

Procurement

Chief Executive's Instruction No. 4

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1. Overarching Principles

The core principle governing Commonwealth procurement is Value for Money and is enhanced by

- competitive procurement processes
- efficient, effective and ethical use of resources
- accountability and transparency.

Value for Money Considerations

Value for Money is a concept evaluated on a whole-of-life basis of the property or services being procured and is influenced by

- the procurement method adopted
- market maturity
- performance
- financial considerations
- the anticipated price that could be obtained at the point of disposal of an item.

Employees purchasing goods and services are to be satisfied that

the best possible outcome has been achieved for the Commonwealth, taking into account all relevant costs and benefits over the whole of the procurement cycle.

2. Key Policy Points

The following mandatory requirements apply

- all employees involved in procuring goods and services are to be aware of, understand and apply
 - the Financial Management and Accountability Act 1997 (FMA Act), particularly Section 44: Promoting efficient, effective and ethical use of Commonwealth Resources
 - FMA Act Regulations 7 – 13: Commitments to Spend Public Money
 - the [Commonwealth Procurement Guidelines](#)
 - the [Better Practice Guides](#) issued by the Australian National Audit Office
 - the Department's supporting procurement procedures
- employees procuring goods and services must apply the detailed mandatory requirements specified in the [Commonwealth Procurement Guidelines](#) and the Department's supporting procedures
- all proposals to spend public money are to be approved in accordance with FMA Act Regulation 9 by an approver who is a Departmental employee delegated that authority by the Chief Executive Officer
 - all employees involved in procurement are to have appropriate training and expertise
 - approvers are not to be the person undertaking the purchase, except where the Corporate Credit Card is being used
- [Corporate Contracts](#) are to be used when procuring supplies for outsourced activities
- the [Endorsed Supplier Arrangement](#) is to be used when purchasing information technology and major office machines
- employees are to ensure that the procurement process is conducted ethically to allow buyers and suppliers to deal with each other on a basis of mutual trust and respect

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and to enable business to be carried out fairly, reasonably and with integrity

- [Small and Medium Enterprises](#), are to be given appropriate opportunity to compete for Departmental business
- employees are to adhere to FMA Act Regulation 10 and the Finance Minister's directions under the FMA Delegations when dealing with forward commitments, including uncapped liabilities, indemnities and leases.

These mandatory requirements need to be read in context with the rest of this document.

3. Business Rules

3.1 Encouraging Competition

- All potential suppliers are to have the same opportunities to compete for Government business and, subject to the Commonwealth Procurement Guidelines, are to be treated equally based on their legal, commercial, technical and financial abilities
 - and not on their degree of foreign affiliation or ownership, location or size.
- The Government is committed to FMA agencies sourcing at least 10 per cent of their purchases by value from Small and Medium Enterprises
 - accordingly employees undertaking procurement should ensure that procurement methods do not discriminate against Small and Medium Enterprises, and they are given appropriate opportunities to compete for DAFF business.
- Employees are to undertake a competitive procurement process of a scale commensurate with the size and risk profile of the particular procurement
 - specific procurement procedures are to be followed for Major Purchases under section 3.8 of this instruction.

3.2 Efficient and Effective Use of Resources

- The procurement process selected is to be consistent with Government policy and appropriate to the procurement objective.
- Property or services are to be procured on the basis that they make the maximum possible contribution to the relevant outcome.
- An appropriate risk assessment is to be undertaken for the proposed purchase in line with procedures issued for Risk Assessment in Procurement Processes.
- Employees are to ensure that the procurement process is conducted ethically to allow buyers and suppliers to deal with each other on a basis of mutual trust and respect and to enable business to be carried out fairly, reasonably and with integrity.

