



OPERATIONAL GUIDELINES

4.3 PROCUREMENT

TABLE OF CONTENTS

1. The Procurement Framework.....	2
2. General Procurement Requirements	6
3. Choosing the Procurement Method.....	22
4. The Tender Process	27
5. Submission Evaluation Plan.....	32
6. Approaching the Market	34
7. Evaluating Submissions	38
8. Selection and Completion of the Process.....	40
9. Executing Contracts	43
10. Reporting Requirements	43
11. Ethics.....	46
Records to be kept.....	46
Internal Controls	47
Penalties	47
References.....	48
Attachment A: Self Assessment Probity Review – Procurement below \$250,000	49
Attachment B: Self Assessment Probity Review – RFT and REOI	50
Attachment C: Self Assessment Probity Review – Tender Evaluation Plan	53
Attachment D: Self Assessment Probity Review – Tender Evaluation Report	55
Attachment E: Request to Engage Contractor for Personnel Services	57
Attachment F: Specific Background Issues	58
Attachment G: Exempt Categories under Commonwealth Procurement Guidelines.....	61

1. The Procurement Framework

Purchasing of goods, other property and services requires diligence and care to ensure that legal requirements are met and the resources acquired by the Australian Government are appropriate for the needs of the Department. *Value for Money* is the core principle governing all procurement within the Australian Government sector.

Value for money outcomes are enhanced by:

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

When determining value for money, costs and benefits need to be assessed over the whole procurement cycle. The assessment of alternative suppliers should extend to assessing their performance history, the relative risks of the proposal, financial considerations over the whole cycle (including sale prices or costs associated with any final disposal) and any contract options (extensions).

Officials who are approving spending proposals (Approvers) are also required to be satisfied (after making reasonable enquiries) that the planned procurement does comply with the policies of the Commonwealth (refer FMA Regulation 9). In particular, the approver needs to be satisfied that policies which implement international obligations are complied with.

Officials will be expected to maintain high ethical standards when they undertake procurement. There is an overarching obligation to treat all participating potential suppliers as equitably as possible. The process rules for any procurement need to be unambiguous, open and equitably applied to all relevant parties.

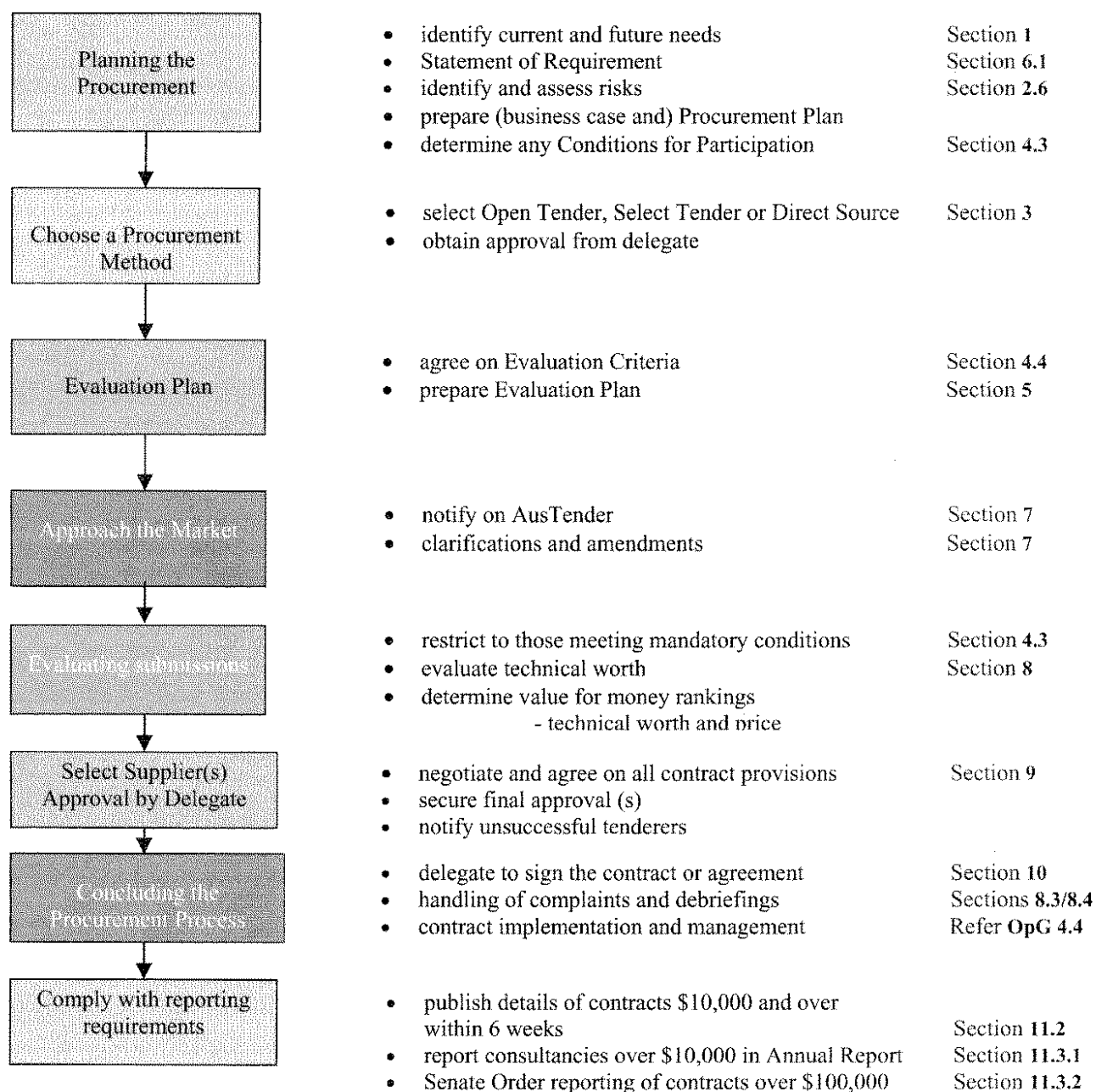
The usual first step in any proposed procurement is to identify current and future needs and provide firm justifications that the acquisition is necessary, to management. On occasions, the Government will make a policy decision which has procurement implications for the Department, and in those cases, the Department's role is to implement the decisions and undertake any associated procurement. This is particularly important for major procurement where in-principle support needs to be secured at an early stage, from the relevant delegate. When justifying procurement proposals, officials should address the requirements, the expected costs and benefits and the time frame. Officials involved in any stage of a procurement process need to remember that they are accountable for any actions and decisions that they take which will involve the spending of public money.

It is essential that an appropriate level of documentation is maintained for any procurement. This covers documentation on the reason for the procurement, the process which has been followed and all relevant decisions.

From 1 July 2005, the Department will be required to publish an Annual Procurement Plan which is to list all the strategic procurements planned for the following year. In addition there are a number of requirements imposed on all procurements with a value of \$80,000 (construction services \$6 million) unless they are on the Exempted List, refer Attachment D).

1.1 Procurement Flowchart

The following flowchart maps out the key steps to be generally followed in the Procurement Process. Officials should refer to the sections listed in this checklist, to ensure that no important aspect is missed.



1.2 Legislation and Approvals

The *FMA Act* and its supporting Regulations sets down a number of legal obligations which must be followed by officials involved in procuring goods and services for the Commonwealth.

Section 44 of the *FMA Act* charges Chief Executives to promote the efficient, effective and ethical use of the resources for which they are responsible. The section, coupled with FMA Regulations 3 and 9, empowers the Chief Executive and delegated officials to approve proposals to spend public money and to enter into contracts and agreements under which public money will or may become payable.

FMA Regulation 9 requires an Approver (an official with the delegated power to do so) to firstly be satisfied that the proposed expenditure:

- (a) is in accordance with the policies of the Commonwealth; and
- (b) it will make efficient and effective use of public money.

An Approver may only approve a proposal to spend public money, when both of these conditions are met.

Parliament is the final authority on all appropriation matters. *FMA Regulation 10* provides a legislative mechanism for the Finance Minister to authorise future spending proposals which go beyond the coverage of the appropriations that have been passed by, or are before, the Parliament. Future spending proposals which are not fully covered by sufficient, uncommitted appropriation cannot be approved unless the Finance Minister (or delegate) has given his/her written authorisation under Regulation 10.

FMA Regulation 13 requires that a person must not enter into a contract, agreement or arrangement (on behalf of the Commonwealth) under which public money is, or may become, payable unless a proposal to spend public money under *FMA Reg 9*, and where applicable *FMA Reg 10*, has been approved.

1.3 Commonwealth Procurement Guidelines

The *Commonwealth Procurement Guidelines January 2005 (CPGs)* set down the fundamental policies which are to apply to all Commonwealth procurement activity. Officials must have regard to the CPGs, as required by FMA Regulation 8(1). The CPGs can be accessed electronically from the [Commonwealth Procurement](#) website.

Where an official undertakes procurement that is inconsistent with the *Commonwealth Procurement Guidelines*, he or she is required to document his/her reasons for doing so. The updated version of the CPGs include a new *Division 2 – Mandatory Procurement Procedures* for all covered procurements. These Operational Guidelines have incorporated all relevant elements of these Procedures.

1.4 Definitions and Scope

Approach to the market

Any notice which invites potential suppliers to participate in a procurement – including a request for tender, request for expression of interest, request for an application for inclusion on a multi-use list or an invitation to tender.

Complying with obligations and adopting best practice

In the CPGs and these Guidelines, where there is a legislative or international obligations which must be complied with in all circumstances, the term ‘must’ will be used. The term ‘should’ denotes matters of sound practice.

Covered Procurements

Covered procurements are defined in the CPGs as procurement process that have an estimated value \$80,000 or above other than those categories which have been exempted, see Attachment D. Note that for construction projects, the covered procurement threshold is set at \$6 million.

Limits to scope of application of the CPGs

Sales of shares are part of an investment/divestment process rather than a procurement process. Employment type contracts are outside the scope 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.

Property

Every type of right, interest or thing which is legally capable of being owned. Property includes physical goods and real property as well as intangibles including intellectual property, contract options and goodwill.

Valuing a Procurement

The estimated value is to include all forms of remuneration¹. The total maximum value of a contract is to include all options for extensions that are within the terms of the proposed contract. If the procurement is to be conducted with several contracts awarded at the same time or over a period of time, the value of the procurement includes the estimated total value of all the contracts agreed under that procurement.

Where goods or other property is to be sourced through a lease or rental contract or where a total price is not specified in the proposed contract, the *value of the procurement* is to be determined as follows:

- (a) for a fixed term contract up to and including 12 months, the total contract;
- (b) for a fixed term contract exceeding 12 months, the total estimated contract including the estimated residual value payable at the end of the contract; or
- (c) for a contract with no specified period or where doubt exists as to whether the contract is a fixed term contract, the estimated monthly instalment multiplied by 48.

¹ Remuneration in a contract includes any premiums, fees, commissions, interest and other revenue streams.

2. General Procurement Requirements

These guidelines outline the major options available when considering procurement for the Department. The range of procurement extends to the following:

- consultancies;
- provision of personnel services (employment related);
- procurement of general services; and
- procurement of property (goods, real property, intellectual property)

Competition is a key element in the Government's procurement framework. The number of suppliers to be approached will depend on the requirement, the overall cost and the number of suppliers in the market. All publicly available business opportunities to be published on the AusTender website. Good documentation of the processes and decisions should be maintained for all procurements.

All costs are GST inclusive

Value	Procurement Options in Range	Documentation
Up to \$10,000	Use preferred supplier ^(a) , panel member ^(b) , endorsed supplier ^(c) or access suppliers in the general market place. <i>Obtain single verbal or written quote. Where appropriate, seek multiple quotes.</i>	<i>File notes</i>
\$10,000 to \$80,000	Use preferred supplier ^(a) , panel member ^(b) , endorsed supplier ^(c) or access suppliers in the general market place. <i>Obtain one written quote from a panel member up to \$25,000. In all other cases, seek at least 3 written proposals or, where appropriate, undertake a select or open tender process. Probity: Business Groups to self assess, unless rated as high risk.^(#) Internal Audit to conduct random compliance audits.</i>	<i>Key decisions</i>
\$80,000 to \$250,000	Use panel member ^(b) or open tender process or, where permitted, select tender or direct sourcing. <i>Seek at least 3 written proposals from panel members or an acceptable number through a tender process. Probity: Business Groups to self assess, unless rated as high risk.^(#) Internal Audit to conduct random compliance audits.</i>	<i>Full documentation</i>
\$250,000 to \$500,000	Use open tender process or, where permitted, select tender or direct sourcing. <i>Obtain an acceptable number of written proposals through a tender process. Direct access through panels requires approval of Secretary. Probity: Business Groups to self assess, unless rated as high risk.^(#) Internal Audit to review and provide clearance letter.</i>	<i>Full documentation</i>
\$500,000 and over	Use open tender process or, where permitted, select tender or direct sourcing. <i>All proposals over \$1 million and smaller proposals with significant risks/potential sensitivities- submit first to Executive Board Probity: Business Groups to self assess medium risk procurements.^(#) Internal Audit to review and provide clearance letter. Procurements over \$2 million are deemed high risk - requires formal probity review of all stages of the procurement process.</i>	<i>Full documentation</i>

All open and select tenders to be published on AusTender.

Amendments to contracts are to be addressed in terms of the new total cost.

* use endorsed suppliers at all levels, for categories outlined in footnote c.

irrespective of size, all **high risk procurements** require **formal probity review** by Internal Audit or equivalent supplier.

Notes to General Procurement Requirements

(a) Preferred suppliers

1. The following firms have contracted to provide the itemised services, on an exclusive basis. No quotations required for supplies falling within the scope of the existing contract.

Chubb Services – security, guarding and patrolling
Instyle – indoor plants
NEC – voice communications (excluding mobile phones)
OPC – Webmaster services
PricewaterhouseCoopers – internal audit and probity*
RossLogic – human resource services
Complete Cleaning – cleaning services
United KFPW – accommodation and facilities management
Volante – computer services

**Business rule requires the seeking of competitive prices for any additional services over \$25,000*

2. The following firms have been selected to provide services, on a non-exclusive basis. You may seek additional quotes for these services, where you judge it to be appropriate.

Qantas Business Travel - domestic travel services, with access to regional airlines
OSA - office services, records management and printing
Corporate Express – stationery and stores

(b) Panels

The following panels have been established, to provide department wide services.

- Accountancy Services Panel
- Recruitment Panel
- CTC Business Advice Services Panel
- Specialist HR Services Panel
- Legal Services Panel

(c) Endorsed suppliers

The Endorsed Supplier Arrangement is the Commonwealth's pre-qualification scheme for selected sectors. Only suppliers which are listed may be contracted to provide information technology products or services, or major office machines. Though not mandatory, only endorsed suppliers should be accessed for commercial office furniture and auctioneering services because of respective issues of OH&S and moneys held in trust.

(d) Open tender

Open market approaches to all relevant suppliers. May involve two-stages, with an initial open approach to the market seeking of expressions of interest, followed by a select tender from the list of potential suppliers that responded to stage one.

(e) Select tendering

A select number of suppliers are invited to tender. For *covered procurements*, select tendering is may only be conducted from a multi-use list, with respondents to a request for expressions of interest or with all potential suppliers holding a specific licence or complying with an essential legal requirement which is necessary for the conduct of the procurement.

