services, advice or guidance of a professional or specialist nature to clients and customers. They are distinguished from other contracts for services by the nature of the work performed and the latitude given to undertake the task.
- 22.2 The nature and purpose of the task to be performed by the consultant is defined but the manner in which the task is to be performed is not set out in detail. Consultancy contracts generally specify the nature of the final product, but do not attempt to constrain the freedom of the consultant to exercise their best professional judgement as to the nature of the content of the product. In other words, their advice can be either accepted or rejected.

Consultancy Services List – Annual Report

- 22.3 Please note that as per clause 9.32 of this Manual, DFAT is required to list all consultancy contracts let during the year to the value of \$10,000 or more (inclusive of GST), in the DFAT Annual Report.

See Example below.

APPENDIX

Consultancy services

Consistent with the Government's policy to focus available resources on core functions, and recognising the value of the different perspectives that consultants can bring to policy and operational issues, the department engages consultants where it lacks specialist expertise, or where independent assessments or input are considered desirable.

Selection processes

The process used for selecting consultants, both in Australia and at overseas posts, is consistent with the department's broader procurement policies and the Commonwealth Procurement Guidelines, and is based on the principle of 'value for money'. Selection methods are as follows:

Public tender: Consultancies are advertised in the daily press. In Australia they are also advertised on the department's Internet site, and through the

services of the Government’s electronic publishing service – AusTender.

Restricted tender: A limited number of organisations or individuals are invited to submit quotations for particular consultancies. These firms are identified:

- through their expertise in a particular field
- through their involvement in related work with the department or government
- as representing a particular cultural or interest group.

In Australia restricted tenders are also advertised on the department’s Internet site for the information of any other supplier who believes they would be competitive in meeting the requirements and wishes to submit a tender.

Direct engagement: A recognised pre-eminent expert or authority in a particular field or a consultant who previously has undertaken closely related work for the department may be engaged directly. In these instances, the consultant’s fees are compared to those in the market, to ensure that value for money is being obtained.

All contracts (including consultancies) with values over \$2000 entered into in Australia, or entered into overseas with an Australian supplier, are published in the Government’s electronic gazettal system (www.contracts.gov.au).

Consultancy services 2003–04

The following table lists all consultancy contracts let during the year to the value of \$10 000 or more (inclusive of GST), including the contract price for the consultancy and the reason for the decision to employ consultancy services.

Division/overseas post	Name of consultant	Description of project	Procurement method*	Advertising details**	Reason(s) for engagement***	Contract price (\$)
Ankara	ERNST & YOUNG	Specialist advice - locally engaged staff salary review	a	ii	1	17 241

23 Contract Management

Contract Elements

- 23.1 Staff should be aware that a contract creates a legal obligation, which is enforceable by law. For this reason staff involved in procurement activities should be aware of the essential elements of a binding contract. These elements are:
- **Offer:** can be written or spoken. The tender, bid or quote received from a supplier is the offer.
 - **Acceptance:** an offer (from a supplier) can be accepted in writing, orally or by conduct. Best practice requires that there be a formal record of the agreement (eg. a written acceptance of the offer or a contract signed by each party. This can be in the form of a purchase order or letter.)
 - **Consideration:** ‘something of value given in return for a promise made by the other party’. It must have a measurable value, but that value does not have to be what might be regarded as a proper market value.
 - **Intention:** parties to a contract must intend to be bound in contract and the terms of that contract must be clear and identical in the minds of those parties. Parties need not specifically declare that intent, but it may be apparent from their actions or statements.
 - **Capacity:** both parties to a contract must have the legal capacity to enter into and be bound by their agreement. In this context, it should be noted that an officer might have the capacity to enter into binding legal agreements with suppliers even if there are no written delegations authorising their authority. For example where an officer occupies a position which it is reasonable for the supplier to assume would give them authority to enter into relevant contract. Staff involved in procurement should not indicate to other parties that they have authority to enter into contracts when in fact they do not.
- 23.2 It is recommended that standard departmental contracts be used to the fullest extent possible. These contracts contain conditions that can be generally applied and which adequately protect the Commonwealth’s interests. Any amendments to these contracts should be checked by the Administrative and Domestic Law Section (ADL) before signature.
- 23.3 Departmental contracts are available on SATIN Welcome Page > Templates.
- 23.4 For **overseas missions** it is recommended, for covered procurement, a local legal firm is consulted well prior to the contract being signed. Best practice would be to have a local legal firm clear the draft contract prior to release with the tender documentation. If staff are in any doubt they should contact ADL in Canberra.