3.3 Accountability and Transparency

- Procurement processes are to be conducted soundly and related actions are to be documented, defensible and substantiated in accordance with legislation and Government policy.
- Employees are to ensure appropriate confidentiality of supplier's tender documentation in accordance with DOFA's [Procurement Guidance on Confidentiality of Contractor's Commercial Information](#).
- An annual procurement plan is to be prepared and published on AusTender by 1 July each year.
- Employees are to ensure that the procurement process is accountable and transparent by meeting reporting requirements under section 3.16 of this instruction.
- All open approaches to the market are to be published on AusTender in accordance with the requirements set out in the [Guidance of Procurement Publishing Obligations](#)
 - open approaches to the market include request for tender, requests for expression of interest and request for inclusion on a multi-use list.
- Documentation is to be made available electronically to the extent practicable.
- Complaints on the procurement process are to be handled in a fair, equitable and non-discriminatory manner.
- Employees are to declare any conflict of interest and act in accordance with the [APS Code of Conduct](#) and [Public Service Regulations 1999](#)
- All cases of suspected fraudulent activity are to be reported to Corporate Governance (Business, Ethics, Security and Investigations) in accordance with [CEI 25 - Fraud Control](#).

3.4 Methods of Procurement

Employees are to use the following methods of procurement where relevant:

- [Corporate Contracts](#): these are listed on Mylink. Corporate Contracts are to be used for all relevant activities that have been outsourced by the Department.

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Instructions for using Corporate Contracts are available on Mylink and further information is available from the relevant contract managers listed

- [Endorsed Supplier Arrangement \(ESA\)](#): is included in the multi-use list on the DOFA website under Endorsed Suppliers. The ESA provides pre-qualification for businesses in the Information Technology, Major Office Machines, Commercial Office Furniture and Auctioneering industries to sell to the Commonwealth Government. It is mandatory to use the ESA for all purchases of Information Technology hardware and software (excluding computer consumables) and major office machines. For purchases where it is considered appropriate to have a contract drawn up, the Government Information, Technology and Communications (GITC) Framework contract is to be used and the GITC is to be consulted where necessary
- [Central Advertising System](#): this system is managed by the Government Communications Unit in the Department of the Prime Minister and Cabinet. Information on the placement of media advertising and public information activities is available under Public Relations on Mylink. Information on recruitment advertising is available under Tendering and Contracting/Corporate Contracts on Mylink
- **General purchases**: this relates to procurement that is not covered under any of the categories above. Information is available on Mylink for procuring goods or services classed as:
 - minor purchases (less than \$2,000 including GST)
 - medium purchases (from \$2,000 to under \$80,000 including GST)
 - major purchases (\$80,000 and over including GST).

Procurements are to be valued in accordance with the Commonwealth Procurement Guidelines.

3.5 Developing Procurement Proposals

- Employees are to adhere to the core principle of [Value for Money](#) in developing procurement proposals. Procurement is to be
 - efficient, effective and ethical

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- approved by an employee holding a delegation as an Approver under *FMA Act Regulation 9* and where appropriate, *FMA Regulation 10* delegate.
- Employees are to act with due diligence in managing risk in the procurement process
 - research all appropriate internal documents and material to ensure sufficient information is available to inform the procurement process and deliver the required outcome.
- Approvers are to satisfy themselves that the proposed expenditure will make efficient and effective use of public money. Consideration needs to be given to
 - the procurement method adopted and whether it imposes any unnecessary costs or burdens on the Department or the supplier
 - whether the market has been sourced sufficiently (eg. has a Request for Tender been advertised widely enough; have a reasonable number of quotes been obtained)
 - the availability and reliability of supply to meet the procurement timeframe
 - the price of the supplies
 - the cost of maintaining an item over its useful life
 - the anticipated price that may be obtained at the point of disposal of an item.
- Value for money considerations are discussed in detail on the DOFA website under Commonwealth Procurement Guidelines.

Procurement Methods

The procurement methods adopted may vary according to

- mandatory requirements detailed in the [Commonwealth Procurement Guidelines](#)
- the complexity of the procurement
- the size and risk of the expenditure
- the requirement
- the circumstances and the market.

For example, there may be no need for complicated, expensive procurement processes when purchasing low risk, low value, products or services. A procurement method of some complexity may be appropriate where risks are greater and/or the requirement is of high value or strategic importance.