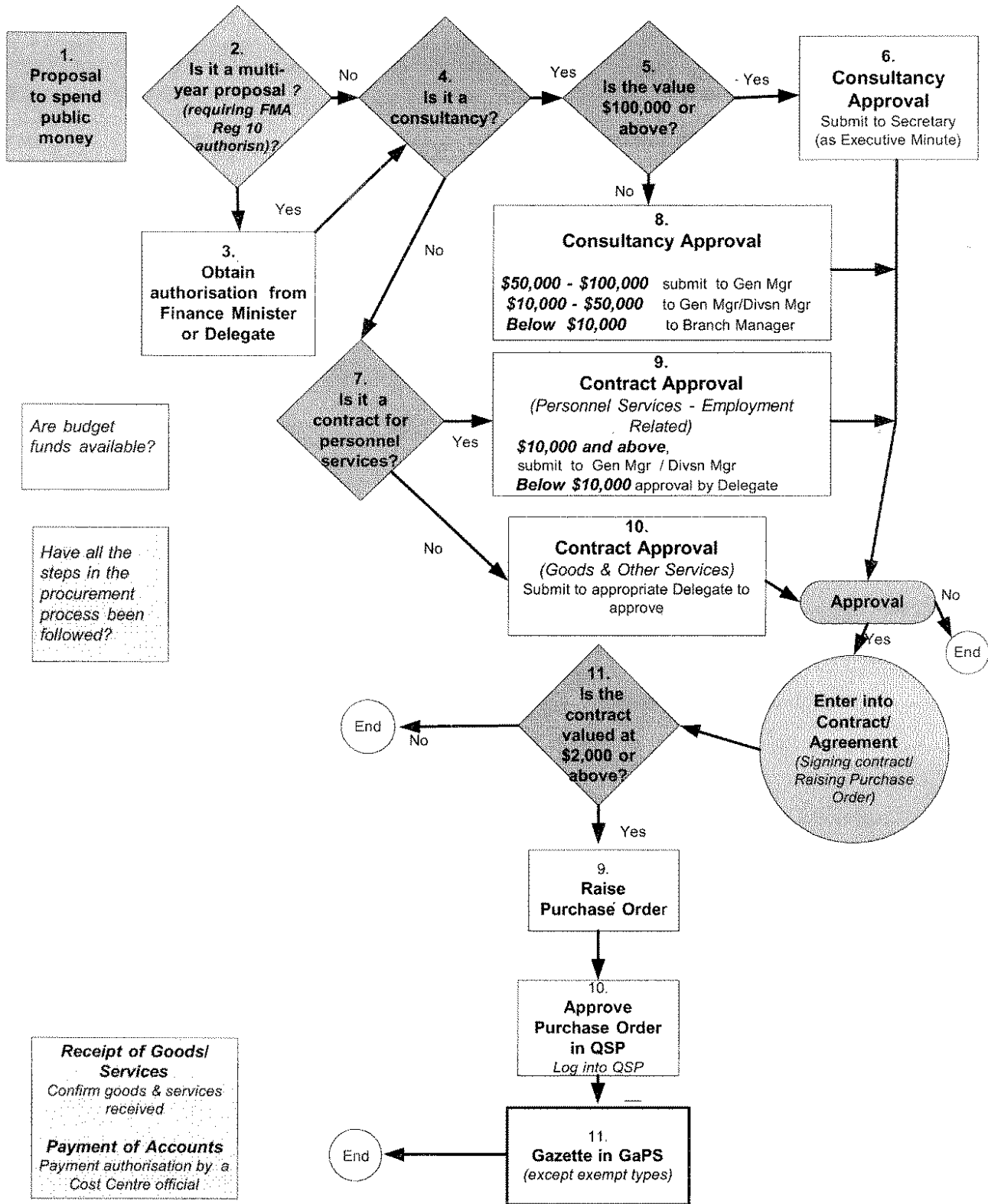
(f) Direct sourcing

Direct sourcing arrangements are permitted where only one specialist supplier or a very limited number of suppliers are capable of meeting all the requirements or the extreme urgency provisions (natural disasters) apply. For *covered procurements*, the listing is set down in CPGs *clause 8.65*.

2.1 Financial Delegations Approval Matrix

The Financial Delegations permit managers 'to approve proposals to spend public money' up to the levels shown below. *All costs to be GST inclusive.*
 All proposed procurements exceeding \$1 million and any smaller contracts with significant risks, to be submitted firstly to Executive Board for consideration.
 All proposals require sufficient, uncommitted appropriation, otherwise an FMA Reg 10 authorisation is a prerequisite of any FMA Reg 9 approval.

Value	Consultancies	Contracts for Personnel Services <i>(employment related)</i>	Other Procurement <i>(Other goods & services)</i>	Capital Expenditure <i>(Asset Management Group: Property Mgt & Major Projects)</i>	Capital Expenditure <i>(All other)</i>
Up to \$2,000	General Managers Division Managers Branch Managers	General Managers Division Managers Branch Managers Cost Centre Managers Finance Managers	General Managers Division Managers Branch Managers Cost Centre Managers Finance Managers Cost Centre Delegates	<i>n.d.</i>	<i>n.d.</i>
\$2,000 to \$10,000	General Managers Division Managers Branch Managers	General Managers Division Managers Branch Managers	General Managers Divisional Managers Branch Managers Cost Centre Managers Finance Managers Cost Centre Delegates - to \$5,000 Dept; \$10,000 Admin	General Manager Division Managers Branch Managers	General Manager Division Managers Branch Managers Cost Centre Managers Finance Managers
\$10,000 to \$50,000	General Managers Division Managers	General Managers Division Managers	General Managers Division Managers Branch Managers Cost Centre Managers Finance Managers	General Manager Division Managers Branch Managers Project Directors	General Manager Division Managers Branch Managers Cost Centre Managers
\$50,000 to \$100,000	General Managers	General Managers Division Managers	General Managers Division Managers Branch Managers Cost Centre Managers Finance Managers	General Manager Division Managers Branch Managers Project Directors	General Manager Division Managers Branch Managers
\$100,000 to \$250,000	Secretary	General Managers Division Managers	General Managers Division Managers Branch Managers Cost Centre Managers	General Manager Division Managers Branch Managers Project Directors	General Manager Division Managers Branch Managers
\$250,000 to \$500,000	Secretary	General Managers Division Managers	General Managers Division Managers Branch Managers Cost Centre Managers	General Manager Division Managers Branch Managers Project Directors - to \$300,000	General Manager Division Managers
\$500,000 and over	Secretary	General Managers Division Managers	General Managers Division Managers Branch Managers	General Manager - to \$6.0 m. Division Manager - to \$3.0 m. Branch Managers - to \$1.0 m.	General Managers - to \$1.0 m.



2.2 Documentation

Officials undertaking procurement are to record all major steps, the selected procurement method and all relevant decisions and authorisations relating to the project/acquisition. The documentation is to cover all stages of the procurement, from the decision on the procurement method to the decision on (and basis of) selecting the preferred supplier(s). Place all these records on a formal file, with the file clearly marked as relating to a major procurement or a general procurement file for small purchases, below \$10,000.

Officials who manage contracts with outsourced service providers also need to ensure that the outsourced service provider does maintain full and proper documentation of all relevant decisions (and the reasons for making those decisions), in relation to the outsourced services or functions.

Documentation Requirements

Procurement level	Reference	Details required
Below \$10,000	File Notes	File details of key decisions taken. <i>Hand written file note/diary entry sufficient</i>
\$10,000 to \$80,000	Document key decisions	Document and file key decisions including: <ul style="list-style-type: none"> ▪ reasons for choosing procurement method; ▪ self assessment of risks; ▪ approval of the procurement method; ▪ reasons for selecting the suppliers; ▪ all quotations received; and ▪ final approval, with supporting reasons.
\$80,000 and over	Full documentation	Document and file all key decisions, approvals and rationales: <ul style="list-style-type: none"> ▪ procurement requirements; ▪ reasons for any restricted procurement method; ▪ assessment of probity and procurement risk; ▪ approval of the procurement method; ▪ evaluation plan; ▪ conditions for participation; ▪ evaluation criteria; ▪ evaluation report; ▪ probity report; ▪ contract negotiations; ▪ final approval, with supporting reasons; ▪ final contract.

2.3 Consultancies

The engagement of a consultant is a specific form of procurement which will often yield high returns but also needs careful planning and management.

The reasons for engaging consultants can be quite varied but the most typical are:

- to provide access to the latest technology and to knowledge on its applications;
- the need for specialised skills;
- a need for an independent study to be undertaken; and/or
- a need for a change agent or facilitator.

2.3.1 *The nature of consultancy services*

A consultant is an entity, whether an individual, a partnership or a corporation, engaged to provide professional or expert advice or services. Consultancy services covers the application of expert professional skills to:

- research a specified subject;
- investigate a defined issue or problem;
- carry out defined reviews or evaluations;
- advise, manage or market the sale of Commonwealth assets;
- provide independent advice; or
- provide independent information or creative solutions.

There are a number of characteristics of consultancy contracts which set them apart from other contracts, as described in the *Checklist: Consultancy or Contractor?* listed below. All parties need to clearly understand whether the external resource is providing consultancy services or contractor services under the contract, as there are mandatory reporting requirements imposed on the Department with engaging consultants. The following features characterise consultancies:

- the nature and purpose of the task **will be** defined;
- the manner in which the task is to be performed **will not be** set out in detail;
- the contract may specify the final product but **will not** attempt to constrain the freedom of the consultant to exercise best professional judgement, as to the nature or contents of the final product; and
- the contracting agency will not set down any predetermined outcome.

When a consultancy is being considered, officials should provide good justification for this decision to bring in external expertise. The brief to management should provide the necessary context/background information and focus on the expected outcome. Ensure that the project specifications are mapped out comprehensively; well thought out specifications will greatly assist in minimising problems and misunderstandings between the parties, such as different expectations or misunderstood timeframes.

When determining whether an engagement is a consultancy or contractor, give due consideration to the level of intellectual output, the level of specialist skills and expertise and the degree of independence/direction and control. The table below provides detailed guidance:

Consultancy Services Contracts <i>(contracts for service)</i>	Contractor Contracts <i>(contracts of service)</i>
<ul style="list-style-type: none"> • <i>providing professional knowledge and/or expert advice/services</i> • <i>may involve development of an intellectual output</i> • <i>independence is a key characteristic</i> 	<ul style="list-style-type: none"> • <i>provision of services where the manner in which work is to be performed is specified. [akin to a contract of employment]</i> • <i>includes external labour hire services to perform ongoing duties</i>
<p>Control and Direction</p> <ul style="list-style-type: none"> <input type="checkbox"/> the Department exercises very limited control over how the task/project is to be performed. <input type="checkbox"/> the Consultant decides when the work is performed. <input type="checkbox"/> the Consultant may sub-contract out some or all of the work to be performed (requires the agreement of the Department). <input type="checkbox"/> the services may be provided to others. <p>Integration Test</p> <ul style="list-style-type: none"> <input type="checkbox"/> work performed is non-ongoing and specialised in nature - assisting the business of the Department. <p>Use of Premises and Equipment</p> <ul style="list-style-type: none"> <input type="checkbox"/> the Consultant may work from their own premises for some or all of the assignment. <input type="checkbox"/> the Consultant may provide own equipment. <p>Remuneration</p> <ul style="list-style-type: none"> <input type="checkbox"/> consultancy payments are usually made when agreed milestones are reached or when a task/project is completed. 	<p>Control and Direction</p> <ul style="list-style-type: none"> <input type="checkbox"/> the Department has a right under service contracts to exercise a high level of control over what the contractor does and how they do it. <input type="checkbox"/> the Department has control over the final form of resulting outputs. <input type="checkbox"/> the Department will dictate the place and the hours of work. <input type="checkbox"/> the contracted person is required to perform the work personally. <input type="checkbox"/> the outputs are generally regarded as agency products <input type="checkbox"/> the contractor must obtain permission to work for other clients. <p>Integration Test</p> <ul style="list-style-type: none"> <input type="checkbox"/> work undertaken is an ongoing and integral part of the Department's business. <p>Use of Premises and Equipment</p> <ul style="list-style-type: none"> <input type="checkbox"/> individuals providing external labour hire services will perform their services at the premises of the Department. <input type="checkbox"/> the Department provides all the equipment and office supplies. <input type="checkbox"/> professional or expert services may be performed at the agency's premises or elsewhere. <p>Remuneration</p> <ul style="list-style-type: none"> <input type="checkbox"/> remuneration is based on the time worked, usually calculated on an hourly rate.

Examples of consulting services	Examples of general contracting services
<p><i>Type of project</i></p> <ul style="list-style-type: none"> ▪ investigating an issue or problem ▪ diagnosing a problem ▪ undertaking defined research ▪ carrying out an independent review ▪ undertaking independent evaluations ▪ providing independent advice ▪ providing independent information ▪ developing advertising and marketing campaigns ▪ advice on training needs and developing training plans ▪ general legal advice ▪ legal advice on the application of legislation or on the development of new legislation ▪ reviews of, and the provision of advice on, O H & S matters ▪ provision of internal audit services ▪ probity services ▪ undertaking risk assessments ▪ business and property valuations 	<p><i>Type of assignment</i></p> <ul style="list-style-type: none"> ▪ temporary contract staffing ▪ conducting of recruitment activity ▪ provision of travel services ▪ provision of communications services ▪ provision of computer support services ▪ printing and copying services ▪ cleaning and waste removal services ▪ maintenance of indoor plants services ▪ provision of security services ▪ delivery of training ▪ writing of manuals and guidance materials ▪ conveyancing services ▪ development of contracts ▪ litigation services ▪ drafting of legislation ▪ data processing ▪ project management

Contract Registration System including Consultancy Approvals (CRS) is accessed on the Finance Intranet – on the light blue strip across the top of the home page.

For Consultancies: Complete the *Contract Registration System – Consultancy Approval* submission.

Prepare also an Executive Minute to support the electronic approval submission. The following standard templates are accessed through the CRS for submissions to the Secretary and to General Managers:

- Executive Minute Template – New Consultancy
- Executive Minute Template – Financial Amendments
- Executive Minute Template – Time Extensions

For Contractor Assignments: Complete the Pro Forma for Engaging a Contractor for Personnel Services, found at *Attachment E*.

Note on engagement of contractors:

Direct employment type contracts are outside the scope of the CPGs. Contracts entered into with employment provider firms, for the provision of contractors, fall within the scope of the CPGs.

2.4 Variations and Extensions to Consultancy Contracts

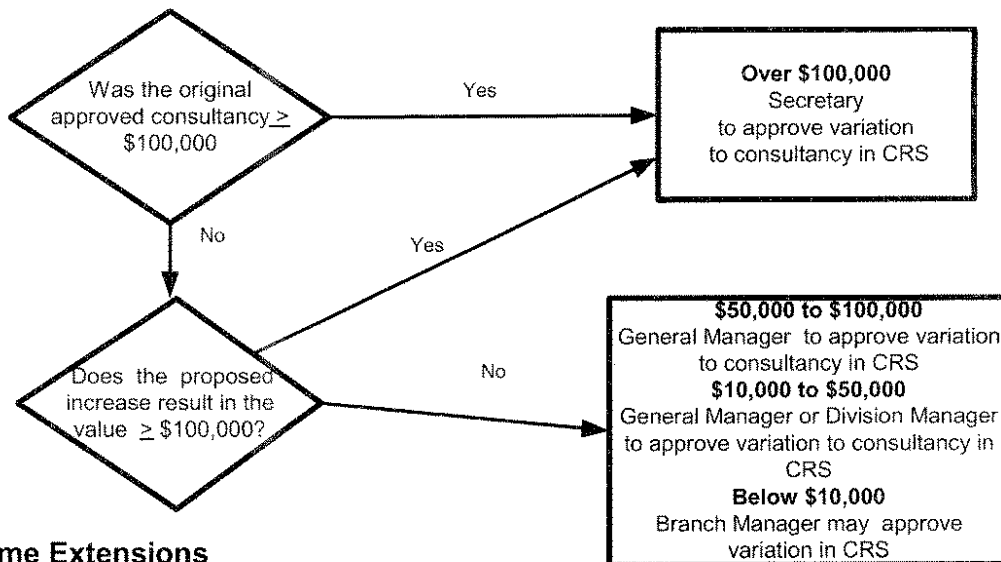
Variations in the value of, or time to complete the delivery of, services/goods under a consultancy contract may be required. Follow correct approval processes, especially in relation to entries and amendments within the Consultancy Registration System (CRS).

