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Procurement and Contract Management Procedures

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1. Introduction

Scope

The Procurement and Contract Management Procedures (the Procedures) are intended to allow AEC personnel to better understand the Commonwealth's procurement policy and framework. The Procedures emphasise the responsibilities of AEC personnel, and the AEC's expectations in undertaking procurements of any value on behalf of the AEC and the Australian Government.

AEC personnel who are required to spend public money of any value or enter into an Agreement must comply with the [Commonwealth Resource Management Framework](#).

In these Procedures all monetary figures are inclusive of GST, unless otherwise specified.

Commonwealth Resource Management Framework

AEC personnel must procure Services in accordance with the:

- (a) Public Governance, Performance and Accountability Act 2013 (PGPA Act),
- (b) Public Governance, Performance and Accountability Rules 2014 (PGPA Rules),
- (c) Commonwealth procurement framework, including:
 - (i) the Commonwealth Procurement Rules (CPRs);
 - (ii) Resource Management Guides;
 - (iii) templates such as the Commonwealth Contracting Suite (CCS); and
 - (iv) the Department of Finance's procurement policy website and guidance,
- (d) Commonwealth Indigenous Procurement Policy (IPP); and
- (e) AEC internal procedures and operational guidelines, including:
 - (i) the Accountable Authority Instructions (AAIs), specifically AAIs (Part 2); and
 - (ii) these Procedures.

How to use these Procedures

The Procedures provide information and processes for AEC personnel completing procurement and contract management activities. Additional information on key areas of the Procedures are included in the Appendices.

Exclusions

Travel arrangements for AEC personnel are only considered in these Procedures to the extent that the arrangements require a legal review (e.g. Contingent Liabilities). Contact [AEC Travel](#) for further information on arranging travel.

Grants are not included in these Procedures.

Resources and Templates

Relevant links referenced in the Procedures are as follows:

Link	Purpose
Procurement Procedures - Intranet	This intranet page provides guidance and templates for AEC personnel conducting procurement processes and provides links and templates such as: <ul style="list-style-type: none"> • Checklists / templates • Information on Panel arrangements • Information on reporting requirements •
AEC Procure-to-Pay System: My Procurement	AEC Procure-to-Pay System: My Procurement (My Procurement) is used to support procurement and contract management in the AEC. The system includes two support functions: <ol style="list-style-type: none"> 1. "My Procurement" function supports: <ul style="list-style-type: none"> • Procurement planning • Approval to approach the market • Spending approval 2. "My Contracts" function supports: <ul style="list-style-type: none"> • Contract variations and amendments • Invoice processing • Contract activity reporting
AEC Procurement Compliance Framework	This page provides guidance on the reviews and audits completed by CLP in relation to promoting and ensuring compliance with: the Commonwealth Procurement Framework; the AEC AAI's; and, best practice processes.
AEC Contract Management Requirements	This page briefly outlines the AEC Contract Management requirements and provides templates including: <ul style="list-style-type: none"> • Contract Management Plan template • Contract Evaluation Template • Risk Assessment template • Expenditure tracker
Election Procurement Strategy	This page provides information on the AEC Procurement Strategy, the AEC Annual Procurement Plan, recruitment and related services and the AEC National Panels (Logistics, Furniture Hire, Ballot Material Printing).
Contingent Liabilities, Polling Places and Comcover Insurance	This page provides information on contingent liabilities (indemnities, warranties and letters of comfort) to AEC personnel; polling place agreements, vehicle hire liabilities; and Comcover insurance. This site includes the AEC's Certificate of Currency.

2. Procurement and Contract Management in the AEC

Election Procurement Strategy

The Election Procurement Strategy details the AEC's approach to procurement and contract management for election procurements.

The aim of the Election Procurement Strategy is to ensure the AEC's approach to procurement is streamlined and coordinated by focusing on efficient processes and national consistency. The Strategy may be periodically adjusted as required to meet the AEC's business needs.

AEC Procurement Structure and responsibilities

The AEC has a decentralised procurement structure, with each Branch, State and Territory responsible for conducting their own procurements within their allocated budget. Each Branch, State or Territory must nominate a dedicated Contract Manager responsible for managing the delivery of the Services and the relationship with the Supplier.

Commercial Law and Procurement (CLP) Section is the AEC's central advice unit for procurement and contract management matters. CLP:

- (a) administers the AEC Procure-to-Pay System: My Procurement (My Procurement);
- (b) provides procurement, probity and contract management advice and guidance to AEC Contact Officers in accordance with the Commonwealth Resource Management Framework;
- (c) provides legal advice on commercial law, including in relation to contingent liabilities;
- (d) manages the AEC's Comcover Statement of Cover;
- (e) monitors compliance with the Commonwealth Procurement Rules (CPRs); and,
- (f) provides training on procurement, contract management and probity.