Consideration should be given to the relevant advantages of hiring or leasing the property in the procurement process.

3.6 Minor Purchases (less than \$2,000 incl GST)

- Where supplies are not available through [Corporate Contracts](#), the [Endorsed Supplier Arrangement](#) or the [Central Advertising System](#), minor purchases are to be made using e-procurement where possible.
- Where e-procurement is not available, purchases are to be made using the Corporate Credit Card if the facility is available. Otherwise, approval is to be obtained from an FMA Act Reg.9 delegate before goods or services are obtained.
- Purchase Orders are not required for purchases less than \$2,000.
- Tax invoices are to be obtained for all purchases over \$55 and should be obtained for purchases less than \$55, if possible, to enable tax input credits to be claimed under GST legislation.

e-procurement

The Department has developed an [e-procurement](#) system for use on minor purchases in preference to obtaining quotations from other suppliers. This purchasing system can be accessed through Mylink which provides advice to employees on how to register as a user and lists the products/services available. Consistent with the Government's policy of adopting electronic purchasing arrangements, the e-procurement system offers a streamlined purchasing process with access to more potential providers as the need to source supplies locally is reduced.

3.7 Medium Purchases (from \$2,000 to under \$80,000 incl GST)

- Where supplies are not available through [Corporate Contracts](#), the [Endorsed Supplier Arrangement](#) or the [Central Advertising System](#), medium purchases are to be made by obtaining quotes to source the market sufficiently.
- Although the threshold for seeking tenders is \$80,000, consideration should be given to seeking tenders if value for money is more likely to be obtained through this process.
- A risk assessment is to be undertaken for the proposed purchase in line with procedures issued for [Risk Assessment in Procurement Processes](#).
- Legal advice is to be sought when preparing large-scale procurement contracts or when a supplier requests a limitation of liability or indemnity.
- Purchase Orders are to be raised for all medium purchases
 - all purchases of \$10,000 or more are to be recorded on the Department's [Contracts Register](#).

3.8 Major Purchases (\$80,000 and over incl GST)

- Where supplies are not available through current [Corporate Contracts](#) or the [Central Advertising System](#) or no exemption applies under the [Commonwealth](#)

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Procurement Guidelines, purchases of \$80,000 and over are to be made in accordance with the Commonwealth Procurement Guidelines by open public tender, select tender or direct sourcing

- direct sourcing will require Chief Operating Officer approval.
- The tender process is to involve
 - use of the Department's standard format [Request For Tender](#) (RFT) document for preparing tenders
 - publishing open approaches to the market on AusTender, including for requests for tender, requests for expression of interest and request for inclusion on a multi-use list
 - establishing and advising tenderers of selection criteria
 - sending the prospective suppliers a copy of the contract as part of the tender documentation
 - setting time limits for potential suppliers to lodge submissions
 - notifying unsuccessful bidders in writing
 - offering debriefing to unsuccessful tenderers.
- Seek legal advice
 - before agreeing to accept a supplier's request for any limitation of liability or to provide an indemnity
 - to assist with risk management when arranging large-scale procurement
 - to clear a Request for Tender or contract documentation where amendments to documentation are being considered.
- Record all purchases on the Department's [Contracts Register](#).
- All purchases are to be fully documented and filed in accordance with good record keeping practices.

3.9 Limitation of Liability and Risk Management

- [Limitation of Liability](#) in a contract is a method of transferring at least some of the risk from the contractor to the Commonwealth

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- usually no limitation of liability would be included in a contract.
- The general principle to be applied in procurement negotiations is to consider which party is in the best position to minimise the occurrence of an identified risk
 - if a Commonwealth indemnity or limitation of liability is considered necessary, then it is only to be applied on a 'per event' basis, be limited in scope and be for a clearly defined amount.
- Where it is necessary to negotiate the option to limit a supplier's liability in Government contracts, employees are to
 - seek advice from the Manager, Tax and Insurance and the Corporate Legal Unit
 - undertake a risk assessment so the likelihood and consequences of the risk eventuating are fully understood
 - prepare a risk management plan as appropriate.
- Any proposals to limit liability or grant indemnity are to be referred to Comcover, through the Manager, Tax and Insurance for advice in relation to the Department's insurance policy.
- Approval to accept a contingent liability may require approval from a Regulation 10 delegate.