Variation	Tasks to undertake	Approving Officials
Cost increase	submit <i>Variation to Consultancy (Financial)</i> Minute and secure approval; amend CRS.	approval by Delegate
Time extension (<i>less than 90 days</i>)	secure approval on hard copy amend CRS.	approval by BM or DM Contract Manager or Finance Unit
Time extension (<i>90 days and over</i>)	submit <i>Variation to Consultancy (Extension of Time)</i> and secure approval; amend CRS.	approval by Delegate

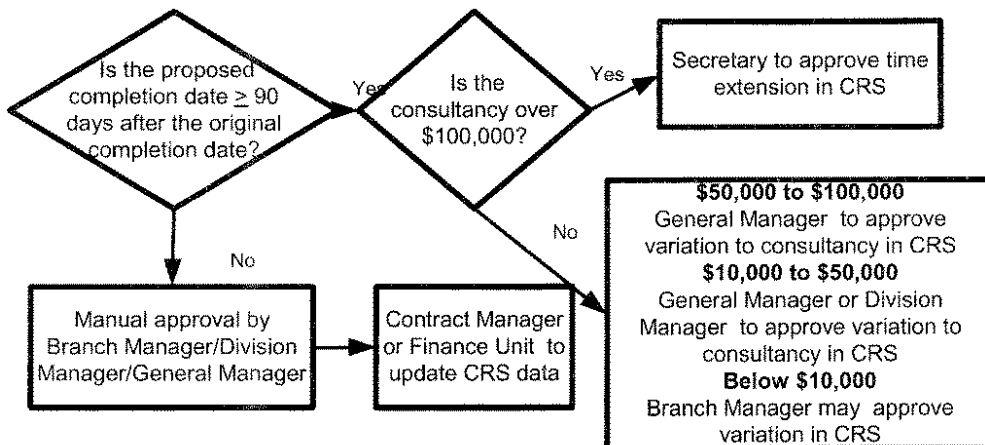
Note: CRS is the Contract Registration System for the Department. It includes consultancy contracts. Where a first or latter extension pushes the total time extension beyond 90 days, the CRS will automatically add all the extension entries and trigger a system Consultancy Approval requirement.

CONSULTANCIES

Cost Variations (Increases)



Time Extensions



2.4.1 Variations and Extensions to General Contracts

Variations in the value of, or time to complete the delivery of goods and services (including contractors, support services and project management) under a general contract may be required. Officials should ensure that correct approval processes are followed.

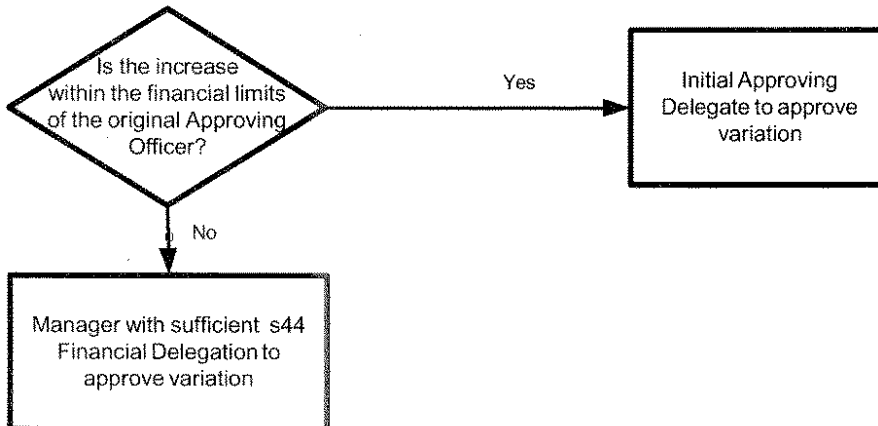
Variation	Tasks to undertake	Approving Officials
Cost increase	submit <i>Variation to Contract (Financial)</i> Minute; secure written approval; amend CRS.	by delegate with Delegation covering total revised costs.
Time extension (less than 90 days)	secure written approval; amend CRS.	Contractors: approval by BM/DM/GM General contracts: by BM/DM/GM/Secretary Capital expenditure: by BM/DM/GM/Secretary
Time extension (90 days & over)	Submit <i>Variation of Contract (Extension of Time)</i> Minute; secure written approval; amend CRS.	Contractors: approval by DM or GM General contracts: by DM/GM/Secretary Capital expenditure: by DM/GM/Secretary

Note: CRS is the Contract Registration System for the Department.

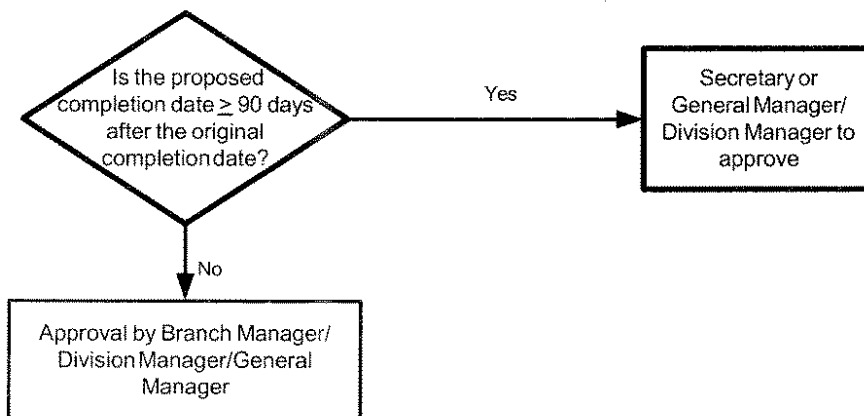
For general contracts, secure written approval for extensions beyond 90 days and then adjust the CRS records.

GENERAL CONTRACTS

Cost Variations (Increases)



Time Extensions



2.5 Ranges of Procurement

2.5.1 Procurement below \$10,000

Everyday procurement below the \$10,000 threshold may cover general office supplies, stationery, travel, small equipment purchases and engaging service providers for short term assignments. Verbal quotations are often sufficient for general market place acquisitions but if you do not obtain a written quotation, then you should keep a file note/diary record of the details provided by each supplier which you have contacted.

When evaluating quotations, purchasing officials need to always keep in mind *value for money*. The purchase price is an important consideration but other factors should also be considered, even for small scale purchases, including a careful matching of the supply to the requirements of the Department. When the evaluation of alternative suppliers is complete and the supplier is selected and approved, a Purchase Order will need to be raised in the Financial Management System (QSP). Place all supporting documentation on file, including key decisions and the reasons for them.

2.5.2 Procurement between \$10,000 and \$80,000

As the size of the procurement increases, the *General Procurement Requirements* (Section 2) set a more rigorous set of requirements for testing the market, in line with the CPG procurement framework. Officials involved in procurement of any size should ensure that the planning, implementation and execution phases are well managed.

Competitive options are to be well canvassed, in order to secure value for money outcomes. Give attention to the ability of each potential supplier to meet the specified quality standards, to maintain supply and to provide any required ongoing support services. When planning the acquisition of equipment, ensure that whole of life costs (including consumables, maintenance and the cost of disposal) are taken into account.

2.5.3 Procurement over \$80,000

Covered procurements valued at or above \$80,000 must meet the Mandatory Procurement Processes (Division 2 of the CPGs). There are several exempt categories – refer *Attachment H*. For construction services, the threshold has been set at \$6.0 million.

The Procurement Framework imposes more rigour on higher value procurement processes to ensuring that competitive options are well canvassed, all due processes are followed and appropriate reviews are undertaken to give assurance to the decision makers. For our Department, risk assessments and probity reviews are required for all procurement above the \$80,000 threshold (within limits, probity reviews are undertaken as self assessments – refer section 2.7).

The key stages of a procurement process prior to approaching the market are:

- define the requirement;
- justify the expenditure;
- define specifications;
- secure approval for procurement method;
- prepare a procurement plan;
- determine the evaluation criteria and prepare Evaluation Plan;
- undertake a risk assessment;
- determine any conditions for participation; and
- finalisation of the Request Document (including draft contract).

2.5.4 Major Procurement (over \$250,000)

Major procurement may be complex procurement. Complex procurement describes those projects/purchases where one or more of the following factors are present:

- (a) a high degree of risk is involved;
- (b) the functional requirements are complex;
- (c) the technical specifications are complex; and/or
- (d) its size gives it strategic importance.

Where the planned procurement is valued over \$1.0 million, the Executive Board will need to provide their endorsement, prior to securing *FMA Reg 9* approval to proceed, from the delegate.

2.5.5 Business, legal and probity advisors

When preparing for major procurements, Business Groups should give consideration to engaging experts to assist with the tender process. Advice and other support can be secured from business advisors, legal advisors and probity advisors. Whilst there is no requirement to engage a probity advisor (as distinct from the probity audit role undertaken by Internal Audit Unit), a major project or procurement with high sensitivity may benefit from such an appointment. A probity advisor can assist in the preparation of request documentation and on the evaluation process. When engaging a probity advisor, ensure that the legal firm has no conflicts of interest with the planned procurement. Where a decision is taken to engage a legal advisor to assist a major procurement process, consideration should be given to that consultant providing probity advice.

2.6 Risk Management

Effective risk management will contribute to successful procurement outcomes. All procurements have some risks associated with the process and the outcomes and while those risks cannot be eliminated they can, and should be, effectively managed. Address all identified risks and formulate strategies which will minimise their impact and occurrence (*'risk mitigation'*). The amount of effort to be applied to the management of risk should correlate with the cost, complexity, sensitivity and security levels of the procurement.

Simple, low cost 'off-the-shelf' purchases to meet everyday requirements usually have low inherent risk levels and appropriate management may be limited to ensuring suppliers have received all the relevant documentation and confirming that the required goods or service are delivered, in accordance with the specifications on the order.

High value procurements or those requiring the development of new technologies or having significant security implications or impacting on the Department's operational or strategic capability will need to be actively managed, in terms of their identified risks. Risk mitigation strategies will need to be developed and implemented, especially in relation to any high or medium rated risks. Officials should be guided by the Department's risk management guidelines - refer to *Operational Guidelines: 7.1 Risk Management*.

By undertaking a formal risk assessment at the front end of a procurement process, risks are identified and can be effectively managed throughout all the stages of the process. Effective risk management involves all of the following:

- identify the risks associated with all stages of the procurement;
- analyse the risks: assess the likelihood, magnitude and consequences of each;
- evaluate the risks (balance off the potential benefits/adverse outcomes);
- develop and implement cost effective risk mitigation strategies;
- allocate responsibility for managing each identified risk; and
- undertake ongoing monitoring of the procurement processes.

2.6.1 Risk Assessments/Ratings

All procurement activity in our Department should have a risk assessment undertaken as part of the procurement process. This can be a very straightforward exercise for small scale procurements but as the size and the complexity of the project increases, so to does the level and potential impacts of associated risks. Where any procurement has high risk elements identified, a formal risk assessment is to be undertaken.

Formal risk assessments can be undertaken with the assistance of the Strategic Management Section, Corporate Group. Where complex issues exist, the General Manager of the relevant Business Group may consider engaging an industry expert to undertake this task.

Risks that may be encountered in procurement include:

- political and regulatory risks;
- the requirement is not adequately specified;
- non delivery of key outputs (in terms of time, cost, quality or quantity);
- financial/business failure of supplier;
- security risks;
- conflicts of interest;
- inadequate knowledge of supplier with Commonwealth procurement requirements;
- business interruptions (network failures, loss of information, natural disasters);
- contract management risks
 - skills/knowledge gap of contract managers;
 - inadequate resourcing of support staff;
 - poor quality of contractual documentation;
 - inadequate management information;
 - disputes; and
- inadequate contract succession planning.

Security risk becomes a major concern when outsourcing of service provision is being considered, for the Department remains accountable and responsible for the performance and delivery. Security risks extend to unauthorised use of resources (including official information), unauthorised access to security classified information and ensuring the service delivery meets the required standards. The risk assessment will identify any security and service delivery risks and determine how to manage those risks (refer to *Operational Guidelines 7.3 Protective Security*).

Risk Rating	Classification of risk elements
High Risk	<ul style="list-style-type: none"> • high significance and high likelihood • high significance and medium likelihood • medium significance and high likelihood
Medium Risk	<ul style="list-style-type: none"> • medium significance and medium likelihood • high significance and low likelihood • low significance and high likelihood
Low Risk	<ul style="list-style-type: none"> • low significance and low likelihood • medium significance and low likelihood • low significance and medium likelihood

Significance - ranging from 'extreme' (with the impact seriously threatening sustainable Government finances or similar, through 'major' and 'moderate' to 'insignificant'

Likelihood – ranging from 'almost certain' (occurred in past 12 months) to 'rare' (no recorded occurrence in the documented history of the Department)

2.6.2 Mitigation strategies to address specific risks

The following strategies can be implemented to address/minimise specific risks that may occur during the procurement process with major projects:

- appointment of a probity advisor;
- enlist legal/business advisors to assist in the preparation of tender documentation;
- appoint independent observers for the tender box opening/tender registration;
- independent review of all correspondence between Finance and tender respondents;
- ensure no alterations to predetermined selection criteria;
- monitor security and access to the Submission Evaluation Plan and received Submissions;
- require all potential suppliers to disclose any litigation matters or criminal or civil findings against key personnel; and
- if appropriate, require potential suppliers to agree to vetting by AFP and ASIC.

Mitigation strategies include publishing all the information and compliance requirements in the Request Document and ensuring that the following provisions are included in the final contract (also published in draft contract within the Request Document):

- (a) provision for insurance coverage (professional indemnity/product liability insurance);
- (b) a clear definition of what constitutes a default;
- (c) agreement on procedures to be followed for any breach of contract; and
- (d) agreed processes for early termination.

2.7 Probity Reviews of Procurement

Procurement processes should conform to the high standards of probity expected of all Government agencies. All the procedures and steps to be followed should be well understood and then followed, from the outset. The Department has quite stringent requirements for a review of procurement activity, at all levels, to ensure that all due processes have been followed.

2.7.1 Probity Risks

The method of procurement can have a significant impact on the probity risk of a procurement. In general, any restriction of the competitive process will increase probity risks. An assessment of probity risks will include:

- the risk that the procurement process can be challenged;
- the risk that the procurement cannot be adequately justified;
- the risk that the selected procurement method is inappropriate; and
- risks arising from limited time frames.

Probity reviews are aimed at confirming that:

- all potential suppliers have had the same access to information and have been treated consistently and equitably;
- processes for receiving and managing supplier information have ensured confidentiality of intellectual property and proprietary information;
- cases of actual or perceived conflicts of interest have been identified and appropriately managed during the procurement process; and
- tenderers are evaluated in a systematic way, against agreed and predetermined criteria.

The approach to probity reviews for the Department is summarised in the following table.

Probity elements	Low probity risk (up to \$250,000)	Low probity risk (\$250,000 up to \$500,000)	Medium probity risk (\$500,000 up to \$2 m)	High/Extreme probity risk (incl all \$2 m and over)
Procurement Risk Assessment	*	* ✓ IAU review	* ✓ IAU review	* ✓ IAU to prepare
Probity Review Checklists	*	* ✓ IAU review (RFT/REOI)	* ✓ IAU review (RFT/REOI, TEP)	* ✓ IAU to prepare (RFT/REOI, TEP, TER)
Probity Clearance Letter	n/a	✓	✓	✓
Periodic Compliance Reviews	✓	✓	✓	✓
Probity advice (as required)	✓	✓	✓	✓

* Self-assessment by Business Group using checklists provided.

✓ Review work undertaken by Internal Audit (or equivalent supplier appointed)

Internal Audit will consider the procurement processes and decisions from a risk management perspective. Of course, the desired outcome of any probity review is for Internal Audit to issue an unqualified probity clearance to the Business Group. Signed hard copies of any probity report are to be provided to the Department; emails will not suffice. A copy of the report should be placed on the relevant project file.

2.7.3 Low Risk Procurement – Self Assessment of Probity

Procurements in the range of \$80,000 to \$500,000 are of a size that low risk ratings generally apply. (However, if the risk assessment any procurement in this range as high risk, then follow the requirements of 2.7.5 High Risk Procurement).

