

DIMIA Procurement and Contracting Financial Instruction

1. This instruction provides guidance on the application of the framework, principles, procedures and approvals which apply to the procurement of goods and services by employees and contractors of the Department of Immigration and Multicultural and Indigenous Affairs. Officers performing duties in relation to the procurement of goods or services must comply with the Chief Executive Instructions (CEIs), the Commonwealth Procurement Guidelines (CPGs) and this instruction.
2. **Procurement** encompasses the whole process of acquiring property¹ or services. It begins when an agency identifies a need and decides on its procurement requirement. Procurement continues through the processes of risk assessment, seeking and evaluating alternative solutions, contract award, delivery of and payment for the property or services and, where relevant, the ongoing management of a contract and consideration of options related to the contract. Procurement also extends to the ultimate disposal of property at the end of its useful life.
3. Chief Executive Instruction (CEI) 22 provides direction for the procurement of goods and services, including:
 - 3.1 identifying which officials have the delegated authority to undertake or approve methods of procurement, approve spending proposals and enter contracts;
 - 3.2 reminding officials to comply with the CPGs, the CEIs and this instruction;
 - 3.3 directing officials to focus on achieving Value for Money;
 - 3.4 establishing the appropriate procurement method;
 - 3.5 ensuring that information required for reporting purposes is collected and published as required.
4. This instruction expands CEI 22 and provides operational guidance on procurement in the department.

This instruction is authorised by

5. The following table provides the authority for this instruction.

Authorised by:	AS Property and Corporate Support Branch
Area responsible:	Contracts & Procurement Advice Section, CGD
Date of issue:	07 September 2005

¹ The term *property* is used throughout this document to refer to every type of right, interest or thing which is legally capable of being owned. This includes, but is not restricted to, physical goods and real property as well as intangibles such as intellectual property, contract options and goodwill.

Source legislation and references

6. CEI 22 sets out the source legislation and relevant references. Delegates and officials are to note that Financial Management and Accountability (FMA) Regulation 9(1) requires that an approver of a proposal to spend public money must be satisfied that the proposed expenditure is in accordance with the policies of the Commonwealth², will make efficient and effective use of the money and, if the proposal is one to spend special public money³, is consistent with the terms under which the money is held.
7. In some cases, approval of spending proposals under FMA Regulation 9 may be required more than once.⁴ The practical effect of this regulation is to require compliance with the CPGs in order to meet Australia's obligations under the Australia-United States Free Trade Agreement.
8. Any departure from the CPGs must be recorded in accordance with FMA Regulation 8(2) which states that where officials act in a manner inconsistent with the CPGs, they must document their reasons for doing so.
9. The CPGs is a *Government policy document* and not "black letter law", though delegates should comply with the CPGs in accordance with the requirements of the *Public Service Act 1999* and Section 13 of the APS Code of Conduct.
10. The Chief Executive may determine procurement measures in certain circumstances that do not fully comply with the mandatory procurement processes set out under Division 2 of the CPGs (in accordance with paragraph 8.2). In all cases these measures are to comply with the CPGs to the greatest extent practicable.

DIMIA procurement of goods and services

11. The department's procurement processes provide goods and services to the department. They also secure the services of third parties for the delivery of outputs to the department's customers in an efficient, effective and ethical manner.
12. Effective procurement identifies the best value for money provider in order to transfer the risks of delivery onto the person(s) most qualified to accept those risks.
13. Goods and services obtained under grant arrangements are not subject to the CPGs. However delegates are to apply the value for money principles to grant processes in order to ensure the proper use of Commonwealth resources.