Code of Conduct

- 23.5 Compliance with the department’s overseas code of conduct is a mandatory requirement and has been incorporated into the department’s two standard contracts. Staff should be aware, and make prospective contractors or consultants aware, that if a contractor or consultant is required to travel overseas, particularly on an official or

diplomatic passport, that person is required to adhere to the department's overseas code of conduct. Copies of the department's [overseas code of conduct](#) are available from the Corporate Information Database.

Drafting the Statement of Requirements

- 23.6 This is the **most important part** of the contract. The contract must include a detailed description of the goods or services. If the description is not sufficiently detailed there will be a high risk of having the incorrect service or product delivered or a product/service of inferior quality.
- 23.7 It is often helpful to start with a general statement that the contractor is responsible for the provision of all "x" services to the satisfaction of DFAT followed by a list of specific responsibilities. It may also be useful to describe the background or environment in which the services/goods are to be delivered.
- 23.8 The description should cover, as a minimum, the following points:
- what are the services/goods
 - who is providing, or responsible for the delivery of the services/goods
 - when do the services have to be completed by; and
 - to what standard do the services/goods have to be delivered.
- 23.9 Consider whether the description should cover any of the following issues:
- responsibility for materials used to provide the services
 - the development of plans which will then specify how services are to be developed
 - response and repair details scope or service changes contract management issues
 - safety requirements
 - security requirements
 - environmental requirements
 - transition issues
 - specific requirements regarding specified personnel

Insurance

- 23.10 Clauses 8.6-8.15 covers information regarding Risk Management. Insurance is often used as a tool to manage the financial impact certain risks in contracting.
- 23.11 Please refer to [Chapter 16 – Insurance](#) of the *Finance Management Manual* for more information regarding insurance related issues associated with Contracting.

Contract Negotiations

- 23.12 Negotiation of issues affecting value for money, including price, is a legitimate tool in the procurement process. However, it is a tool that should be used judiciously. For instance, in non-covered procurement, it would not normally be appropriate to

attempt to negotiate with suppliers over a quote. Negotiations are a tool for covered procurements and generally occur after the receipt of offers, and before supplier selection or the formation of a contract. The aim of any negotiation is to improve bids and clarify uncertainties through a structured and ethical process.

23.13 Some areas for negotiation might include:

- acceptance testing;
- completion dates;
- delivery dates;
- discounts;
- duration of contract;
- cancellation terms;
- expenses incurred by suppliers, including travel and accommodation;
- life-cycle support and maintenance;
- new-generation technology;
- risk sharing;
- subcontracting arrangements; and
- staffing arrangements and specified key personnel, particularly in service contracts.

23.14 With respect to the purchase of equipment, trialing and testing of potential suppliers’ equipment during the evaluation phase involves costs to all parties and should only be undertaken if it adds value to the evaluation process. Staff should refuse offers by potential suppliers to pay for any expenses incurred during a trial process (eg. travel, personnel training etc.)

Contract Term

23.15 The maximum term of a contract is something that needs to be assessed depending on the type and value of the procurement.

23.16 As a guide, the following contract terms should be used;

Type	Value	Term	Options (extension)
Contractor/Consultant	N/A	1 Year	Case by case
Property/Services	Below \$80,000	1 Year	Case by case
Property/Services	Above \$80,000	3 Years	2 Years in annual increments

23.17 The important thing to consider in setting contract terms, is assessing how value for money will be determined throughout the term of the contract. If the type of property/service you are procuring is likely to change in value or capability (ie, new technology is developed all the time at cheaper and cheaper prices), a long contract term may not be appropriate.

23.18 Options or contract extensions are a useful tool to manage the performance of a contract as well as the price. That is, in order to justify the contract extension, the Contract Manager should review the contractor's performance against the agreed Performance Standards as well as how the actual cost of the contract compares to the planned expenditure. If both areas are assessed well, there is good reason to extend the contract. If there are issues in either the contractor's performance or the contract cost, not proceeding with an extension should be seriously considered.