Officials undertaking procurement are required to undertake a probity self assessment for all procurements \$10,000 or above. There is some flexibility in selecting the procurement method below the \$80,000 threshold but every procurement process needs to comply with all the *General Procurement Requirements (Section 2)*. Where a procurement is a covered procurement, the entire process is subject to the *Mandatory Procurement Procedures* of the CPGs.

The Business Group should complete Checklist A below for procurements below \$250,000. Where any procurement (below or above \$80,000) involves an approach to the market, whether as an open market approach or a select Tender, complete Probity Checklists B, C and D.

- A. Probity Self Assessment Checklist: Procurements below \$250,000.
- B. Probity Self Assessment Checklist: Approach to the Market (RFT or REOI).
- C. Probity Self Assessment Checklist: Tender Evaluation Plan.
- D. Probity Self Assessment Checklist: Tender Evaluation Report.

Retain copies of all completed Checklists on your Branch's procurement/project file. Internal Audit will undertake a random sample audit each year for procurements below the value of \$250,000, of the self assessed *Checklists for Procurements below \$250,000* and where there has been an approach to the market, the *Checklist: Approach to the Market*

completed probity assessments (as well as the risk assessment completed previously) to Internal Audit and retain a copy on the Branch's project file. Internal Audit will review the risk assessment and the Approach to Market Checklist and is then to provide a short form clearance letter to the Business Group.

2.7.4 Medium Risk Procurement – Self Assessment of Probity

Officials of the Department are to undertake a probity self assessment of any proposed procurement where the level of risk is rated as medium, that is for procurements in the range of \$500,000 up to \$2 million, other than those that have been categorised as high risk procurements.

The Business Group is required to complete Checklists B, C and D (listed above) for all medium risk procurements and provide a copy of the completed assessments to Internal Audit.

Internal Audit shall to review each self assessment, covering not only the Request Documentation (RFT or REOI) but also the Tender Evaluation Plan Documentation (TEP) and all of the actual processes followed. Internal Audit will then provide a written clearance letter to the Business Group.

2.7.5 High Risk Procurement – Probity Reviews

For high risk procurements of any value and any procurement exceeding \$2 million, a probity review of all the stages of the procurement process is to be undertaken to ensure compliance with the core policies of the Commonwealth and the policies of the Department. The auditors will be assessing every stage of the procurement process against the benchmarks of the *Commonwealth Procurement Guidelines* and the Chief Executive's Instructions of the Department. The work is to be carried out by Internal Audit (or an equivalent supplier, if selected for projects over \$25,000).

With high risk procurements, Business Groups should discuss the plans, timetables and issues with the Internal Audit team at an early stage and reach agreement on an appropriate level of involvement and assurance work to be undertaken. As a guide, Internal Audit would generally work with the project managers to complete the risk assessment, then review the Procurement Plan. They would undertake an assessment of the proposed RFT and the TEP before the release of the tender to the market. The probity audit work will continue through the tender period and the evaluation phase and the Tender Evaluation Report should also be reviewed. This will provide assurance that the planned processes announced to the market have been followed.

The reviewer will assess and give clearance on the following key processes and documents:

- the appropriateness of the selected procurement method;
- the contents of the Request Documentation (*REOI* or *RFT*);
- the proposed evaluation process including evaluation methodology;
- the managing of the tender open period and the offer closure processes;
- the management of communications with tenderers;
- the security and access arrangements of documents;
- all phases of the evaluation process;
- the contents of the evaluation report; and
- the final decision making process.

3. Choosing the Procurement Method

In choosing the most appropriate procurement method, officials should take into account all relevant factors, including whether the procurement is a covered procurement and thus **needs to meet all** the Mandatory Procurement Procedures within the CPGs. Endorsed Suppliers Arrangements (ESA) must be used when sourcing information technology and major office machines. ESA is an efficiency measure, designed to save agencies the time and cost in assessing the technical and financial credentials of suppliers in these sectors.

Pre-selection options can be considered for major procurements by publicly seeking expressions of interest and offers through:

- (a) Expressions of Interest (EOI);
- (b) Requests for Proposals (RFP); and
- (c) Requests for Information.

Where a regular supply of goods and/or services are required by the Department, this may be best served by appointing a preferred supplier or establishing a Panel of Providers. Both of these supply outcomes need to be established by first canvassing the entire market through an open process and making an assessment of all bids. In such cases, the best potential supplier(s) will be appointed for a set period of time, usually for 3-5 years, and there may be options to extend the contractual period.

Procurement from a preferred supplier or from a panel member, during the contract period, can be easily undertaken by officials by making contact with one or more of the providers to ensure availability, confirming the expected costs and contracting through a short form Project Agreement or Job Order.

When approaching the market, the most comprehensive method is to issue a Request for Tender and seek bids, within a defined time period. Full competitive bidding will see an open tender; restricted tenders limit the bidders to either a select group or a sole provider.

Principal Procurement Options

Open tenders		Public offers sought from all relevant suppliers operating in the market place. This process can involve two-stages, where expressions of interest are first sought, then tenders invited.
Select tenders		A limited number of competent suppliers are approached directly based on known suitability, special expertise, unique skills and/or previous work performance. Where an EOI has been conducted, a select tender can follow, by choosing from those who have met the conditions for participation.
Direct Sourcing		A form of restricted tendering which invites one or more suppliers to bid, because of unique expertise, or limits to suppliers or where other defined circumstances apply for a covered procurement [For covered procurements - refer CPGs 8.65].

The open tender process represents a public business opportunity. It is a public invitation to all available suppliers to submit a tender/bid. For covered procurements, the Department is required to use open tendering unless there are mitigating circumstances which permit a more restricted bidding arrangement.

The open tender process is initiated by publishing a tender notice on the Australian Government AusTender website (www.tenders.gov.au) (and through national print media, if so determined). Where AusTender is used as the mechanism for distributing Documentation with a tender process, AusTender will then serve as the sole access point for potential suppliers if they wish to download the tender documentation.

The public notice must include, at a minimum:

- the name of the agency and contact details for obtaining the documentation;
- the scope and nature of the goods/services required;
- any conditions for participation;
- the criteria by which the offers will be evaluated;
- the address for lodging the submissions;
- the closing date and time for the submission of tenders; and
- the timeframe for the delivery of the goods/services.

Multi-stage open tendering is permissible. The first round, usually referred to as *Requests for Expressions of Interest (EOI)*, often used when the entire procurement specifications are not known or where innovative solutions are being sought. Tender notices for phase one would be worded to indicate the purpose, such as '*suppliers to express their interest in a procurement opportunity*'. A second stage Select Tender would then be conducted, by requesting a select number of the first round tenderers to refine their initial submissions, according to well defined criteria. Such intentions need to be signalled in the first round tender notice.

Non-standard terms and conditions and any additional contractual requirements should be cleared by the Department's Legal Services Branch (or through them a Legal Panel member or other law firm with no material conflicts of interest) prior to the issuing of the tender Documentation to potential tenderers.

3.2 Select Tenders

For standard and low value procurement, it is sometimes appropriate and more efficient to selectively test the market. Invitations to tender are issued only to suppliers selected by the Department. Select tenders are often used when there.

Valid reasons for limiting a procurement to a select group of suppliers, for procurements under \$80,000, include:

- (a) a large number of reputable retailers/providers supplying very similar products;
- (b) the existence of only a few suppliers of the required goods or service;
- (c) cases where the market has been tested in an open manner very recently;
- (d) matters of urgent health, security or safety;
- (e) obligations under an existing warranty or contract requiring goods and/or services to be acquired from particular suppliers; or
- (f) potential suppliers have been identified through an expressions of interest process.

construction services), select tenders may only be undertaken if they fall within the scope of the CPG provisions. The following three processes are permitted and options (a) and (b) are supported by the fact that an initial open approach has been made to the market.

- (a) from an established multi-use list;
- (b) from the list of potential suppliers that have responded to a request for expressions of interest; or
- (c) from all potential suppliers that have been granted a specific licence or they comply with an essential legal requirement, where that licence or compliance is essential to the conduct of that procurement.

Where a select tender process is used, the CPGs stipulate that you are to ***select the largest number of suppliers consistent with an efficient procurement process***. Meeting this obligation ensures that competitive tension is maintained throughout the entire procurement process and that value for money outcomes will be achieved. The reasons for utilizing a select tender process and the setting of the numbers of suppliers should be fully documented and be able to withstand scrutiny from Parliament, the Australian National Audit Office as well as other suppliers.

Where a two stage procurement process is undertaken, the first round notice will need to make clear any limit to the number of suppliers who will be invited to tender in the second round and indicate the criteria upon which those suppliers will be selected.

3.2.1 Guide to numbers

The following table provides guidance on the ranges of numbers that should generally be sought, under a Select Tender process. They are not hard and fast rules but officials should seek to obtain at least 6 submissions, except in exceptional circumstances.

Scenario	Acceptable range of tenders
<i>A large number of potential competitive suppliers</i>	Between 10-20 suppliers
<i>Expressions of Interest have been obtained and the most competitive suppliers can be identified</i>	Select between 6-12, depending on the size of the procurement and the relative merit of EOI responses.
<i>Complex, major procurement</i>	Select more than 10 to ensure genuinely independent bidders
<i>Only small number of actual suppliers</i> <i>Definite time limitations</i>	May approach a field of less than 6

3.3 Direct Sourcing

On limited occasions, direct sourcing from a single supplier (sole sourcing) or a very limited number of suppliers may be pursued, such as when there is only one supplier who can meet all the primary requirements, within the set timeframe. The basis for deciding to undertake direct sourcing of any procurement above \$10,000 needs to be fully documented.

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 (outcomes).
[CPGs 8.63]

- (a) where an approach has been made to the market and:
 - no submissions were received;
 - no submissions were received that conformed to the minimum content and format stipulations (as stated in the request documentation); or
 - no potential suppliers satisfied the conditions of participation.
 In such cases, direct sourcing is then permitted, provided that the essential requirements of the procurement are not changed.
- (b) where, because of reasons of extreme urgency brought about by events unforeseen by the Department (such as a natural disaster) 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 and which are not routine purchases from regular suppliers (*such as unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy or receivership sales*);
- (d) where the property or services can only be supplied by a particular business and there is no reasonable alternative or substitute. This extends to the following:
 - works of art;
 - the protection of patents, copyrights or other exclusive rights or proprietary information; and
 - an absence of competition for technical reasons.
- (e) for additional deliveries of property or services by the original supplier or an authorised representative that are intended either as replacement parts, extensions, or continuing services for existing equipment, software, services or installations, where a changes of supplier would compel the Department to procure property or services that do not meet requirements of compatibility with existing equipment or services;
- (f) purchases on a commodity market;
- (g) where the Department 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) contracts awarded to a winner of a design contest, provide that:
 - the contest has been organised in a manner that is consistent with Division 2 of the CPGs; and
 - the contest is judged by an independent jury with a view to a design contract being awarded to the winner;
- (i) for new construction services that consist 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.

[CPGs Division 2: 8.65]

In all cases where direct sourcing is proposed for any *covered procurement*, the procurement official should prepare an Executive Minute, for approval by either their General Manager or the Secretary. The Minute needs to address all of the following:

- (a) the reasons for adopting the direct sourcing alternative for this particular procurement;
- (b) an assurance that all the requirements of the CPGs have been met; and
- (c) the steps taken to ensure that the procurement process is adequate and defensible.

3.4 Endorsed Suppliers (being Multi-Use Lists)

The Endorsed Supplier Arrangement (ESA) is managed by Procurement Policy Branch for the whole of the Australian Government sector. It provides pre-qualification for businesses and lists all pre-qualified potential suppliers who have satisfied the conditions for participation. For the Australian Government sector, the ESA is in place for use when procuring information technology, major office machines, commercial office furniture and auctioneering services.

Assessment of potential Endorsed Suppliers is quite rigorous, as those suppliers who are endorsed are granted 'in perpetuity' status to supply all Australian Government entities. The technical assessment addresses technical capacity and compliance with agreed industry standards. The financial assessment aims to ensure that the Australian Government will be dealing with a financially viable legal entity, with sufficient reserves to honour reasonable Commonwealth contract obligations and financial strength sufficient to support normal business requirements.

The Department must source only from listed firms for any goods or services in the information technology (ICT) and major office machines categories. Though not mandatory, sourcing of commercial office furniture and auctioneering industries should also be from ESA listed firms because of OH& S reasons in the former and security in handling public money in the latter.

Where procurements of ICT products or services exceed \$80,000, the Business Group may choose from the following three options:

- (a) undertake a select tender process from among the endorsed suppliers;
- (b) undertake an open tender, listing endorsed supplier status as a Condition for Participation; or
- (c) where requirements for direct sourcing can be met, approach an endorsed supplier.

3.5 Panels

A *panel* is an arrangement under which a number of suppliers are made available to supply property or services to the Department, on a demand basis, at any time throughout the contracted period. Panels can only be established through an open tender process. Usually, it takes a lot of resources to work through the establishment of a panel so they should be considered only if there is a regular need for those services and if the panel option will clearly deliver the required value for money outcomes. The Request Documentation will need to clearly set out the methodology to be followed for selecting the number of panellists from the field of potential suppliers who lodge submissions.

In setting up a panel arrangement, officials are to ensure that minimum requirements are covered, including an agreed set hourly or daily rate (or indicative price) for the provision of the goods or services, agreed arrangements for other disbursements and the range of property or services are well defined and specified. The Department will enter into a Deed of Standing Offer with each of the selected suppliers for the provision of identified property or services. The Deed will cover off all the contractual obligations and provide for panel members to supply, under a simple Procurement Order or Project Engagement Agreement.

The acquisition of goods or services from panel members, as specified in an established panel arrangement, does not continue to attract the operation of the Mandatory Procurement Procedures of the CPGs. However, the other elements of the procurement policy framework do apply (including the requirements to achieve value for money and to have appropriate authority for the expenditure of public money).

Approaching the market through a tender process provides the opportunity for suppliers to make submissions (bids/offers) which the Department can duly consider and then select the most suitable supplier. During any tender process, it is vital that all potential suppliers have been treated equitably. The following principles should apply throughout any procurement process:

- all potential suppliers to have equal access to the information being provided (both content and quality);
- all submissions received to be treated equitably; and
- confidential information within the submissions to be respected.

The main documents that will need to be prepared for any tender process are:

- Procurement Plan
- Request Documentation
- Tender Evaluation Plan

4.1 The Business Case

Where the procurement is significant, a preliminary step should be the preparation of a Business Case. The Business Case will describe the proposed procurement, summarise any market research findings and address the key procurement planning issues. This will usually include defining the specifications and identifying the risks and listing mitigating strategies and providing an overall assessment of the proposal. The business case should include details of resourcing requirements, identify key stakeholders, provide a cost-benefit analysis to justify why the procurement should proceed and recommend the preferred procurement method.

Business cases for proposed procurement over \$250,000 should be submitted to a Division Manager, the General Manager (or the Secretary) for approval. Where the planned procurement is valued over \$1.0 million, submit the business case to the Executive Board for their endorsement, prior to securing approval to proceed from the delegate. In approving a business case, the approving official will be giving his/her agreement for the procurement process to proceed, so consideration of FMA regulations 9 and 10 are required.

4.2 The Procurement Plan

A Procurement Plan provides the formal process for documenting all of the intended stages of the process and the strategies/key procedures to be followed. It will document what is required for each of the stages of the procurement process, defines resources required, nominate responsibilities and sets down the timeframes to be followed. The Plan should cover:

- (a) a description of the procurement;
- (b) analysis of the market and possible suppliers;
- (c) the proposed Procurement Method;
- (d) the Risk Assessment;
- (e) a probity plan, if appropriate;
- (f) governance arrangements;
- (g) the Evaluation Plan including evaluation criteria; and
- (h) the activity timeframe and sequence of events.

The level of detail in the Procurement Plan should reflect the size and complexity of the planned procurement. The Plan provides the mechanism for informing management (including the Approving Delegate) that the necessary processes are in place to meet all legislative and internal procedural requirements and comply with government policies.