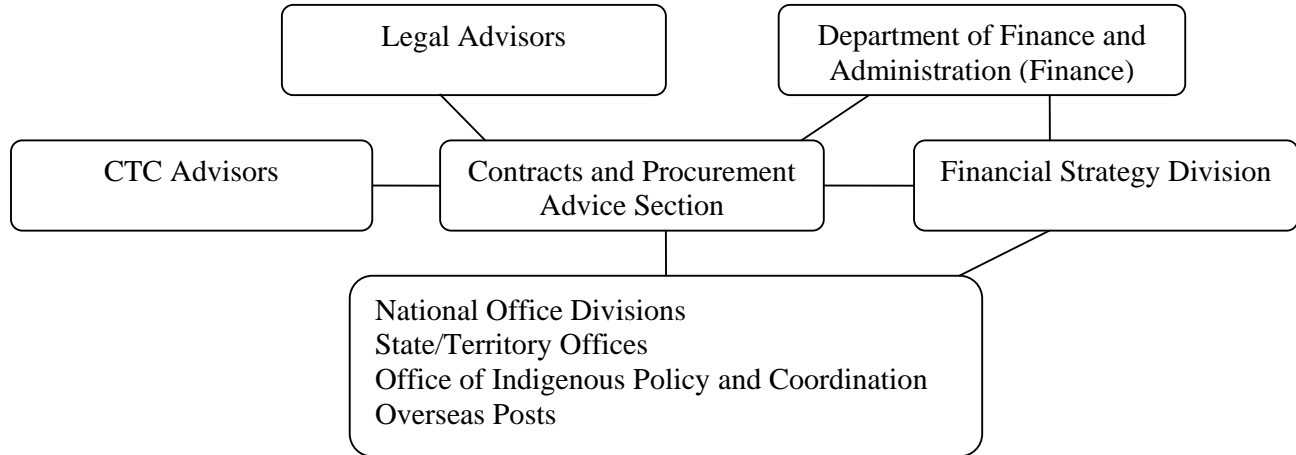
² As stated in paragraph 1.5 of the CPGs, obligations that must be complied with, in all circumstances, in accordance with FMA Regulation 9, are denoted by the use of the term 'must' in the CPGs.

³ Section 16 of the FMA Act defines *special public money* as public money that is not held on account of the Commonwealth or for the use or benefit of the Commonwealth. Money held by the Commonwealth on trust for another person is an example of special public money.

⁴ Further guidance on the application of FMA Regulation 9 can be found in Finance Circular 2004/10 *Using the FMA Regulation 10 Delegation*, available from www.finance.gov.au (under the *Government Finances* menu).

DIMIA Procurement Framework

14. The department's procurement framework is devolved to divisions and states and supported by Corporate Governance Division. A diagrammatic representation is below:



15. The responsibilities for each area are listed in the table below:

Area	Responsibilities
Contracts and Procurement Advice Section	<ul style="list-style-type: none"> • Policy • Reporting • Annual Procurement Plan • Tender and Contract Template Documents • Clear Procurement Plans – covered procurement • Endorse submissions for direct sourcing and exempt procurement • Advice • Advertising • Liaison with Competitive Tendering and Contracting (CTC) Advice Panel and Legal Advisors • Point of contact with Finance relating to contracting and procurement matters
National Office Divisions State/Territory Offices Office of Indigenous Policy and Coordination Overseas Posts	<ul style="list-style-type: none"> • Plan Procurement • Select Suppliers • Manage Contracts
Financial Strategy Division	<ul style="list-style-type: none"> • CEIs and delegations • Financial Management • Point of contact with Finance for all other issues.

Delegations

16. The department's Chief Executive has delegated approval of procurement in CEI 22.

17. The table below describes where in the procurement cycle these procurement delegations apply.

Stage of Procurement Process	Delegate Approval Required	Delegate
Identify Need	Procurement Plan <ul style="list-style-type: none"> Approval to spend public money Risk assessment Overview of evaluation plan 	F120 A-E ¹
Determine Suitable Process	<ul style="list-style-type: none"> Approve method of procurement 	F122 A-C ²
Conduct Procurement Process	Evaluation Plan Probity Plan (if applicable and may require the use of Competitive Tendering and Contracting (CTC) advisers). Approve advertisement for newspaper (if applicable) Recommendation (may include preferred tenderer) Letter to preferred tenderer Letter to unsuccessful tenderers and debrief if requested	F120 A-E F120 A-E F120 A-E F120 A-E F120 A-E F120 A-E
Manage Contract/ Relationship	Sign contract Approve standing/purchase order Sign variations Approve payment of invoices	F121 ³ F120 A-E F121 ³ F120 A-E ¹
Manage Termination/ Transition/Disposal	Disposal	F118 ⁴