Contract Manager

23.19 The most important resource to be appointed is the Contract Manager. This person will have the most influence over the success or failure of the contract. As a contract managers' performance will be judged on the quality of their contract management, it is essential that the manager have the required skills. The following is a list of skills that a contract manager would have to have to administer a successful contract:

- Experience
 - knowledge and experience of the department's business
- Technical skills
 - understands service elements
 - ability to appraise performance of service delivery
- Management skills
 - experience in contract management
 - people management
 - financial skills (eg budgeting and costing)
- Communication skills
 - ability to present information in writing and orally
 - negotiation skills
 - facilitation skills
 - conflict resolution skills
- Personal attributes
 - interpersonal skills
 - flexibility
 - earns/maintains respect

23.20 At a minimum, all DFAT officers who will have the responsibilities of a Contract Manager **must** attend the in-house Tenders & Contracts training course (or equivalent as advised by CPU).

23.21 The following list is essential to ensure that contract managers are able to deliver outcomes and ensure that all aspects of the contract are on target:

- has the full support of senior management and the resources to do the job;
- is familiar with the activity and the process from which the contract arose;

- has the requisite skills or is being trained in contract management and any specialist skills required;
- has sufficient authority for day-to-day management;
- has a relationship of trust with the provider;
- a flexible attitude; and
- must continuously improve the relationship.

23.22 Issues such as documentation, information systems, conflict resolution, variations and payment processing are the day to day, ongoing management issues of the contract management process and, unless clearly identified, have the potential to considerably disrupt service delivery.

Contract Management

23.23 Contract management is an essential part of the procurement process and ensures that the department obtains value for money through satisfactory performance of the contract. Simple procurement may only require matching incoming goods and invoices against purchase orders. Complex, high-cost contracts may require full-time contract management. Sound contract management identifies risks and monitors events to ensure that new problems do not occur or takes action to limit their effect. The degree of contract management effort required depends therefore, on the complexity of the contract and the assessed level of risks. A simple ‘off-the-shelf’ procurement will entail less risk than, for example, managing a complex consultancy.

Contract Management of a Consultant

23.24 As part of effective performance management, contract managers should constantly monitor the performance of consultants and obtain relevant information which allows the contract manager to conduct performance meetings.

23.25 Information can be gathered in a number of ways including informal feedback, formal reports and performance assessments. The criteria utilised for a performance assessment should be identified, agreed upon and provided by the tender board at stage one of the process.

Contract Management of a Contractor

23.26 As part of effective performance management, contract managers should constantly monitor the performance of the contractor and obtain relevant information from colleagues so as to provide feedback on performance.

23.27 A number of mechanisms can be used to gather this information including informal feedback and formal reports and performance assessment that enables the contract manager to formally conduct performance assessments of the contractor. The criteria utilised for a performance assessment should be identified and provided by the tender board at stage one of the process and agreed to by both parties by the signing of the contract.

Dealing with disputes

23.28 During the contract management phase, disputes may emerge. Issues, which are minor and have minimal impact on the outcome of the contract, should be resolved

in the first instance by the contract manager by having discussions with the relevant parties. All communications must be documented and filed.

23.29 Some disputes may be of a more serious nature and much more difficult to resolve. If this situation arises the contract manager should:

- identify and clearly describe the issue/s of contention and advise key clients and stakeholders;
- establish communication between the key clients and stakeholders to assess their concerns;
- document all matters raised with options for solutions;
- facilitate a meeting as quickly as possible and table issues and suggested solutions; and
- follow up to ensure suggested corrective action was successful.

23.30 If the conflict is still unresolved after this process refer to the *Mediation* clause of the signed contract for further action.

Monitoring the Contract

23.31 To effectively monitor the contract you need:

- measurable and agreed performance criteria;
- effective feedback mechanisms from clients or end users;
- a program that regularly and systematically monitors whether the contract requirements continue to be satisfied and the contractor remains capable of providing the services;
- continuous monitoring of the factors that affect risk and the effectiveness of the risk management plan;
- adequate resources to cover all costs; and
- a good working relationship between the parties.

Performance Monitoring Plan

23.32 A performance monitoring plan might include the following:

- a statement of the outcomes of the contract, including critical time and cost factors and identified risks which might affect the satisfactory achievement of these outcomes, or which could contribute to poor performance;
- consideration of the ways the outcomes can be achieved;
- consideration of the resources required (skills, equipment, facilities, personnel);
- suggested monitoring systems (against budget, timeframes, deliverables);
- coordination required with other related activities, including other areas of expertise;
- methodology for measuring effectiveness of systems in place against agreed performance indicators; user satisfaction levels; and
- agreed 'milestones' in respect of stages of completion of aspects of a contract.

Performance Criteria

- 23.33 To measure performance against agreed criteria staff need to establish:
- methods for measuring both the achievement of contract objectives and customer satisfaction;
 - agreed courses of action based on the results of the process; and
 - administrative and management systems to accomplish it.