The Request Documentation is the documentation which is provided to potential suppliers in the market place. It provides the essential information to suppliers, to enable them to understand the requirements of the particular procurement and to indicate to them how best to prepare an appropriate and responsive submission. The Request Documentation should set out, in clear terms, the specific requirements of the procurement, necessary details for lodging submissions and how the submissions will be evaluated.

When preparing the Request Documentation for an open or select tender, officials will need to include the following matters:

- (a) a description of the procurement, including procurement specifications;
- (b) conditions for participation (if any);
- (c) the evaluation criteria (and information to be provided in response to each criterion);
- (d) a summary of the evaluation methodology;
- (e) minimum content and format requirements;
- (f) the scope of information to be provided by the tenderer;
- (g) the name of the tender official (and contact point for clarifications);
- (h) details on the tender lodgement requirements (when, where, number of copies) ;
- (i) other process rules, including handling of clarifications and amendments; and
- (j) the proposed draft contract or Deed of Standing Offer.

It is important to remember that our Department is bound by the process notified to the marketplace, that is, as per the process announced by the Request Documentation being released on AusTender. Take time to very carefully cross check all elements in the documents before finally releasing them to the market.

4.4 Conditions for participation

Conditions for participation are mandatory requirements which stipulate minimum standards or essential characteristics to be met by suppliers, if they wish their submissions to be considered. The CPGs require that an agency must reject any submission that fails to meet any announced conditions of participation, so care should be taken before listing any such conditions in the Request Document.

Conditions for participation can only be set down in relation to legal, financial, technical and/or commercial capabilities of suppliers, to meet the specific procurement requirements. It should be noted that the Department is prohibited from awarding a contract to any supplier that does not meet stated conditions for participation.

Conditions for participation can cover:

- access to certain technical or operational skills, facilities or capabilities;
- relevant licences or professional accreditations/registrations;
- the ability to satisfy nominated security requirements;
- minimum levels of financial assurance (financial viability and insurance policies);
- minimum occupational health and safety standards; and
- prior demonstrated experience or specific capability where such experience is essential to the delivery of the required property and services.

The Department can also include in its conditions for participation an exclusion of suppliers on grounds of insolvency, false declarations or significant deficiencies in the performance of any substantive requirement or obligation under a prior contract.

they are not mandatory, they should only be listed as evaluation criteria. Where the Business Group is uncertain about the level of importance being attached to a supplier requirement, it is preferable to express the requirement as an evaluation criterion.²

4.5 Evaluation Criteria

Evaluation criteria form the basis for fair and equitable assessment of all submissions which meet the conditions for participation (if any). Criteria need to be determined for each and every procurement process, as there will be some characteristics that relate only to the particular procurement under consideration.

Examples of criteria that may be considered, as appropriate, are:

- the financial viability and capability of the supplier;
- a demonstrated ability to provide the property or services;
- proposed approach and methodology;
- the approach to management of risk;
- any warranties and guarantees offered;
- risk to the Australian government in relation to non-compliance with the terms of the Request Documentation and the draft contract conditions;
- specific criteria for the specific acquisition; and
- submission price.

Evaluation of suppliers should be based on the relative importance of each criterion. There are a variety of methodologies that can be used to achieve this. If any evaluation criteria are weighted according to their relative importance, potential suppliers should be advised of these weightings to assist them to appropriately focus their responses. Provision of this information makes the process more transparent.

4.6 Tender Official

The appointment of a Tender Official (Project Official) should be considered for all open tenders and major select tenders, to provide efficient and effective management of the tender process. The Tender Official will provide the single contact point for all enquiries. This Official will oversee security of all submissions once the tender period closes. The appointee should have a good working knowledge of tender processes to ensure that the entire procurement process is carried out with complete transparency and probity.

The principal duties of the Tender Official will usually include:

- (a) being the single official contact point for all external parties;
- (b) overseeing the opening of the tender box and registering all tenders received;
- (c) delivering the complete set(s) of received tenders to the designated officials; and
- (d) providing support services to the Tender Evaluation Team.

The Tender Official should not be part of the Tender Evaluation Team/Committee (referred to here as the TET) as he/she will play an ongoing role in the provision of support services to the Team and be the contact point with the external parties.

4.7 Submission Open Times

The Submission Open Period commences at the time when the tender is publicly announced and concludes at the point of the set tender close off. Always allow sufficient (and reasonable) time

² Note that when an issue is identified as an evaluation criterion it is in the non-essential category and this means the Department cannot later treat the criterion as essential during the evaluation of the tender submissions.

records of all parties that respond to advertising and also to whom the invitation document is sent.

Where the closing date is extended, this change must be advised to all parties. This notification is again to be made through the AusTender website.

All submissions received should be addressed in the manner advised in the Request Documentation, lodged in the Tender Box and remain there unopened, until the closing date. However, where the size of submissions is expected to be voluminous, the Tender Evaluation Plan should set out appropriate procedures to be followed, including security of all documents, should the Tender Box be filled to capacity before the closing date. The Tender Box should have two locks and the keys held by two officials so as to demonstrate the security of information contained in offers until the closing date.

The minimum period between invitation and closing of offers, for *covered procurements*, is set at 25 calendar days, but where the tender is large or complex, the open period may need to be extended. In limited situations, the time limit for lodging of submissions can be reduced down to 10 days, provided that sufficient time is still provided to potential suppliers. The limited cases are where:

- (a) details have been published in the Annual Procurement Plan (post June 2005) for at least 30 days;
- (b) a genuine state of urgency renders the standard time limits impracticable;
- (c) the acquisition is for commercial property or services³; or
- (d) second or subsequent approaches to the market for recurring nature procurement.

4.8 Questions and Clarifications

During the Tender Open period, potential tenderers may make contact with the Department to seek further information, to clarify points or to ask questions. Potential suppliers may seek clarification on technical or functional requirements, so as to be able to more accurately assess their capacity to meet the stated requirements and to therefore lodge the best possible submissions.

It is important that all contact from potential suppliers be conducted only through the nominated Tender Official. The direct contact point may be a dedicated project specific e-mail address which the Tender Official will access. All contact from potential suppliers during the submission open period is to be through the nominated Tender Official.

The Tender Official should carefully record all questions asked and clarifications provided, in a register or project file. He/she will need to seek information on the appropriate wording for the response (the Clarification) from the Chairperson of the TET or where necessary, from the General Manager or Division Manager of the Business Group. Any supplementary information should be provided to potential suppliers in an equitable manner. This is to be undertaken through the AusTender site. For the process - refer to section *6.4 Clarification on AusTender*.

³ Property or services of a type that are offered for sale to, and routinely purchased by non-Government buyers for non-Government purposes. Includes any modifications common in the commercial marketplace and any minor modifications not common in the commercial marketplace.

4.9 Industry Briefings

Where it is appropriate, procurement officials should ensure that industry is provided with the opportunity for an industry briefing, on all the technical and functional specifications of the procurement and to understand the evaluation criteria. The usual way to provide such an industry briefing is to convene an open meeting in a central location, for all interested parties.

On occasions, a Business Group may declare that attendance at the industry briefing, is mandatory, for potential suppliers, if there are many technical or delivery matters to be considered.

4.10 Sensitive Procurement

Where major procurement involves high security or politically sensitive issues, the procurement officials should ensure that all documentation and safekeeping meets the Protective Security standards set by the Australian Government. Seek guidance from your General Manager on any relevant issues to ensure that timetables, confidentiality and document control requirements can be met. The standard business process will be for the Executive Board to consider and endorse all major procurement that is deemed 'sensitive'.

All tenders for sensitive procurement are to include an external representative on the TET. The representative can be from another Business Group, where it is appropriate, but where the proposal represents very sensitive procurement, consideration should be given to engaging a representative who is totally independent and external to the Department.

4.11 Lodgement Rules

Lodgement requirements of tenders need to be clearly defined within the request Documentation. The Documentation should clearly state the following:

- (a) all tenders to be lodged in a secured Tender Box (or details of the electronic lodgement on AusTender);
- (b) the location of the Tender Box; and
- (c) originals and copies to be clearly marked by the tenderer.

4.12 Tender Close

The time when submissions will no longer be accepted for any formal open or select tender process is commonly referred to as the 'Tender Close'. Late submissions cannot be accepted for any tender process, unless the lateness is caused by a fault of the Department.

The Tender Close process needs to be conducted in a manner that maintains the integrity of the procurement process. The procedures to be followed are:

- (a) two designated officials (with one who is independent of the tender process) to jointly open and record tenders received;
- (b) all accepted tenders to be acknowledged within 5 working days of the close;
- (c) late tenders to be returned to the tenderers and the reason for non-acceptance provided; and
- (d) all tenders, quotations and related Documentation are to be treated as at least commercial-in-confidence and appropriate security measures need to be adopted.

Unless there are exceptional circumstances, avoid setting the closing date for a tender during the Christmas / New Year holiday period (one week before to two weeks afterwards).

The Request Documentation+ should also signal that departmental officials cannot accept any responsibility for lodging offer Documentation on behalf of a bidder. Email and facsimile transmissions are not acceptable for lodgements of submissions. The onus must be placed on the tenderer to lodge their submission.

There should be no significant gap between the closing date and commencement of evaluation.

5. Submission Evaluation Plan

The Submission Evaluation Plan (for tenders: the Tender Evaluation Plan) is an internal document which maps out the processes to be followed in evaluating submissions (tender bids and EOIs). It describes in detail the way the evaluation is to be structured and managed. The plan will need to be consistent with the information provided in the request Documentation.

The Submission Evaluation Plan should be developed and finalised before the market is approached. It should be formally approved by a Division Manager or General Manager, so ensuring that the evaluation process and final selection is fully consistent with what the market will be advised, that the assessments of all submissions will be treated fairly and equitably and that the principle of *value for money* will guide the final procurement decision. By formally mapping out the planned approach, evaluation process becomes more robust and the highest standards of probity are kept in focus.

The Plan will provide a summary of the selected procurement method, outline all major processes; and set out the roles and the responsibilities of the TET. The Plan should document each of the following issues:

- (a) protocols for handling submissions;
- (b) protocols for contacts with tenderers;
- (c) disallowance of late submissions;
- (d) rules for submission registration and safekeeping;
- (e) mandatory conditions for participation, if set;
- (f) minimum content and format requirements;
- (g) protocols for identifying and handling conflicts of interest;
- (h) the roles of Submission Evaluation Team;
- (i) the evaluation criteria (and, if determined, the associated weightings to be applied);
- (j) evaluation methodology;
- (k) the nominated Approving Delegate; and
- (l) details of the evaluation timetable.

5.1 Evaluation Methodology

The evaluation methodology included in the Plan should have regard to the nature and value of the procurement but will generally cover:

1. Initial screening process
 - i. have Conditions of Participation been met?
 - ii. have minimum content and format requirements been met?
2. Evaluation against the stated evaluation criteria;
 - i. scoring against each criterion;
 - ii. applying differential weightings (if so advised); and
 - iii. undertaking interviews of tenderers (if so advised).
3. Completing overall Value for Money assessment
4. Negotiations with preferred tenderer(s).

Once the tenders closing date has passed the plan cannot be changed, in any material way. This process ensures that there is no basis for an external party to allege that the evaluation methodology was changed after tenders had been viewed, in order to favour or disadvantage a particular tenderer. This process will be subject to a review by the Probity Auditors.

5.2 Tender Evaluation Team

Tenders should be reviewed by a Tender Evaluation Team (TET), comprising officers with relevant skills and representing the key stakeholders within the Department. It is important that suitable personnel be selected at an early stage for this purpose. Where the procurement will impact on more than one Business Group, consideration should be given to appointing representatives from across the Department to the Team. When major procurement is being undertaken, a steering committee for the project should also be considered.

The Team should comprise at least three members, with one of the more senior officials taking on the role of chairperson. All members should possess the necessary technical skills and subject matter knowledge to be able to effectively contribute to the assessment of the submissions. On occasions, there will be a need to have a specialist included in the Team (such as financial advisors or technical specialists).

Where the tender is for sensitive procurements, a representative from outside the commissioning Business Group is to be included on the TET. In most instances, this representative can be from another Business Group but for very sensitive tenders, the General Manager should give consideration to a representative who is totally independent and external to the Department. Any external experts should be required to abide by confidentiality requirements and also make the declaration of having no conflicts of interest.

All tenders are to be evaluated in an unbiased and systematic way (for technical worth and for value for money). Each team member should individually score each tender against each criterion and note down the reasons for their ratings. The Team should then convene to review and moderate the scores, (that is, to consider those occasions where individual scores against one criterion range widely and seek to understand why different ratings have been given). Team members are permitted to then adjust their initial ratings, in the light of information shared by the other team members. However, whenever adjustments are made, the reasons should be noted.

5.3 Management of conflicts of interest

Officials involved in the selection process should avoid any actual or perceived conflict of interest. Any potential for conflict of interest between an official's duty and private interests should not occur.

Quite stringent ethical standards are to apply to any evaluation process. Official conduct by officials of the Department should always display a high level of integrity and professionalism. Officials must not be influenced by bribes or benefits. For further detailed guidance refer to Operational Guidelines: *4.6 Official Hospitality and 7.8 Probity and Conflicts of Interest*.

TET members are to make a declaration at the time of being nominated to the Team, that they have no conflicts of interest (either perceived or real) in relation to the procurement. Copies of the signed *Conflicts of Interest Declaration* would normally be attached to the Tender Evaluation Plan when it is being submitted for approval to the Division Manager/General Manager.

arise, such as requiring the relevant member to promptly provide details to an appropriate senior official, nominated in the Plan, such as the chairperson of the TET. Approaches to managing the conflicts of interest will need to be consistent with departmental policies (refer CEI and Operational Guidelines 7.8 on *Probity and Conflicts of Interest*) but can extend to reporting the position and allowing the member to continue to participate on the TET or having the member take no further part in the process. If the conflict can be managed, the chairperson will need to report (and explain mitigation strategies adopted) to the chair of the Steering Committee or the relevant General Manager where no such committee exists.

A conflict of interest is very likely to exist where an official is to be involved and he/she:

- (a) has a pre-existing financial or social relationship with any of the potential suppliers;
- (b) would personally benefit from the engagement of a particular supplier; or
- (c) the official is related to the supplier.

6. Approaching the Market

An approach to the market is the stage when the Department issues an open request (a notice) to the market for the supply of property or services. It serves as an invitation to potential suppliers to participate in the procurement. Open approaches to the market include requests for tender, requests for expressions of interest, requests to be included on a multi-use list and disposal of assets. All open approaches to the market are to be published electronically on AusTender; where complementary publication in print media occurs, the content will need to be consistent with the AusTender notice.

The CPGs have set minimum time requirements relating to the time that a request/invitation is open in the marketplace. Also, there are minimum information requirements and rules to apply when modifying the Request Documentation (including issuing clarifications).

Two key principles apply:

- (a) potential suppliers need to be provided with sufficient time to prepare and lodge their submissions; and
- (b) all suppliers are to be provided with an equal opportunity to make a submission.

6.1 Statement of Requirement

A Statement of Requirement (*Project Specifications or Statement of Works*) defines what the official requirements are and consequently, what the suppliers are required to provide, if selected. It is essential that the specifications accurately define the need in a way that can be easily understood by potential suppliers.

Functional specifications

Describes the outcome, tasks or duties to be performed. Outcome based functional specifications are the *preferred method* of defining a requirement when seeking offers, because the risk of non-performance rests with the supplier.

The specifications should encourage the presentation of innovative and effective solutions.

States the physical description of the item required, including size, capacity, and materials. Technical specifications include plans, designs, drawings, and blueprints. Technical specifications should be used *sparingly and with some care* when seeking offers, because innovation can be stifled and fresh technology may be overlooked. It is a preferred position that prescribed licenced products or specific products are not specified, unless it is essential to do so.

Performance specifications

Provides the details on the required performance of the product/service. They set out maximum and minimum performance standards and the methods of measuring performance - they do not detail how standards will be met. Performance specifications should identify where it is necessary to link non-performance to liquidated damages or other enforcement mechanisms in the contract.