Examples of delegates

- Deputy Secretaries or equivalent, CFO, First Assistant Secretaries, Assistant Secretaries
- A&B: Deputy Secretaries or equivalent, CFO, First Assistant Secretaries, Assistant Secretaries.
C: Deputy Secretaries or equivalent, CFO
- Deputy Secretaries or equivalent, CFO, First Assistant Secretaries, Assistant Secretaries
- Associate Secretary, CFO, First Assistant Secretaries, Director Financial Management & Reporting Section

Operational guidance

Value for Money

18. Value for money is the core principle underpinning Australian Government procurement. The delegate must make a comparative analysis of the relevant costs and benefits of each procurement proposal throughout the whole procurement cycle (whole-of-life costing).
19. Delegates must have sufficient comparative information before determining the best value for money procurement method. This is most defensible where the procurement process:
- encourages competition by ensuring non-discrimination in procurement and using competitive procurement processes;
 - promotes the use of resources in an efficient, effective and ethical manner; and
 - decisions are accountable and transparent.

At a minimum, delegates are to ensure that the procurement process is appropriately documented, accountable and fully transparent. This is enhanced by using the department's template documentation to support the procurement and contracting of goods and services.

20. The department's methods of procurement and associated documentation are outlined in the following table.

Purchase Value Indicators	Dollar Value	Action
Simple	Under \$2,000	<ul style="list-style-type: none"> • Oral quote • Credit card or purchase order
General	Under \$10,000	<ul style="list-style-type: none"> • Oral quote or written quote depending on risk; • Credit card or purchase order
	\$10,000 - \$80,000	<ul style="list-style-type: none"> • Request for Quote (RFQ): <ul style="list-style-type: none"> ○ Written quotes from selected suppliers (at least 6 <u>depending</u> on value of procurement and market conditions) using standard RFQ template • Apply the standard short form contract or long form contract; • Raise purchase order
Covered	Over \$80,000	<ul style="list-style-type: none"> • Full open RFT, unless applicable exemption applies • Apply standard long form contract or custom contract • Raise purchase order
Exempt		<ul style="list-style-type: none"> • Procurement covered by exemptions under Appendix B of the CPGs • Procurement that satisfies the conditions for Direct Sourcing under paragraphs 8.65

Responsibility for procurement methods

21. **General** procurement is the responsibility of the relevant Schedule F122A delegate. The delegate **must** be satisfied that the procurement plan, however simple in form, complies with the CPGs.
22. All **procurement** plans for covered procurement **must** be forwarded to the Contracts and Procurement Advice section for review, prior to submission to the Schedule F122B or F122C delegate.
23. All **procurement** plans and submissions for direct sourcing or exempt procurement **must** be forwarded to the Contracts and Procurement Advice section for endorsement, prior to submission to the Schedule F122C delegate.
24. **Procurement** plan templates and other documentation are available on the DIMIANet site at http://dimanet/corporate_services/contracts/checklists/1.0.htm or alternatively by emailing the Contracts & Procurement Advice Section.

Email: [Contracts & Procurement Advice Section](#)

Notification, distribution of request documentation and receipt of submissions

Advertising

25. All departmental open approaches to industry are to be advertised on AusTender although it is still possible to use other forms of advertisement. All advertising of request documentation is co-ordinated by CPAS.
26. All other press advertising is to be referred to the Government Communication Unit (GCU) within the Department of the Prime Minister and Cabinet and in accordance with the Guidelines for Australian Government Information Activities which can be accessed at www.gcu.gov.au

Notification

27. The department is required to issue all invitations to select tender electronically. This means that invitations should be supplied via AusTender, email, facsimile or transmitted through other electronic means. To the extent practical tender documentation should also be available electronically to all potential suppliers invited to tender, however, other forms of communication may also be used.

AusTender

28. AusTender allows for the electronic distribution of request documentation as well as the receipt of electronic submissions. Divisions, states and territories are to use these features of AusTender as a way of reducing tender costs.