Please note that CLP does not draft procurement and contract management documentation, but will review documents developed by the relevant business areas and provide feedback to AEC personnel as required. It is the responsibility of each business area to ensure compliance with the procurement framework and to make decisions concerning their procurements and contracting arrangements.

AEC Contact Officers (also referred to as AEC personnel for the purposes of this Procedure) are responsible for procurement activities including;

- (a) identifying business requirements for procurement activities;
- (b) completing procurements in accordance with Legislative and Policy requirements;
- (c) demonstrating the achievement of Value for Money (VFM) in procurement and contracting; and
- (d) obtaining required Approvals in accordance with CPRs, PGPA Act and AEC AAI's.

AEC Contract Managers are responsible for actively managing contracts including:

- (a) ensuring goods and/or services are delivered as agree;
- (b) monitoring contract spend against approved value, and
- (c) maintaining records in accordance with AEC Record Keeping Policy

AEC Panel Managers are responsible for:

- (a) maintaining Deeds of Standing Offer including extension options and price increases;
- (b) providing guidance on the use of panels including;
 - (i) advice on how to access and use the panel; scope; terms and conditions;
 - (ii) reviewing and assisting in the development of procurement documentation, and
- (c) monitoring the use of the Arrangement(s), including supplier performance.

When to engage CLP?

CLP is available to provide advice and guidance to AEC personnel for procurement and contract management of any value. However, the following table can be used to identify if you are required to seek advice from CLP for your procurement. It is important that you allow time for CLP review when planning your procurement timeframes.

Procurement approach / value	Do I need to consult CLP?	Documentation required?
Terms and Conditions (T&Cs) Any Value	It is <u>mandatory</u> that CLP are consulted any time the AEC is asked to enter into Supplier Terms and Conditions – irrespective of the value	<ul style="list-style-type: none"> T&Cs sent to CLP for review Risk Assessment (if required)

Procurement approach / value	Do I need to consult CLP?	Documentation required?
Any Approach Under \$10 000	There is no requirement to consult CLP for procurements at this value, but you must follow the Procedures This arrangement must be entered in My Procurement, unless you are paying for the goods/services on a Corporate Credit Card	<ul style="list-style-type: none"> • Templates available on the AEC Procurement Intranet page. • Risk Assessment (if required)
Limited Tender / Existing Arrangements Between \$10 000 to \$80 000	CLP may be consulted for procurements of this value and approach, if advice is required This arrangement must be entered in My Procurement, including indicating if CLP review of documentation is required	<ul style="list-style-type: none"> • Commonwealth Contracting Suite (Limited Tender) / Existing Arrangement templates (i.e. panel RFQ) • Risk Assessment (if required)
Existing Arrangements Between \$80 000 and \$200 000	It is <u>mandatory</u> for CLP to be consulted for all procurements valued at \$80 000 or above This arrangement must be entered in My Procurement	<ul style="list-style-type: none"> • Business case • Request for Quote • Risk Assessment • Draft Work Order • Contract Management Plan
Existing Arrangements Over \$200 000	It is <u>mandatory</u> that CLP is consulted for all procurements valued at \$80 000 or above This arrangement must be entered in My Procurement	<ul style="list-style-type: none"> • Business case* • Request for Quote • Evaluation Plan & Evaluation Report • Probity Adviser (probity briefing and review of Evaluation Report)** • Draft Work Order • Risk Assessment • Contract Management Plan
Open Tender Over \$80 000	It is <u>mandatory</u> that CLP is consulted for all procurements valued at \$80 000 or above This arrangement must be entered in My Procurement. The Government Procurement (Judicial Review) Act will apply.	<ul style="list-style-type: none"> • Business case • Approach to Market (ATM) • Evaluation Plan & Evaluation Report • Probity Adviser (probity briefing and review of Evaluation Report) • Risk Assessment • Draft Contract • Contract Management Plan
Limited Tender Over \$80 000	It is mandatory that CLP is consulted for all procurements valued at \$80 000 or above Note that Limited Tender procurements above \$80 000 must only be used in the event a condition or exemption under the CPR's applies This arrangement must be entered in My Procurement	<ul style="list-style-type: none"> • Business case • CCS / AEC Template • Evaluation Plan & Evaluation Report • Probity Adviser (probity briefing and review of Evaluation Report) • Draft Contract • Risk Assessment • Contract Management Plan

* Business cases are not required for recruitment activities approved as 'labour hire' by the AEC Recruitment Committee for this value.