Service Level Agreements

Complex contracts may benefit from the development of service level standards in the form of a Service Level Agreement (SLA). For major contracts, the SLA becomes a comprehensive agreement on delivery standards between the strategic service provider and the Department. SLAs should include the following elements:

- (a) definitions of the work to be performed, in measurable terms;
- (b) agreed standards covering quality, quantity and timeliness requirements; and
- (c) performance descriptors for use when undertaking an assessment of performance.

6.2 AusTender Notification

The advertising of any approach to the market must be through AusTender. Where the Request Documentation is also issued through AusTender, then the mandated set of AusTender-related clauses will need to be included within the Terms and Conditions of the Request Documentation.

6.2.1 Referencing the Request Documentation

All Request Documents are to be referenced to the Department and numbered sequentially, by Business Group. The initial part of the reference shall refer to the Department and calendar year when the tender is to be released (i.e. FIN05) and the second section shall make reference to the Business Group and the document number (full example: FIN05/AMG001).

AGI	AGIMO	FES	Financial and e- Solutions Group
AMG	Asset Management Group	FMG	Financial Management Group
BUD	Budget Group	MPS	Ministerial & Parliamentary Services
CRP	Corporate Group		

6.3 Modifying the Request Documentation

All eligible suppliers must have equal access to any and all procurement information. This extends to when Request Documentation is modified, following the publication date. The amendment notice must be issued in a way that can be accessed by all potential suppliers. On AusTender, the notice to advise of any modifications to the Documentation is referred to as the *Issuance of Addenda*. Modifications include any extension of the time limit for submissions.

Documentation does include a paragraph which advises potential suppliers of the rules and procedures relating to modifications (as per the AusTender related clauses).

Another benefit of using AusTender as the medium for document provision to suppliers is that supplier contact information is retained when the tender documentation is downloaded. This enables an automatic notice dispatch to all registered suppliers, by email, when a modification is notified through the *Add Addenda* mechanism.

Business Groups should place the onus on potential suppliers to regularly access the AusTender website and check for modifications which have been published by the Department.

6.4 Publishing Clarifications on AusTender

When a point of clarification is to be issued, it is to be provided to all prospective suppliers, in a timely and equitable manner. Clarifications are to be issued as addenda through AusTender, on its *Addenda* page. They need to be identified with a specific reference to the EOITender and noting the fact that it is a clarification. (e.g. Clarification 1 to RFT: FIN05/BSG005.doc). The file is to be uploaded to AusTender through the *Add Addenda* process. A brief explanation should be provided so that prospective suppliers can easily understand which matter is being addressed (e.g. Clarification to the Conditions for Participation).

Officials should take care to make sure that there is no disclosure of sensitive financial information nor of any commercial-in-confidence information of individual suppliers.

6.5 Confidentiality and Accountability Requirements

Where submissions contain commercial-in-confidence information, such information may only be disclosed to officials with a need to know, for the purposes of reaching a decision on the procurement. Access to the submissions needs to be closely controlled and all Documentation are to be locked away in a C Class Cabinet when not being used during the evaluation and negotiation stages.

Original submissions are to be placed on official files, once the procurement process is complete. All copies of submissions that are not needed for ongoing contract management should be destroyed or returned to the tenderer after the tender process is finalised. Where a copy of a tender document has been written on by a member of the TET, it should not be returned to the tenderer. In this light, the Evaluation Plan should indicate whether notations can/cannot be inscribed onto submitted copies of the submissions.

In relation to the Commonwealth standards for transparency, potential suppliers need to be advised that contractual provisions may be disclosed to Parliament and to its committees, if requested - unless public interest considerations preclude such disclosure - and external scrutiny of public tendering may be undertaken by the Auditor-General or the Commonwealth Ombudsman. Officials should ensure that relevant public interest considerations are taken into account when deciding the status of particular elements of submissions received.

Parliament and the courts of Australia also have legal rights to access a wide range of information. Rights of access to information in, or associated with, contracts are provided for within the following Commonwealth legislation:

- (a) *Freedom of Information Act 1982*;
- (b) *Auditor-General Act 1997*; and
- (c) *Ombudsman Act 1976*.

or a Committee of the Parliament to provide information that has been classified commercial-in-confidence, the information should be provided, unless disclosure would not be in the public interest or would be against legislative requirements (refer to *Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters, PM&C 1989*).

Officials should ensure that the party concerned is advised of any proposal to disclose information before the disclosure occurs. For more details, officials should refer to the publication *Guidance on Confidentiality on Contractor's Commercial Information* (Feb 2003).

Notwithstanding the disclosure obligations outlined above, the Department needs to give appropriate protection to commercially sensitive information provided by tenderers, both in their tender documents and during subsequent negotiations. Commercial-in-confidence information must be kept secure and never used for personal gain or to prejudice fair, open and effective competition. Request Documentation should therefore include clauses covering:

- (a) the commitment of the Australian Government to keeping confidential any confidential information provided by tenderers prior to the awarding of the contract and, in respect of unsuccessful tenderers, after the contract has been awarded; and
- (b) a requirement that tenderers specify within their tender submissions any information which they consider to be confidential and provide reasons for that confidentiality.

The obligation to maintain confidentiality cannot be considered breached in cases where the information is disclosed by the Australian Government, in the following circumstances:

- (a) to employees or third parties, solely for activities related to a tender process (including final negotiations with the preferred supplier);
- (b) to internal management, solely for management or auditing of activities related to a tender process;
- (c) to the responsible Minister;
- (d) in response to a request by a House or Committee of the Commonwealth Parliament;
- (e) to other Business Groups of the Department, or another Australian Government agency, where this serves the Commonwealth's legitimate interests;
- (f) as authorised or required by law; or
- (g) to the public domain provided it does not breach any of the Australian Government's obligations of confidentiality.

The Request Documentation should also indicate if the Department intends to pass confidential information contained within a tender submission, to a third party, for the purpose of evaluating a submission or preparing a resultant contract, the Commonwealth will obtain a deed of confidentiality from that third party, obliging them to protect the information as confidential. Agreement needs to be obtained prior to the provision of information to that third party.

Request Documentation should also signal to potential suppliers that any information or documentation generated by the Australian Government as a result of a tender process (e.g. Tender Evaluation reports) will not be disclosed outside of the Australian Government, apart from exceptions which would be specified.

Potential suppliers should also be advised that where the Department enters into a contract or deed of standing offer, the Department is subject to Commonwealth legislation and policy requirements which obliges it to disclose certain information:

- (a) to report contracts, agency agreements and standing offers with a value of \$10,000 or more (including GST where applicable); and
- (b) to publish on the Department's website the list of contracts entered into by the Department with a value of \$100,000 or more, which have not been fully performed or which have been entered into in the previous 12 months. The information is to include details about the confidentiality requirements contained in each contract.

Potential suppliers should be notified that their employees and management have a statutory obligation pursuant to the *Crimes Act 1914* not to disclose or misuse any confidential information provided by the Department during a tender process.

7. Evaluating Submissions

Evaluation of submissions received from potential suppliers involves rating against the advertised evaluation criteria, to identify the offer that will provide best value for money. Apply the procedures that have been outlined in the Request Documentation and the Evaluation Plan and assess against each of the evaluation criteria.

7.1 Principles to be followed

To achieve a fair and ethical outcome with any approach to the market, officials should ensure that all phases of the evaluation are conducted in accordance with the approved Submission Evaluation Plan.

The following principles should be followed when undertaking a tender evaluation to ensure such fairness and equity and avoid criticisms against the process by external parties:

- evaluations to be conducted strictly in accordance with the approved Submission Evaluation Plan;
- assessments to be based on the information supplied by the potential suppliers;
- base each assessment on the agreed and published Evaluation Criteria;
- conduct the process in a way that does not advantage or disadvantage any tenderer;
- no one person should be able to unduly influence outcomes of an evaluation process;
- evaluation of the technical merit of each submission should be undertaken in isolation from the assessment of the financial aspects/pricing to prevent knowledge about prices influencing the technical ratings;
- technical and financial aspects of the evaluation process should only be brought together after the separate assessments, in the 'Value for Money' final assessment;
- all decisions taken during the evaluation process to be fully documented; and
- all correspondence and documentation relating to the evaluation are to be retained and appropriately filed.

The Request Documentation should ask for sufficient copies of the tender submission to be lodged by the bidder so that a copy can be provided to each TET member as soon as the committee is convened. Retain the original submission in an untarnished state – do not deface with comments or notations by any team member.

Officials need to understand that strict security standards apply when tenders are being evaluated. Submissions are to be locked at all times in a C Class Cabinet, unless the TET is meeting. Meetings of the TET are to be held behind closed doors.

7.2 Initial Screening (of non conforming submissions)

At the beginning of the process, the TET should determine if any bids are non-conforming by carefully examining each submission for compliance with conditions of participation and the the required format and content rules.

submissions:

- (a) has the submission met all declared Conditions for Participation?
 - sufficient insurance provisions?
 - occupational health and safety capabilities and systems up to requirements?;
- (b) does the submission conform required format and content rules?
 - (a) is it impossible to identify the actual tenderer?
 - (c) has the submission provided responses to all specified sections?
 - (d) has the submission included all significant details specifically requested? and
 - (e) was the lodgement made within the due date and time?

Submissions that fall below an acceptable standard should not be considered any further and should be referenced as '*non-conforming tenders*'. The Request Documentation should clearly have clearly indicated the intention to conduct an initial screening process.

7.3 Evaluating Submissions

When evaluating submissions, you should:

- (a) assess the technical and operational capability of each submission in terms of the stated Evaluation Criteria;
- (b) clarify any technical omissions, ambiguities or anomalies;
- (c) consider the degree of acceptance with the proposed contract terms and conditions and assess the impact of any non-compliance;
- (d) confirm suppliers' claims by contacting referees (*if part of the process*);
- (e) rank pricing information on a whole-of-life basis (*deduct any optional costs contained in offers to arrive at a consistent set of prices*); and
- (f) determine best value for money (*by aggregating the scores for technical capability and price – where weightings have been applied to the various criteria, ensure that these calculations are applied*).

A Comparative Statement is useful when assessing the significant technical aspects of bids. The purpose is to assess all submissions in terms of their ability to supply in accordance with the specifications. On occasions, you may need to obtain external expertise to assist in assessing whether the submissions meet the technical specifications set out in the Request Documentation.

Procurement officials should note any optional benefits provided within a submission (that is, benefits outside the scope of the published Specification of Requirements). They should not be considered in the overall evaluation process, when the TET are assessing all submissions as a group.. However, if a tenderer is chosen as a preferred tenderer, these additional benefits may be taken into account at the contract negotiation stage.

7.4 Submission Evaluation Report

The purpose of the Submission Evaluation Report is to document the evaluation process and to identify for the Approver a "preferred supplier" or "preferred suppliers". The Evaluation Report will document, in detail, the process followed and contain sections on the following:

- (a) a summary of the evaluation process;
- (b) a summary of each received submission;
- (c) a summary of the assessment of each submission;
- (d) reasons for any elimination of a submission from further consideration;
- (e) recommendations concerning the preferred submission(s); and
- (f) details of any issues which need resolution during subsequent negotiations.

been evaluated, in terms of *'best value for money'* taking into account their scores against the selection criteria and the quoted prices.

The Report will contain the final recommendations, be signed by all members of the SET and submitted to the Approving delegate. The Approver is to sign 'Approved' if he/she is in agreement with the recommendations contained therein. Where the Approver signs 'Not Approved' the alternative actions to be followed should be clearly stated.

On occasions, an alternative strategy may need to be considered or adopted. This extends to when:

- (a) *No submission represents value for money*
Officials may then consider whether the Specification of Requirements should be made less restrictive or whether it is best to now undertake a direct sourcing process.
- (b) *Two or more top ranked suppliers are too close to separate*
Where these circumstances occur, it may be necessary to invite the top ranked suppliers to improve their offer, by negotiation. This process can be conducted by parallel negotiations.
- (c) *Further negotiations with the preferred supplier required*
The preferred supplier may not have indicated willingness to be fully compliant with the proposed contract terms and conditions. Exercise care, document all negotiations and refer back to the Approver for final approval.
- (d) *Process problems (serious)*
Occasionally the tender process has become seriously flawed and no remedy appears appropriate. This could be the result of major technical or operational problems which have been identified and attributed to an inadequate or incorrect set of specifications. On such occasions, the Report should recommend cancelling the process, explaining the circumstances to stakeholders (including any tenderers) and starting anew.
- (e) *Public Interest grounds*
As well, public interest grounds may arise which would lead to the cancellation of a procurement process: unforeseen events or new information (machinery of government changes, unforeseen technological or environmental changes).

The reasons for the final recommendations in the Evaluation Report need to be well documented and kept on file for public accountability purposes.

8. Selection and Completion of the Process

8.1 The Approval

An appropriate delegated official (the Approver) is to approve all procurement proposals.

Where an open or select tender process has been conducted, the Approver will need to approve the final evaluation report or the recommendations based on the Evaluation Report. He/she has the authority to accept or reject the recommendations made by the TET.

for the engagement of one or more providers, he/she will need to document the basis for making that decision and then determine whether the entire process should be recommenced.

8.2 Negotiating with the Preferred Suppliers

There will usually be some contract matters that need to be negotiated with the preferred suppliers. An official or a team of officials may be appointed by the Approving delegate to undertake final negotiations with the preferred suppliers. All identified issues must be settled and, where appropriate, incorporated into the final contract before signing. Post tender negotiations should not alter the scope or intent of the tender process. Any change from the intent of the initially published Request Documentation would make the tender process void.

A detailed record should be maintained of every negotiation session with the preferred tenderers and placed on the Project Procurement file.

8.3 Debriefing Bidders

All suppliers who have made submissions are to be promptly advised of the final procurement decision. Where a bidder requests a debriefing, the Department is obliged to provide a debrief. Where an oral debrief is provided, a file note should be appended to the Procurement file.

The debriefing should provide the key reasons for why the unsuccessful bidders were not selected and provide guidance for the future:

- (a) an explanation of why the submission was unsuccessful;
- (b) identify the areas of weakness or non-compliance in the offer;
- (c) provide suggestions on how to improve future submissions; and
- (d) if the final supplier has been agreed (following successful negotiations), provide the name of the successful supplier and the agreed price of the contract.

Where an Expression of Interest process is the first stage of a multi-stage process, officials should endeavour to advise potential suppliers who are no longer in contention of the decision immediately, so that those suppliers can stand down their bid teams.

Where an Expression of Interest process has been conducted, the debriefing should always be in writing. Where a tender process has been conducted, the debriefing can be provided orally unless a bidder requests a written debrief.

8.4 Dealing with Complaints

Complaints may be received from participants in a procurement process. Should this occur, officials should manage the complaints process in a positive way. Direct and honest communication with the aggrieved party is often the best way to manage the complaint. Effectively managed conciliation will often mean that disputes and complaints can be resolved and litigation avoided.

Request Documentation should advise potential suppliers of the procedures to be followed if they wish to lodge a complaint. Where a complaint is made verbally (via phone or face to face) the project officer or an appropriate senior officer may be able to satisfactorily address the issues and deal with it in this manner.

details of the complaint and response provided. However, if any complaint is lodged in written form, it should be answered in writing.

The complaint handling procedure needs to be fair, equitable and non-discriminatory. Both officials and the external parties need to well understand the procedures to be followed.

8.4.1 Complaint Handling Procedures – Escalation

The step by step processes for handling complaints should be as follows:

- (a) initial complaints should be, in the first instance, lodged with the nominated Tender Officer (or contact point) for the tender process (where a major tender operation necessitates, this can be structured as a Complaints Hotline);
- (b) where the issue cannot be resolved by the Project Officer either by way of initial discussions or replying to the issues in writing, he/she should brief their Branch Manager (or Division/General Manager);
- (c) the external party should always be provided with sufficient time to provide full details or to respond to developments (10 calendar days plus, depending on the complexity);
- (d) the external party should understand that a similar time period may be required by the Department to respond to developments (10 days plus);
- (e) set up a specific time and location for meetings;
- (f) always have two officials in attendance at any formal meeting, including one at the management level;
- (g) seek agreement on the points of contention before proceeding to discussions and/or negotiations;
- (h) invite other officials who have not been involved in the procurement process but who have a good understanding of the issues, as appropriate;
- (i) where agreement needs to be sought from a more senior officer, indicate this clearly to the aggrieved party; and
- (j) ensure that all conversations are minuted.