Variations

- 23.34 The contract manager must control the number of variations to the contract. They may need to negotiate such matters as price, standards for delivery and timeframes. Under a traditional contract, variations will be negotiated or established before the work is undertaken. Be aware that acceptance of late delivery or other variations may be interpreted as agreement to change the terms and conditions of the contract (eg: accepting late reports).
- 23.35 Regardless of the type of contract, the contract manager should give consideration to the following matters when dealing with variations:
- an upper dollar limit for variations;
 - monitor the number of variations, the reasons why and act accordingly;
 - authority levels to match variations (eg can approve variations to 10% of original contract price);
 - amend performance indicators if necessary to match variation; and
 - document variation and reasons why.

Payment Process

- 23.36 Before payment to the provider is made, the contract manager needs to be satisfied that the work has been successfully completed in accordance with the contract. The work completed will be measured against the Performance Indicators or Statement of Works and that the invoices submitted by the contractor are in accordance with the conditions of the contract.

Managing under-performance

- 23.37 Although management of contracts should emphasise and encourage good performance it is common for poor performance to go undetected. Action must be taken promptly when monitoring reveals any performance that does not meet agreed standards. Strategies devised to deal with poor performance are fundamental to the management of every contract. These can range from agreed problem-solving mechanisms to enforcing or, as a last resort, terminating the contract. Increased use is now made of dispute resolution methods, which help to maintain good working relationships and the continued delivery of the service while the dispute is being resolved.
- 23.38 The contractor also has the right to good performance from the department (eg prompt payment of accounts). Poor administration by the Department can be a cause of conflict. Good administration includes:
- prompt payments of accounts;

- effective processing of claims for variations and extensions of time;
- replies to correspondence;
- the provision of any agency-supplies material; and
- the implementation of the outcomes of performance reviews.

23.39 Maximum payment terms are not to exceed thirty days from the date of receipt of specified property and services and a correctly rendered invoice. The mandatory payment policy applies to non-administered payments to small businesses where invoices have a value of up to and including five million dollars. The usage of late payment penalty clauses in contracts should be considered on a case by case basis but are to be encouraged. Late payment penalties are to be calculated using the general interest charge, as applied by the ATO, and accrue daily.

Partnering – Good relations between contractual parties

23.40 The idea of partnering is that both parties work together to solve mutual problems and share risks, to the advantage of the service being provided and to all parties, particularly the end user. An effective partnering relationship can enhance the outcomes of any contract (eg. faster responses, lower costs, greater certainty and reduced risk). There are potential disadvantages as well, including becoming dependent on the contractor, divulging sensitive information or losing control of the project. Effective partnering means mutual respect and trust.

23.41 Partnering can promote contract effectiveness and efficiencies through:

- commitment by both parties based on common goals and objectives;
- equity and trust (eg department and contractor interests are considered; win/win situation);
- implementation of joint strategies for developing mutual goals; and
- continuous and joint evaluation.

Transition Out

23.42 The transition out phase at the end of the contract should be negotiated and clearly defined during the contract negotiation/preparation stage. If provision was not made in the contract, then this process should be negotiated with the contractor well in advance of the completion of the contract.

23.43 Key issues to be addressed include:

- intellectual property;
- timeframes and phase in/out strategy;
- relationship between old and new contractors; and
- skill transfer to DFAT or new contractor.

23.44 An essential process in the succession/transition out phase, is a final evaluation and feedback session on the contract, as well as a review the performance of the contract. A review should include an evaluation of:

- relationship - did the relationship between both parties work? - if not why not?;

- contract - identification of any changes and why these occurred;
- procedures/processes - did they work?;
- performance - were performance indicators achievable?;
- payments - were they paid in accordance with the contract?;
- customer satisfaction - were the clients happy with the service they received?;
and
- lessons learnt - what worked and what didn't will be useful when drawing up similar contracts in the future.

24 Approvals

Document Ownership

The following lists the responsibilities for this document:

Owner: Assistant Secretary, Financial Services & Systems Branch / Corporate Management Division

Authoriser: First Assistant Secretary Corporate Management Division

Author: Contract Management & Policy Unit (CPU), FSB/CMD

Document Changes

Changes to documents will, following appropriate consultation, be authorised by the Assistant Secretary, Finance Services & Systems Branch.