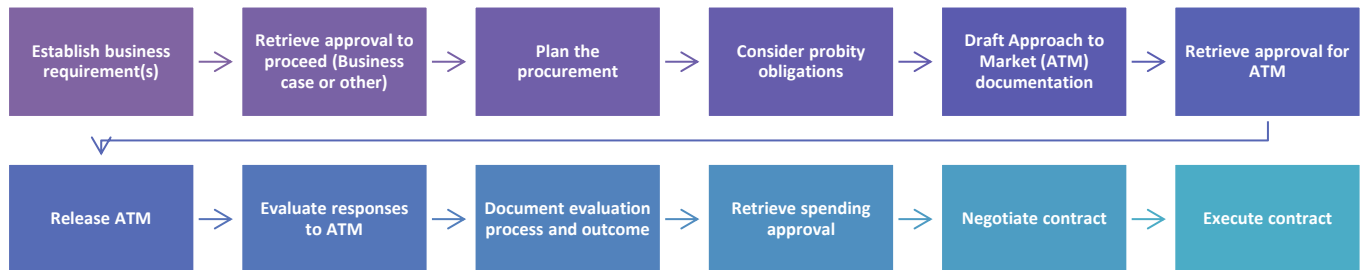
** CLP will determine for each individual procurement activity if a probity briefing and report is required.

3. Procurement

Overview

Procurement encompasses the whole process of procuring goods and services, beginning when a need has been identified and a decision has been made on the procurement requirement.

At a high level a procurement activity follows the below process flow:



When taking part in a procurement activity, AEC personnel and AEC Financial Delegates must:

- (a) act in accordance with legislation, policy and procedural requirements;
- (b) act within appropriation, authorisation or delegation;
- (c) act ethically, fairly and impartially;
- (d) achieve VFM at all times;
- (e) act in an open, accountable and transparent manner; and
- (f) encourage competition and non-discrimination.

Irrespective of the size or nature of any procurement, AEC personnel must seek to achieve VFM in accordance with the CPRs to ensure AEC Financial Delegates are satisfied that a VFM outcome has been reached.

When a business requirement arises, AEC personnel should consider how a procurement will deliver the best VFM outcome. This should begin by clearly understanding and expressing the goals and purpose of the procurement, and must include consideration to leverage any existing AEC arrangements.

AEC personnel must exercise caution to ensure they do not enter into an Agreement orally (or give the perception of) or by the exchange of non-contractual documents, letters or emails. Unknowingly entering into an Agreement can occur, for example, where a AEC personnel instruct a Supplier to proceed with the Services before the commencement date of an Agreement.

Important Note: VFM and proper use of public resources

Achieving VFM is the core rule of the CPRs. VFM is not determined by which response is the cheapest. Dollar value is just one component of an overall VFM assessment. All of the VFM considerations (including non-pricing considerations) must be analysed, all decisions/outcomes are to be well substantiated and fully documented to establish a transparent and defensible VFM outcome for the AEC.

Notable considerations for the VFM assessment are:

- Consideration of full tendered contract value, including whole-of-life costs,
- Comparison of the tendered contract value to the estimated contract value as per the procurement plan,
- Competition noted within the procurement process, including:
 - how many submissions were received,
 - analysis of trends in pricing submissions; and
 - negotiations undertaken to reduce tendered values.
- Value adds and benefits to the AEC,
- Document any changes in scope from initial estimate,
- Any clarification undertaken to ensure consistency in respondent approach; and
- Risk exposure to the AEC presented in submissions.

AEC personnel responsible for a procurement must be satisfied, after reasonable enquiries, that the procurement achieves a VFM outcome. *Refer CPRs Division 1: Rules for all procurements.*