The primary external complaint mechanism is the civil legal system, which is used to settle disputes through a formal judicial process. It should also be noted that the Commonwealth Ombudsman also has limited powers to investigate procurement complaints. The Ombudsman seeks to resolve disputes by negotiation and persuasion, and if necessary, by making formal recommendations to the most senior levels of Government. However, the Ombudsman cannot override decisions which are made by an agency.

Where a matter is in dispute and it is referred to an external body for review, access to the relevant documentation becomes an important issue. Officials should first establish (through Legal Services Branch or an external law firm, if appropriate) if there are any legal reasons preventing the provision of such information and if there are no impediments, they should promptly provide all relevant Documentation to that external body.

Officials should never allow the initiation of a complaint process to prejudice the supplier's participation in future procurement processes.

8.5 Storing of Records

When a procurement process is finalised, ensure that all Documentation are filed on the appropriate procurement file, so that there is a full record of proceedings and of the basis for all decisions made. Appropriate security classifications need to be followed when managing the storage of procurement information. (Refer to Operational Guidelines 5.9 *Records Management*).

9. Executing Contracts

Once approval has been given, a contractual agreement may then be entered into, establishing a formal liability for the Department and a binding obligation on the supplier to deliver the required goods or services within the set timeframes. The finalisation of a contract represents the acceptance of the best offer.

Refer to Operational Guidelines 4.4 *Entering into and Managing Contracts. Agreements and Arrangements*, for guidance on the practices to be followed when entering into contracts and the ongoing management of the contract.

10. Reporting Requirements

10.1 Reporting publicly available business opportunities

Business Groups are required to lodge information on each publicly available business opportunity on the electronic AusTender website (<http://www.tenders.gov.au>). There is no financial threshold set for such notifications and the notification on the AusTender site is sufficient for fulfilling the legal requirements. However, Business Groups can elect to also advertise their business opportunities in the print media.

Public approaches to the market include all of the following:

- (a) expressions of interest;
- (b) invitations to bid;
- (c) offer proposals;
- (d) requests for information;
- (e) requests for tender; and
- (f) disposals of assets via the market place.

The details which need to be reported on AusTender are as follows:

- (a) the name of the Department;
- (b) the reference number allocated by the Department;
- (c) an adequate description of the goods or services;
- (d) closing date and time of the invitation;
- (e) name, telephone number and email address of the contact officers for supply of documents and responses to enquiries; and
- (f) the United Nations Standard Products and Services Code for the goods/services.

Where a Business Group elects to use AusTender as the mechanism for distributing Request Documentation in a tender process, AusTender is to be the sole mechanism for that purpose. Subsequent clarifications to potential suppliers (referred to as *Addenda*) are to be posted onto the same AusTender website.

serves as the AusTender Administrator. Business Groups are to take responsibility for the approving and publication of their own business opportunities. Prior to any officer of a Business Group being set up as a user of the AusTender system, Branch Manager approval is required and training is to be undertaken. For details, contact the AusTender Administrator.

10.2 Publishing of contracts, agreements and standing offers

Details of all contracts, agency agreements and standing offers with a value of \$10,000 or more (unless exempt) are to be reported in AusTender within 6 weeks of the date of entering into the contract/agreement.

The Department sources the information for this reporting by drawing on Purchase Order information in QSP. The reporting is to include service contracts, maintenance agreements and standing offers. Where a standing offer exists, the Business Group Finance Manager is required to make an estimate of the expected annual level of purchases under the contract and raise a Purchase Order for this amount, at the beginning of each financial year.

Details of contract amendments involving additional funding will also need to be published. The additional amount that has been approved is to be reported.

10.2.1 Exemptions from publishing

There are a number of classes of transactions that are exempt from these general provisions:

- payments under an existing, previously reported contract;
- transfers of funds to other Australian Government agencies;
- grants to outside bodies or state governments;
- tax payments, including fringe benefits tax;
- salaries of Australian Government public servants;
- payments of travelling and other allowances to public servants;
- refunds to customers for a prior payment made for a product or service; and
- supplies procured and used overseas.

10.2.2 Timing

Gazettal of contracts, agency agreements and standing offers is completed through the AusTender (<http://www.contracts.gov.au>). Reporting may be by single entry or as a bulk upload. The reporting must be done **within 6 weeks** of the date of entering into the agreement.

10.2.3 Directions to not publish

The Secretary has the authority to direct that details of a contract or standing offer not be published in the Gazette, where they would be exempt from scrutiny under the *Freedom of Information Act 1982*. Any such directions must be in writing and must make reference to the grounds for exemption under the FOI Act. Documentation of reasons for valid non-gazettal is to occur in all cases.

10.3 Other Public Reporting

10.3.1 Reporting Consultancy Contracts

The Annual Report is to contain a summary of the Department's policy on the selection and engagement of consultants, its selection procedures, and the main categories of purpose for which consultants were engaged during the reporting period. Details of Annual Reporting requirements are found in the Prime Minister and Cabinet publication *Requirements for Departmental Annual Reports*.

The total number of consultants under engagement during the reporting period, and the total amount paid to consultants during the year is also to be shown. Sub-totals of number and amounts are also to be shown in relation to particular programs or broad categories of purpose.

Each consultancy valued at \$10,000 (GST inclusive) or more is to be listed in the report, except where the large number of consultancies would render this impractical. Each entry should:

- (a) indicate the name of the consultant;
- (b) describe the project;
- (c) cost of the project; and
- (d) detail concisely the justification for engaging the consultant.

Irrespective of the detail shown for each consultancy, the report is to indicate that a complete listing of consultancies (including those valued at less than \$10,000) is available from the Department, on request. Listings of consultancies either in the Report or provided separately are to identify by footnote those which were publicly advertised prior to engagement.

10.3.2 Listing of Agency Contracts

A listing of all contracts, for each agency administered by the Portfolio Minister, is placed on the Internet, with access to the list through the Department's home page, under the provisions of the Senate Order 192.

Each contract, with a value of \$100,000 or more which has not been fully performed or which has been entered into in the previous 12 months, is to be listed. The listing must provide the following details:

- (a) the name of the contractor, the amount of the consideration and the subject matter of each such contract;
- (b) the amount of consideration of the contract;
- (c) whether each such contract contains provisions requiring the parties to maintain confidentiality of any of its provisions, or whether there are any other requirements of confidentiality;
- (d) a statement of the reasons for the confidentiality;
- (e) provide an estimate of the cost of complying with the Senate Order and a declaration of the method used to make the estimate.

Where the list does not fully comply with the requirements set out above, the Minister is required to table in the Senate the extent and reasons for non-compliance and indicate when full compliance is expected to be achieved.

Contracts not listed on agency websites are to be open to access by the Auditor-General, in his role of auditing this policy requirement.

1999

The Department is required to report to the *Equal Opportunity for Women in the Workplace Agency* when a competitive bid from suppliers has been rejected because the bid was not compliant with the requirements of this Act.

Outsourced service providers are also required to ensure that they comply with the Government's equal opportunity requirements.

10.3.4 Major Public Works

The Department is required to refer public works costing in excess of \$6 million to the *Parliamentary Standing Committee on Public Works*.

For public works with an estimated value of between \$2 - \$6 million, the Department is obliged to notify the Committee of proposals.

11. Ethics

Ethical behaviour in procurement is especially important because it involves the expenditure of public moneys. All staff involved with procurement activities are required to:

- (a) meet the obligations for APS employees, as set out in the *Public Service Act 1999*, giving particular attention to the requirements of *Section 10: APS Values* ;
- (b) have regard to the *Guidelines on Official Conduct of Commonwealth Public Servants*; and
- (c) adhere to the information privacy principles set out in the *Privacy Act 1988*.

In all procurement dealings, officials are required to:

- (a) deal with suppliers fairly, honestly and even-handedly;
- (b) be scrupulous in their use of public property and funds;
- (c) recognise and deal with conflicts of interest;
- (d) safeguard commercial-in-confidence information.
[so that other parties cannot gain access to it, deliberately or inadvertently];
- (e) avoid using one's position to benefit oneself or others;
- (f) not reveal details of commercial arrangements, including the details of contract pricing *[as disclosure may compromise the commercial position of that supplier];*
- (g) maintain records of meetings and other dealings with suppliers; and
- (h) avoid compromising the Australian Government's standing, through the acceptance of gifts or hospitality.

Records to be kept

Records to be maintained may include the following, depending on the value and complexity of the actual procurement:

- (a) all approvals of proposals to spend public money;
- (b) all other procurement decisions and approvals, and the reasons for them;
- (c) documentation relating to all phases of the procurement process;
- (d) copies of purchase orders;
- (e) warranties;
- (f) register of indemnities, guarantees and letters of comfort;
- (g) register of consultants; and
- (h) originals of all contracts, agreements and standing offers.

Internal Controls

Internal control considerations which are fundamental to the management of procurement include:

- (a) appropriate financial delegations for approving spending proposals;
- (b) adequate segregation of duties;
- (c) application of sound risk management practices;
- (d) probity of the tender process and sound contract management;
- (e) disclosure of any current or prospective personal interest/conflict of interest;
- (f) defined and agreed procurement outcomes;
- (g) confidentiality and privacy of personal and commercial information;
- (h) use of appropriately worded contracts; and
- (i) regular evaluation and monitoring of performance.

Penalties

Public Service Act 1999

Where an Australian Public Service official breaches Section 13 (10), he/she may be subject to disciplinary action, for taking advantage of their position.

Where an Australian Public Service official breaches any provision under Section 15, the APS Code of Conduct, he/she may be subject to disciplinary action.

Criminal Code Act 1995

s. 132.8 Dishonest taking or retention of property

Penalty: Imprisonment 2 years

s. 134.1 Obtaining property by deception

Penalty: Imprisonment 10 years

s. 134.2 Obtaining financial benefit by deception

Penalty: Imprisonment 10 years

s. 135.1 General Dishonesty

Dishonesty with the intention of dishonestly obtaining gain, causing loss or influencing a Commonwealth public official

Penalty: Imprisonment 5 years

s.135.2 Obtaining financial advantage

Obtaining a financial advantage for oneself or for another from a Commonwealth entity, knowing that the person is not eligible to receive that advantage

Penalty: Imprisonment 12 months

s.135.4 Conspiracy to defraud the Commonwealth

Conspiracy to defraud with the intention to obtain a gain, cause loss or influence a Commonwealth public official

Penalty: Imprisonment 10 years

Financial Management and Accountability Act 1997

s. 14 Misapplication, improper use or disposal of money

Must not misapply, improperly dispose of or improperly use public money.

s. 41 Misapplication, improper use or disposal of property

Must not misapply, improperly dispose of or improperly use public property

Maximum penalty: 7 years imprisonment

s. 61 Accounts, statements and records

Must not falsify an account or record

Maximum penalty: 7 years imprisonment

References

FMA Act: Section(s): 44

FMA Regulations: Regulations: 3, 7-10, 12-14

Other References:

- CEI No 1.0 *Delegations and Authorisations*
- Operational Guideline 5.5 *Receiving Gifts and Gifting Public Property*
- *A New Tax System (Goods and Services Tax) Act 1997*
- *Criminal Code Act 1995*
- *Electronic Transactions Act 1999*
- *Freedom of Information Act 1982*
- *Occupational Health and Safety (Commonwealth Employees) Act 1991*
- *Public Service Act 1999*
- *Public Works Committee Act 1969*
- *Superannuation Guarantee (Administration) Act 1992*
- APS Values and Code of Conduct in Practice, A Guide to Official Conduct for APS Employees and Agency Heads, Australian Public Service Commission, 2005
- Commonwealth Procurement Guidelines, *January 1995*
- Guidance on the Mandatory Procurement Procedures, *January 2005*
- Framework for National Cooperation on Electronic Commerce in Government Procurement
- Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters, Prime Minister and Cabinet 1989
- Requirements for Departmental Annual Reports, Prime Minister and Cabinet 2000
- Guidelines on Confidentiality of Contractors' Commercial Information, *February 2003*
- Guidelines on the Listing of Contract Details on the Internet (Meeting the Senate Order on Departmental and Agency Contracts), *January 2004*
- Guidance on Identifying Consultancies for Annual Reporting Purposes, *July 2004*



Self Assessment Probity Review

Procurement below \$250,000

Retain on file: \$10,000-\$250,000

Business Group:	Title and Reference No.:
Branch:	Estimated Value: (inclusive of GST)

Checklist Questions	Answers
Has a risk assessment undertaken? If so, attach and indicate level of risk.	Probity Risk: High/Medium/Low Procurement Risk: High/Medium/Low
Does the procurement comply with all the requirements of Division 1: Commonwealth Procurement Guidelines? If not, document how and why? <i>(Officials must have regard to the CPGs, as required by FMA Regulation 8(1). Where the procurement process is inconsistent with the CPGs, the officer is required to document his/her reasons for doing so.)</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Does the procurement methodology comply with the General Procurement Requirements of Finance? <i>(The procurement methodology must comply with Section 2 of Operational Guidelines 4.3 Procurement, including: (a) appropriate procurement methodology chosen from the options available; and (b) appropriately documented.)</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>
Where the procurement involves an approach to the market, has Attachment B been completed?	Yes <input type="checkbox"/> No <input type="checkbox"/>

Prepared by:

Name: _____

Title: _____

Date: ___/___/___



Attachment B

**Self Assessment Probity Review – Approach to the Market
Request for Tender or Request for Expressions of Interest**

Retain on file: Below \$250,000
Submit to Internal Audit: \$250,000 and over

Business Group:	Title and Reference No.:
Branch:	Estimated Value: (inclusive of GST)

Checklist Questions	Answers <i>(enter specific cross reference in next column)</i>	RFT/ REOI page ref
<p>Has a Probity and Procurement Risk Assessment been completed? <i>(Document and attach)</i> <i>(For pro-forma risk assessment refer web-site)</i></p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/> Probity Risk: High/Medium/Low Procurement Risk: High/Medium/Low</p>	
<p>Does the procurement comply with the Commonwealth Procurement Guidelines? <i>The CPGs policy framework applies to all procurements. Division 2 – Mandatory Procurement Procedures must be followed for all covered procurements.</i> If not, document how and why? <i>Where an official undertakes procurement that is inconsistent with the CPGs, the reasons for doing so must be documented.</i></p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>	
<p>Does the procurement methodology comply with the General Procurement Requirements of Finance? <i>The tender methodology must comply with Section 2 of Operational Guidelines 4.3 Procurement:</i> <i>(a) appropriate procurement methodology chosen from the options available; and</i> <i>(b) appropriately documented.</i></p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>	
<p>Is the procurement being undertaken through: (a) an Open Tender process; or (b) a Select Tender process; or (c) Direct Sourcing. <i>Attach the justification for any limiting of the market.</i></p>	<p><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/></p>	
<p>For select tenders is the numbers of suppliers invited 'the largest number consistent with an efficient procurement process'?</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>	