3.10 Occupational Health and Safety Considerations

- The potential for health and safety hazards associated with the procurement of goods, equipment or materials is to be evaluated prior to proceeding with procurement action. This is consistent with Commonwealth procurement requirements and the *Occupational Health and Safety (Commonwealth Employees) Act 1991*.
- Where any OH&S risk is identified, advice on appropriate action can be sought from the appropriate OH&S Advisor in Canberra or in AQIS regional offices. Any health and safety requirements identified through this process are to be included in the purchase specification, making it clear

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that suppliers must comply with OH&S legislation and relevant standards.

- It is expected that any major items of plant and/or equipment, as well as any potentially hazardous substances will be referred to these OH&S staff for advice as a matter of course.

3.11 Information Technology and Major Office Products and Services

- Procuring Information Technology (IT) and major office products and services falls into a specialist purchasing category.
- All IT hardware and software acquisitions are to be made through the [VOLANTE IT contract](#)
 - items approved for use in the Department are identified in the [VOLANTE Equipment Catalogue](#) and via the Department's Purchasing Guide.
- Outside of these arrangements, after consultation with the [Contracts Management Unit](#) (CMU), employees purchasing IT or major office machine products or services are to source them from endorsed suppliers.
- If a purchase cannot be obtained from an endorsed supplier these purchases are to be considered on a case-by-case basis by the Chief Information Officer (CIO). The CIO may determine that an appropriate quotation or tender process is required.
- Where it is considered appropriate to have a contract drawn up, the [Government Information, Technology and Communications \(GITC\)](#) Framework contract is to be used and the GITC is to be consulted where necessary.

Consumables

As part of the IT outsourcing arrangement VOLANTE can procure a range of consumables on the Department's behalf, however, in many cases these can be more effectively purchased via the e-procurement system.

If there is a need to purchase consumables outside of these two avenues then it is recommended that the Department's IT Contract Management Unit (CMU) be approached to determine if there are any issues that need to be considered such as compatibility with equipment and associated warranties in the event of failure.

3.12 Media Advertising

- Procuring media advertising falls into a specialist purchasing category
 - be mindful that expenditure on media advertising attracts a high level of public scrutiny
 - arrange all public relations activities through the Manager, Planning and Communication.
- Employees are required to
 - advise the [Government Communication Unit](#) (GCU) within the Department of the Prime Minister and Cabinet, of any plans to undertake a public information activity
 - place their media advertising through the [Central Advertising System](#) (CAS).
- As the Ministerial Committee on Government Communications (MCGC) approves any communications research that is sensitive or has a budget over \$100,000, obtain approval from the MCGC before engaging providers to undertake work on communications, related research strategies and projects that exceed this amount.
- Where a media campaign falls within the MCGC's jurisdiction, the communications strategy, briefs and lists of agencies (prepared in consultation by the Department and the GCU from the list of consultants in the GCU Register of Consultants) are to be all approved by the MCGC.

3.13 Consultancy Services

- When procuring consultancy services employees are to
 - be mindful that consultancy engagements attract a high level of public scrutiny
 - procure consultancy services in accordance with the [Commonwealth Procurement Guidelines](#).
- Make a timely assessment of and act upon consultant's recommendations as appropriate.

3.14 Contracts and Agreements

- Contracts and/or agreements are to reflect sound legal advice by using
 - the Department' [Standard Form Consultancy Contract](#) when preparing a consultancy contract
 - the [Corporate Legal Unit](#) to draft contracts that involve new, unusual or complicated provisions.
- Contracts are to clearly articulate milestones (where relevant) and delivery requirements.
- Contracts are to meet Commonwealth privacy obligations under the [Privacy Act 1988](#), [Information Privacy Principles](#), [National Privacy Principles](#) and [Privacy Obligations for Commonwealth Contracts](#).
- Services provided by another Agency should be covered by a written agreement outlining the responsibility of the service provider and the Department and the expected outcomes.
- Employees are to manage contracts actively to ensure that projects are completed on time and within budget
 - regularly and systematically monitor and evaluate performance
 - evaluate results versus anticipated outcomes
 - obtain progress reports
 - ensure that agreement conditions are met
 - record relevant discussions and negotiations.