29. The Tender box is available to receive other hard-copy tender material as required. Special consideration should be given to the use of the Tender box to receive hard-copy submissions where the capacity of industry to respond electronically is in doubt.

30. CPAS is the departmental AusTender administrator.

Disclosure

Annual Planning

31. The department is required to publish by June each year, a short strategic procurement outlook for the agency supported by details of any planned procurement. All forecast procurements are to be identified to CPAS for consideration and inclusion in the Annual Procurement Plan (APP).

32. CPAS is the departmental point of contact for industry queries relating to the APP. These queries will be forwarded to responsible divisions, states and territories.

Other Planning Requirements

33. All departmental tender and contracting documentation is required to include specific provisions which relate to public accountability, Australian National Audit Office access, confidentiality of contractors information and the disclosure of information under the *Freedom of Information Act 1982*.

34. The departmental tendering and contracting template documentation is maintained by CPAS and is available upon request or through DIMIANet. These templates are regularly updated making it essential to ensure that the latest version is used every time a new procurement processes is undertaken.

35. If specific business requirements make it necessary to use alternative documentation to the department's standard templates, such alternatives should be approved by CPAS in order to ensure that the documents are fully compliant.

Debriefing of unsuccessful tenderers

36. Where an agency rejects a tenderer's application to participate in a procurement process, the agency must promptly advise the tenderer, and provide a written explanation for that rejection on request.

37. Following the award of a contract, agencies must promptly inform all tenderers of the tender decision and, on request, provide an unsuccessful tenderer with the reasons why its submission was not successful.

Dealing with Complaints

38. In the event that a complaint about a procurement process is made to the department it will be referred to senior management and officials independent of the process as appropriate and with advice from CPAS. Complaints are to be dealt with promptly and in writing.

Process probity

39. A procurement conducted in an ethical manner will enable purchasers and potential suppliers to deal with each other on a basis of mutual trust and respect. Adopting an ethical, transparent approach enables business to be conducted fairly, reasonably and with integrity. Officers should refer to Finance Guidance on Ethics and Probity in Government Procurement.⁵

40. A specific aspect of ethical behaviour relevant to procurement is an overarching obligation to treat all participating potential suppliers as equitably as possible. For example, when providing further information to potential suppliers during the course of a procurement, agencies need to ensure that procedures are in place to treat all potential suppliers fairly. The procurement process rules need to be clear, open, well understood and applied equitably to all parties to the process.

41. Conflicts of interest are to be declared to delegates in accordance with the CEI 22 and Administrative Circular 1045 - DIMIA Code of Conduct.

Reporting

42. The Senate Order on Departmental and Agency Contracts requires FMA agencies to place a list of contracts with a consideration of \$100,000 or more, which have not been fully performed or which have been entered into during the previous 12 months, on the Internet with access through their home page⁶.

43. Agencies must publish details of agency agreements⁷ and Commonwealth contracts⁸, including Standing Offers for panel arrangements as defined in Division 2 of the CPGs, with an estimated contract value of \$10,000⁹ or more. Publication must be within six weeks of entering into the agreement in accordance with the requirements set out in the *Guidance on Procurement Publishing Obligations*.

44. Annual reporting is required on consultancy contracts valued at \$10,000 and above.

⁵ Available at <http://www.finance.gov.au/ctc/ethics%5F%5F%5Fprobity%5Fin%5Fgovernment.html>

⁶ The requirements for listing contract details on the Internet extends to grants, including funding agreements, that take the legal form of a contract rather than a conditional gift.

⁷ FMA Regulation 3 defines an agency agreement as an agreement for the procurement of goods and services under which an Agency is obliged, or may become obliged, to make a payment of public money to another Agency.

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

⁹ Relevant CAC Act bodies are required to report all contracts arising from covered procurements with an estimated liability of \$400,000 or more.