Document References and advisors

Reference: Commonwealth Procurement Guidelines

Advisor: Department of Finance and Administration – Procurement Agency Advice Branch

Summary of Changes

This section records the history of significant changes to this document. Only the most significant changes are described here.

Version	Date	Author	Description of change
1.0	June 2005	CPU	Final Version

Summary of Approvals

This document was approved by:

Name	Title	Date
Bruce Cowled	AS, FSB/CMD	June 2005
Penny Williams	FAS, CMD	June 2005

Attachment A – Definitions

The following definitions apply for the purposes of these CPGs:

Approach to the market – any notice inviting potential suppliers to participate in a procurement including a request for tender, request for expression of interest, request for application for inclusion on a multi-use list, or invitation to tender.

Conditions for participation – minimum conditions that potential suppliers must meet 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 all procurements covered by the *Public Works Committee Act 1969*.

Covered procurement – a procurement, other than one that is specifically exempt, where the value of the property or services being procured exceeds the relevant procurement threshold. Covered procurements must comply with the mandatory procurement procedures.

Deadline for submissions – the precise time and date by which submissions must be received in response to an approach to the market.

Direct sourcing – a procurement process, available only under certain defined circumstances, in which an agency may contact a single potential supplier or suppliers of its choice and for which only a limited set of mandatory procurement procedures apply.

Electronic – for the purposes of these CPGs means any information provided on AusTender, and includes documentation provided to a supplier or potential supplier by email, facsimile or otherwise transmitted to the recipient by another electronic means.

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

Exempt – a procurement or class of procurement which is exempt from the mandatory procurement procedures set out in Division 2 of these CPGs. Such a procurement is not a covered procurement irrespective of the value of the property or services being procured. Exempt procurements remain subject to other requirements of the CPGs, including the core principle of value for money.

Expression of interest – a response to an open approach to the market requesting submissions from businesses interested in participating in a procurement. The list of potential suppliers who have submitted expressions of interest may be used as the basis for conducting a select tender process.

Invitation to tender – an invitation issued to selected businesses inviting them to submit tenders in response to a select tender process or direct sourcing process.

Mandatory procurement procedures – a set of rules and procedures, outlined in Division 2 of the CPGs, which must be followed when conducting a covered procurement.

- Minimum content and format of submissions** – criteria that a submission must meet to be eligible for further consideration in a procurement process. These include conditions for participation where relevant.
- Multi-use list** – a list, intended for use in more than one procurement process, of pre-qualified businesses who have satisfied the conditions for participation for inclusion on the list.
- Open tender process** – a procurement procedure in which a request for tender is published inviting all businesses that satisfy the conditions for participation to submit tenders.
- Panel** – A panel may be established by an agency by entering into contracts or deeds of standing offer (panel arrangements) for the provision of identified property or services. A panel is defined as an arrangement under which a number of suppliers, usually selected through a single procurement process, may each supply property or services to an agency as specified in the panel arrangements.
- Procurement threshold** – a value above which a procurement, unless exempt, is considered to be a covered procurement.
- Property** – 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.
- Published** – listed electronically on AusTender in accordance with Government policy, as stated in the Accountability and Transparency chapter of these CPGs.
- Request documentation** – documentation provided to businesses to enable them to understand and assess the requirements of the procuring agency and to prepare appropriate and responsive submissions. This general term includes documentation for expressions of interest, multi-use lists, open and select tender processes, and direct sourcing.
- Request for applications for a multi-use list** – a published notice inviting businesses to apply for inclusion on a multi-use list. The notice must be published on AusTender, either continuously or at least once per year.
- Request for expressions of interest** – a published notice inviting businesses to register an expression of interest in a procurement.
- Request for tender** – a published notice inviting businesses who satisfy the conditions for participation to submit a tender in accordance with requirements of the request for tender and other request documentation.
- Select tender process** – a procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders. For covered procurements, a select tender process may only be conducted in accordance with certain procedures and circumstances set out in Division 2 of the CPGs.
- Submission** – includes any formally submitted response from a potential supplier to an approach to the market. Submissions include tenders, expressions of interest and applications for inclusion on a multi-use list.
- Tender** – a submission from a potential supplier making an offer to perform a procurement in response to a request for tender or invitation to tender.
- Time limit** – the minimum time that an agency must allow for potential suppliers to respond to an approach to the market.

Value – the total maximum estimated value of the property or services being procured, as determined in accordance with the rules in Division 2 of the CPGs. The value of the property or services being procured, except where a procurement is exempt, will determine whether a particular procurement is a covered procurement.