Checklist Questions	Answers <i>(enter specific cross reference in next column)</i>	REOI <i>page</i> <i>ref</i>
<p>For direct sourcing, do the conditions meet one of the provisions of the CPGs 8.65? <i>Attach Executive Minute, approved by Delegate, which documents:</i> (a) <i>the reasons for adopting direct sourcing; and</i> (b) <i>the steps taken to ensure that the procurement process is adequate and defensible.</i></p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>	
<p>Does the Request Documentation for an open or select tender, include all the information required under the CPGs? (a) a description of the procurement, (incl. procurement specifications) (b) conditions for participation (if any) (c) the evaluation criteria (and information required for each criterion) (d) a summary of the evaluation methodology (e) minimum content and format requirements (f) the scope of information to be provided by the tenderer (g) the name of the tender official and contact point for clarifications (h) details on the tender lodgement requirements (i) other process rules, including handling of clarifications and amendments; and (j) the proposed draft contract or Deed of Standing Offer.</p>	<p>(a) Yes <input type="checkbox"/> No <input type="checkbox"/> (b) Yes <input type="checkbox"/> No <input type="checkbox"/> (c) Yes <input type="checkbox"/> No <input type="checkbox"/> (d) Yes <input type="checkbox"/> No <input type="checkbox"/> (e) Yes <input type="checkbox"/> No <input type="checkbox"/> (f) Yes <input type="checkbox"/> No <input type="checkbox"/> (g) Yes <input type="checkbox"/> No <input type="checkbox"/> (h) Yes <input type="checkbox"/> No <input type="checkbox"/> (i) Yes <input type="checkbox"/> No <input type="checkbox"/> (j) Yes <input type="checkbox"/> No <input type="checkbox"/></p>	
<p>Does the Request Documentation include Conditions for Participation? <i>Check that they stipulate minimum standards or essential characteristics to be met by suppliers.</i> Does the Request Documentation state that an initial screening process will be undertaken? <i>Should state that compliance with the "conditions of participation" will be checked and that any non-conforming tenders will not be evaluated any further.</i></p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/></p>	
<p>Does the RFT notify tenders of requirements under other legislation?</p> <ul style="list-style-type: none"> • <i>Freedom of Information Act 1982;</i> • <i>Privacy Act 1988;</i> • <i>Equal Opportunity for Women in the Workplace Act 1999;</i> • <i>other relevant Acts</i> 	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>	
<p>Does the Request Documentation state that departmental officials cannot accept any responsibility for the lodgement of submissions? <i>The onus is on each tenderer to lodge their own submission. Email and facsimile transmissions are not acceptable forms of lodgement.</i></p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>	

Checklist Questions	Answers <i>(enter specific cross reference in next column)</i>	REOI <i>page</i> <i>ref</i>
Does the Request Documentation clearly indicate that late submissions received from tenderers cannot be accepted?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Does the Request Documentation include a section outlining Finance's Rights in the Tender Process?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Are they expressed in a manner consistent with the Mandatory Procurement Procedures of the CPGs?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Is competitive neutrality considered to be an issue?	Yes <input type="checkbox"/> No <input type="checkbox"/>	

Prepared by:

Name:

Title:

Date:

Internal Audit probity clearance received:

Reference: _____

Date: _____



Attachment C

Self Assessment Probity Review – Tender Evaluation Plan

Retain on file: Below \$500,000
Submit to Internal Audit: \$500,000 and over

Business Group:	Title and Reference No.:
Branch:	Estimated Value: (inclusive of GST)

Checklist Questions	Answers <i>(enter specific cross reference in next column)</i>	TEP <i>page</i> <i>ref</i>
Has the TEP been finalised before the market has been approached? <i>If not, provide explanation</i>	Yes <input type="checkbox"/> No <input type="checkbox"/>	
If select tender – does the TEP list the entities invited and justify the number?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Are details of the evaluation methodology and scoring system included in the TEP?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Is there explicit guidance included for the Tender Evaluation Team (TET) on the processes to be followed?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Does the TEP include guidance on the process for completion of the overall Value for Money Assessment?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Are “Conditions for Participation” listed in the TEP?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
If yes, does the wording within the TEP match the Request Documents exactly?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Does the wording of the evaluation criteria in Request Documents and TEP match?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Does the TEP detail the roles of the TET? (a) Are details of TET members provided? (b) Are the required skills/experience present in the TET members? (c) Is there adequate technical assistance? (d) Is the nominated Approving Delegate listed? (e) Is the evaluation timetable included?	(a) Yes <input type="checkbox"/> No <input type="checkbox"/> (b) Yes <input type="checkbox"/> No <input type="checkbox"/> (c) Yes <input type="checkbox"/> No <input type="checkbox"/> (d) Yes <input type="checkbox"/> No <input type="checkbox"/> (e) Yes <input type="checkbox"/> No <input type="checkbox"/>	

	<i>(enter specific cross reference in next column)</i>	<i>page ref</i>
Are TET members required to declare conflicts of interest?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Does the TEP detail protocols for handling tenders: (a) rules for opening of tenders (b) rules for tender registration (c) rules for security and storage	(a) Yes <input type="checkbox"/> No <input type="checkbox"/> (b) Yes <input type="checkbox"/> No <input type="checkbox"/> (c) Yes <input type="checkbox"/> No <input type="checkbox"/>	
Does the TEP include details of treatment of late submissions and clearly outline that they cannot be admitted to the evaluation process?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Does the TEP detail how to respond to enquiries from tender respondents, including strategy for recording any correspondence?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Does the TEP detail how conflicts of interest will be managed before and during the evaluation process?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Has the TEP been approved by the delegate and signed in agreement by all by members of the TET?	Yes <input type="checkbox"/> No <input type="checkbox"/>	

Prepared by:

Name:

Title:

Date:

Internal Audit probity clearance received:

Reference: _____

Date: _____



Attachment D

Self Assessment Probity Review – Tender Evaluation Report

Retain on file: Below \$500,000
Submit to Internal Audit: \$500,000 and over

Business Group:	Title and Reference No.:	
Branch:	Estimated Value: (inclusive of GST)	
Checklist Questions	Answers <i>(enter specific cross reference in next column)</i>	TER page ref
Has the nature of the property and/or services required been altered?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Does the TER contain the following background: (a) reason for the procurement; (b) the timetable; (c) the evaluation criteria; and (d) the evaluation methodology.	(a) Yes <input type="checkbox"/> No <input type="checkbox"/> (b) Yes <input type="checkbox"/> No <input type="checkbox"/> (c) Yes <input type="checkbox"/> No <input type="checkbox"/> (d) Yes <input type="checkbox"/> No <input type="checkbox"/>	
Have the Conflict of Interest Declarations by panel members been completed?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Does the TER include details of opening, receipting and secure storage of tender responses?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Has an initial screening of tender submissions taken place – including the following: (a) Does each submission meet all Conditions of Participation? (b) Does each submission conform to the required format and content rules? (c) Has each Tenderer provided responses to all specified sections? (d) Was each tender lodged within the specified time? (e) Have all non-conforming Tenders been identified and removed from the next stage of the Evaluation?	(a) Yes <input type="checkbox"/> No <input type="checkbox"/> (b) Yes <input type="checkbox"/> No <input type="checkbox"/> (c) Yes <input type="checkbox"/> No <input type="checkbox"/> (d) Yes <input type="checkbox"/> No <input type="checkbox"/> (e) Yes <input type="checkbox"/> No <input type="checkbox"/>	
Has the TER documented the evaluation process followed, including: (a) a summary of the evaluation process (b) a summary of each evaluation received (c) a summary of assessment of each tender (d) the reasons for eliminating any tender (e) the recommendations concerning the preferred tenderer	(a) Yes <input type="checkbox"/> No <input type="checkbox"/> (b) Yes <input type="checkbox"/> No <input type="checkbox"/> (c) Yes <input type="checkbox"/> No <input type="checkbox"/> (d) Yes <input type="checkbox"/> No <input type="checkbox"/> (e) Yes <input type="checkbox"/> No <input type="checkbox"/>	

fully documented?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Was the evaluation performed consistent with the Tender Evaluation Plan? <i>(The TER must detail the observations of the Tender Evaluation Team with respect to the published evaluation criteria).</i> Are the observations by the Tender Evaluation Team consistent with stated scoring system?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Does the TER detail issues which need resolution during subsequent negotiations?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Have the Conflict of Interest Declarations from tenderers been assessed? <i>(if appropriate).</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Has the evaluation panel conducted referee checks of all short list tenderers?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Have financial viability and past and impending litigation checks be conducted? <i>(where appropriate)</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Was the evaluation process timely?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Has the evaluation report been signed by all TET members? <i>Where the decision is not unanimous, the dissenting member/s are to submit a separate evaluation report detailing the reason for disagreement with the TET's recommendation.</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	

Prepared by:

Name:

Title:

Date:

Internal Audit probity clearance received:

Reference: _____

Date: _____



Request to Engage Contractor for Personnel Services

Business Group: _____ **Branch:** _____

Proposed Contract Details:	
Organisation:	_____
Nominated Personnel:	_____
Proposed period of engagement:	_____
Specified services:	_____ _____
Budget impact:	\$ _____

Background and description of requirement:

Justification for requiring contractor services:

Nominated supervisor for the assignment: _____

Endorsed by:

Approved by:

Signature: _____ Date: _____

Signature: _____ Date: _____

Branch Manager

General Manager/Division Manager

Specific Background Issues

Procurement competency training

The level of competency required by staff will depend on the value, risk and type of purchasing each officer may undertake. It is best practice for all staff involved in the procurement function to be assessed as competent or be in the process of achieving competence through the Public Services Training Package.

Information on 'Procurement and Contract Management' competency units can be found at the Public Service Education and Training Australia (PSETA) website (www.pseta.gov.au) and at the National Training Information Service website (www.ntis.gov.au). Business Groups are to support the assessment of staff against these competency standards, for the particular requirements.

Endorsed Suppliers Arrangement

The Endorsed Suppliers Arrangement (ESA) (<http://www.finance.gov.au/online/esa>) is a system of pre-qualification for suppliers in the following sectors, to supply into the government marketplace:

- Information technology;
- Major office machines;
- Commercial office furniture; and
- Auctioneering services.

Use of Endorsed Suppliers is mandatory when purchasing information technology or major office machines products and services. Departmental officials must ensure that outsourced service providers abide by ESA requirements when engaging sub-contractors. Procurement Branch administers this scheme, on behalf of the Australian Government.

Endorsed Suppliers are required to meet financial viability and industry standards. All Endorsed Suppliers have made a real commitment to industry development.

Although it is not mandatory for the Department to source all general supplies, commercial office furniture and auctioneering services only from Endorsed Suppliers, this approach is highly recommended, as it considerably lowers the level of procurement risk.

Business Groups can use the ESA web-based system to source supplies on-line. Searches can be conducted by selecting supplier name, product or service type, by State or by any combination of these. Officials can also hot-link to suppliers homepages from the ESA on-line search system. For further information contact the: **Endorsed Supplier Helpline** on 6215 2063.

Endorsement under the ESA scheme is granted in perpetuity. However, one condition of endorsement is that each supplier needs to re-sign the ESA Head Agreement at the beginning of each three year period. The current Head Agreement will run to 30 September 2004. Where a company is found to have breached the rules of endorsement, they can be suspended for six months. If offences recur, endorsement may be revoked.

Mandatory SME participation with Information and Communications Technology Projects.

The mandatory requirements for SME participation for those projects that are Information and Communications Technology related, cut in for contracts with an expected value of \$20 million or more.

- for hardware related contracts: minimum SME participation rate is 10% of contract value; and
- for services contracts (systems integration, software development/support, services provisions, consultancies) the minimum SME rate is 10% of contract value.

Where a project contains elements falling under both of the above categories, then the minimum SME requirement should be a weighted average of these minimum levels, based on each category's share of the total contract value.

Commonwealth Government Information Technology and Communications Framework (GITC4)

The *Commonwealth Government Information Technology and Communications Framework (GITC4)* is a web-based electronic framework, providing a standard set of terms and conditions to allow government buyers and private sector suppliers to tailor a contract electronically and to define specific purchasing needs. The terms and conditions have been agreed between government and industry, for use when purchasing information technology (IT) and major office machines (MOM). All Endorsed Suppliers within the IT and MOM industries are signatories to the GITC4 Head Agreement.

The Head Agreement provides a sound legal framework and covers the centralised performance guarantees and insurance arrangements. This means that suppliers do not have to put in place multiple arrangements. It also signals that those companies are willing to use the GITC4 Terms and Conditions when entering into contracts.

Officials can obtain detailed guidance on how to construct a contract with an Endorsed Supplier, by accessing the [GITC4 homepage \(http://www.gitc.finance.gov.au\)](http://www.gitc.finance.gov.au). Select the 'How to use' page.

Electronic commerce

The Australian Government remains committed to building up the usage of electronic commerce, both as a strategic tool for national development and as an efficient way for linking the various tiers of government. The Department has set targets for the key objectives of the Government's Online Strategy with paying all suppliers electronically and conducting simple procurement online. Strategic partners should be encouraged to implement on-line strategies.

The Government Framework for National Cooperation on Electronic Procurement promotes a consistent approach, under all jurisdictions, in the following areas:

- Confidentiality, Security, and Authentication;
- Tender Management Systems;
- Supplier Awareness and Education; and
- Accessing Supplier Information on the Internet, covering:
 - Business Registration;
 - Catalogues; and
 - Identification Systems.

for electronic purchasing and payment by Commonwealth agencies. The aim is to achieve widespread usage of electronic data interchange facilities, for the payment of accounts. Any electronic commerce system developed by the Department must be consistent with the Government's Online Strategy.

International Agreements

Australia New Zealand Closer Economics Trade Agreement

The *Australia New Zealand Closer Economics Trade Agreement of 1983* established closer economic relations and eliminated barriers to trade between the two countries. Australian Government officials are required to treat in New Zealand content in offers as equivalent to Australian content. Business Groups should ensure that the opportunity exists for Australian and New Zealand suppliers to compete on an equal and transparent basis for government contracts.

The Commonwealths of Australia and New Zealand entered into the updated *Australia New Zealand Government Procurement Agreement in 1997*. This Agreement covers procurement of all goods and services with the aim of creating a single Australian and New Zealand government procurement market, to maximize opportunities for competitive businesses from both jurisdictions and to remove any procurement practices that would discriminate against suppliers from either country.

Singapore Australia Free Trade Agreement

The *Singapore Australia Free Trade Agreement* came into operation on 28 July 2003. This bilateral treaty through its Government Procurement chapter achieves general consistency with current Australian Government procurement policy and practice and it has several specific features. The Department is now legally obliged to not discriminate against Singaporean companies when undertaking procurement. Where the Department is required by law to divulge confidential information, Article 8.2 requires that reasonable notice be provided, in writing, to the party who has provided the information before any confidential information is disclosed.

Australian-United States of America Free Trade Agreement

The *Australian-United States of America Free Trade Agreement (AUSFTA)* came into effect on 1 January 2005. This Free Trade Agreement impacts on a number of facets of Commonwealth procurement, where the procurement process is a *covered procurement*, that is, has a value \$80,000 or above and is not an exempt item, as per the listing in Attachment G. Note that for construction projects, the covered procurement threshold is set at \$6 million.

Exempt Categories under Commonwealth Procurement Guidelines

The Mandatory Procurement Procedures will not apply to the following exempt categories:

- (a) leasing or purchase of real property or accommodation;
- (b) procurement of property or services from other Commonwealth, State, Territory or Local Government entities where no commercial market exists or where Government legislation or policy requires the use of a Government provider (e.g. tied legal services);
- (c) purchases funded by international grants, loans or other assistance where the provision of such assistance is subject to conditions inconsistent with the CPGs;
- (d) purchases funded by grants and sponsorship payments;
- (e) procurement for the direct purpose of providing foreign assistance;
- (f) procurement of research and development services, but not the procurement of inputs to research and development undertaken by the agency;
- (g) purchases of goods and services for resale or of property or services used in the production of goods for resale;
- (h) the engagement of an expert or neutral person, including engaging counsel or barristers, for any current or anticipated litigation or dispute;
- (i) procurement of property or services (including construction) outside Australian territory, for consumption outside Australian territory;
- (j) acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for Government debt;
- (k) procurement of motor vehicles;
- (l) procurement, by the PSS Board or the CSS Board, of investment management, investment advisory, or master custody and safekeeping services for the purposes of managing and investing the assets of the PSS and CSS funds;
- (m) procurement of blood plasma products or plasma fractionation services;
- (n) procurement of Government advertising services; and
- (o) procurement of property and services by, or on behalf of, the Defence Intelligence Organisation, the Defence Signals Directorate, or the Defence Imagery and Geospatial Organisation.

Note: Procurements within this exempt listing are still required to be undertaken in accordance with the principle of value for money and in accordance with Division 1: the Procurement Policy Framework of the CPGs and complying with the Division 3: Other Policies that interact with Procurement.