Approval of proposals to spend public money

45. A spending proposal may be approved by an official authorised under Financial Delegation Schedules F120A to E.
46. An approver **must not** approve a proposal to spend public money on the procurement of goods and services unless satisfied that the proposed expenditure:
- is in accordance with the policies of the Commonwealth (FMA Regulation 9(1)(a));
 - will make efficient, effective and ethical use of public money (FMA Regulation 9(1)(b));
 - is in accordance with FMA Regulation 10;
 - is in accordance with CEI 7 - Spending Public Money; and
 - is in accordance with CEI 22, other CEIs and this DIMIA Procurement and Contracting Financial Instruction.
47. Regulation 10 approval is necessary for any spending proposal which commits as yet unappropriated funding.¹⁰ In most cases this will be any proposal which goes outside the current financial year. The Regulation 10 delegate for DIMIA is the Chief Financial Officer.

Risks and indemnities, guarantees and arrangements

48. The transfer of risk requires a robust selection process; a sound contractual agreement that assigns roles, responsibilities and risks and effective contract management. Particular risks should be borne by the party best placed to manage them, that is, the Commonwealth should generally not accept risks which another party is better placed to manage. Agencies need to carefully monitor the terms and conditions, including pricing, on which risk allocations are determined, to ensure that they reflect value for money.
49. Indemnities, guarantees, warranties and letters of comfort given by the Commonwealth to contractors are forms of contingent liabilities. The full potential cost to the Commonwealth as a result of the liability must be considered, and if necessary authorised under FMA Regulation 10 before the spending approval can be authorised under the Financial Delegation Schedule F120 A-E.
50. All contracts containing contingent liabilities **must** be forwarded to the Contracts and Procurement Advice section for clearance, prior to submission to the Schedule F120A-E delegate.
Email: [Contracts & Procurement Advice Section](#)

¹⁰ Unappropriated funding is that which has not been authorised by existing law or a proposed law which is currently before Parliament. See Finance Circular 2004/10: *Using the Financial Management and Accountability Regulation 10 Delegation* available at www.finance.gov.au/finframework/docs/FC_2004-10.nf.

Entering into contracts for the procurement of goods and services

51. Only an official authorised under Financial Delegations Schedule F121 may enter into a contract, agreement (including an agency agreement) or arrangement under which public money is or may become payable. A contract includes a Purchase Order, similar document or electronic communication.
52. A contract, agreement or arrangement that includes an indemnity or similar clause **must** be approved in accordance with Financial Delegation Schedule F121.
53. An approver **must not** enter into a contract unless satisfied that:
- a proposal to spend public monies has been approved (FMA Regulation 13), and
 - the contract is in accordance with CEI 22 and this DIMIA Procurement and Contracting Financial Instruction.
54. A copy of the draft contract should be forwarded to the CPAS for clearance prior to signature.
55. A copy of the final signed contract and a completed appropriate Contract Information Form **must** be provided to the CPAS for inclusion in the department's Central Contract Register.

Overseas Procurement

56. For any Overseas procurement refer to Administrative Circular 1066 or contact the Contracts & Procurement Advice Section.

Training

57. Departmental personnel and delegates should undertake procurement training opportunities offered by the department including the Certificate IV in Government (Procurement and Contracting).

QUESTION TAKEN ON NOTICE

SUPPLEMENTARY BUDGET ESTIMATES HEARING: 1 November 2005

IMMIGRATION AND MULTICULTURAL AND INDIGENOUS AFFAIRS PORTFOLIO

(21) Output: Internal Product

Senator Murray asked:

Has the department/agency revised its procurement guidelines to incorporate the new Commonwealth Procurement Guidelines that took effect from 1 January 2005, particularly with respect to the confidentiality elements contained in those guidelines? If so, when did this occur and can a copy be provided? If not, what is the cause of the delay and when will the revision occur?

Answer:

DIMIA

The department revised its internal procurement guidance to ensure compliance with the new Commonwealth Procurement Guidelines in April 2005 and a more detailed procurement instruction was issued in September 2005. A copy of the procurement instruction is attached. Specific guidance on confidentiality of contractor information had been included in earlier guidance material and was not included in the procurement instruction.

RRT

The Tribunals' have an Intranet page providing general guidance on procurement. This includes a link to the Commonwealth Procurement Guidelines which came into effect on 1 January 2005. The standard contract used by the Tribunals was updated to take into account the new guidelines, and the revised contract was placed on the Intranet on 28 February 2005. A copy of the standard contract is attached.