Consultants, Contractors and Employees

It is important to distinguish between consultants, contractors

and employees

- a consultant is a person engaged for specialist knowledge and skill in short-term specified projects that assist the development or refinement of the department's activities
- a contractor is a person engaged and supervised by the department on a temporary or intermittent basis to undertake specified routine work, or to help the department carry out specified activities
- an employee is a person directly engaged by the Department as an ongoing or non-ongoing employee, subject to the *Public Service Act 1999* and the Department's Certified Agreement or an Australian Workplace Agreement.

Consultants and contractors should be registered businesses with an ABN.

If a consultant or contractor is deemed to be engaged in an employer/employee relationship with the Department, there may be additional costs and legal risks associated with legislative requirements such as the [Superannuation Act](#) and the [Occupational Health and Safety Act](#) and tax legislation.

3.15 Corporate Sponsorship

- Corporate sponsorship refers to arrangements where the Department provides some benefit to a private company, corporation or another agency in exchange for money, goods or services to support the Department's activities.
- Employees are to apply the [Better Practice Guide on Management of Corporate Sponsorship](#) issued by the Australian National Audit Office.

3.16 Reporting

- The Department is required to meet the following reporting requirements for procurement
 - publish open business opportunities and Requests for Tender in AusTender and the [Commonwealth Purchasing and Disposals Gazette](#)
 - publish contracts and standing offers with a value of \$10,000 or more in the [Commonwealth Purchasing and Disposals Gazette](#) within 6 weeks of entering into the agreement
 - list all Departmental contracts to the value of

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\$100,000 and over, which have not been completed or have been entered into in the previous 12 months, on the Department's internet (in order to comply with the Senate Order of 20 June 2001, as amended 27 September 2001 and 26 June 2003)

- list all Departmental consultancies costing a total of \$10,000 or over in the Annual Report
- list amounts in excess of \$1,500 paid by or on behalf of the Department to advertising agencies, media advertising organisations and direct mail organisations in the Annual Report
- report to the [Equal Opportunity for Women in the Workplace Agency](#) when competitive bids from suppliers have been rejected for non-compliance with the [Equal Opportunity for Women in the Workplace Act 1999](#)
- refer public works costing in excess of \$6 million to the [Parliamentary Standing Committee on Public Works](#), and notify it of proposals for public works with an estimated value of between \$2 million and \$6 million.

References

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|------------------------------|---|
| FMA Act: | Sections 5, 14, 26, 27, 44 and 60 |
| FMA Regulations: | 7-14 and 21 |
| FMA Orders: | 2.5 |
| Delegation: | FMA Act Reg.9 and 10 Chief Executive to Official |
| Related Instructions: | CEI Gifts, CEI Official Hospitality |
| Guidance: | DOFA Procurement Guidance on Confidentiality of Contractor's Commercial Information |
| Penalties: | FMA Act Sections 14, 26 and 60 Public Service Act 1999 Section 15 |

Change History

| Document Details | |
|---------------------------|-----------------------------|
| Created on | 28/05/2003 |
| Modified on | 22/11/2004 |
| Path and File Name | C:\DOCUME~1\BURGES~1.AGD\LO |

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| | |
|-----------------------|---|
| | CALS~1\Temp\MetaSave\Additional Information for MS 14.doc |
| Document Owner | |

| Document Approval | Date of Approval |
|---|-------------------------|
| Branch Head – Corporate Governance | 02/12/2004 |
| Audit | 07/12/2004 |
| EMT | 20/12/2004 |
| Secretary | 20/12/2004 |

| | |
|--------------------------------|----------------------|
| Document Due for Review | December 2006 |
|--------------------------------|----------------------|