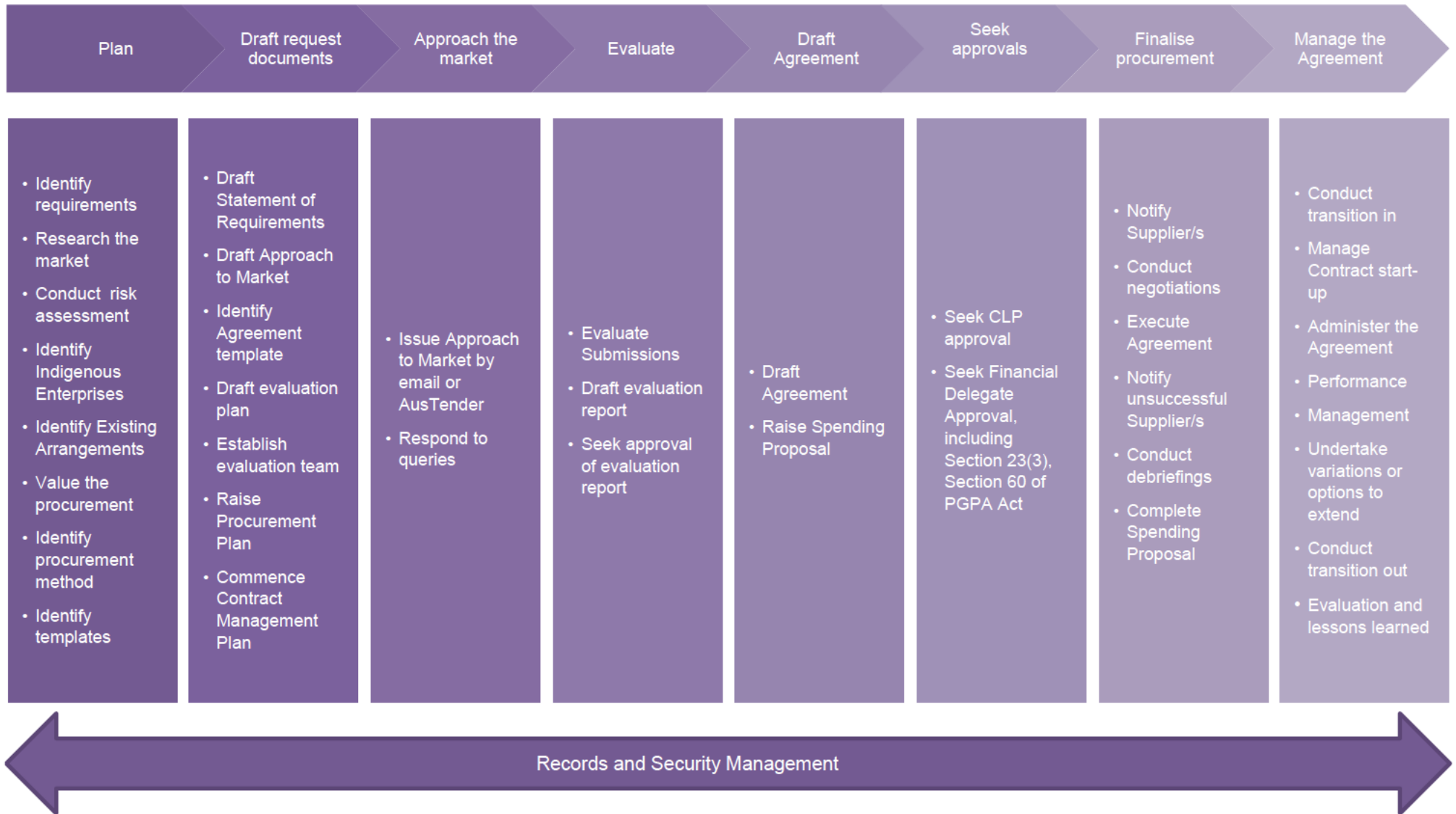
VFM should always be considered throughout the entire procurement process, including when looking to extend or vary a contract that increases the contract value.

AEC Delegates are responsible for ensuring that the commitment of relevant money is a proper use of public resources - efficient, effective, economical and ethical - that is consistent with the policies of the Commonwealth. AEC Delegates must assure themselves that a procurement activity has:

- encouraged competition and is non-discriminatory,
- facilitates accountable and transparent decision making,
- encourages appropriate engagement and management of risk; and
- is commensurate with the scale and scope of the business requirement.

Procurement workflow

The following flowchart depicts the basic workflow for a procurement process. However, tasks required to comply with the CPRs will vary depending on the procurement method, value, complexity and risk, and as such these Procedures must be read as a whole.



4. Plan the procurement process

Effective planning for procurements leads to consistently better value for money, higher quality project and service delivery and reduced risks to the AEC. Procurement planning involves consulting key stakeholders and business areas to define requirements, analysing how the supply market works, assessing risks and ultimately identifying the best procurement strategy to meet the agency's business needs. It is a critical step in ensuring the successful delivery of Services for the AEC. The level of planning undertaken should be appropriate to the scope, scale, complexity, value and estimated risk of the Services being procured.

What should I consider in the planning stage...?

- What are the business requirements?
- Do other business areas have the same or similar requirements within the AEC?
- What does the supply market dictate about the requirements?
- What are the procurement risks?
- What is the estimated value?
- What procurement method can I / should I use?
- Is there an Indigenous enterprise that I can approach?
- Are there any Existing Arrangements that meet the AEC's business requirements?
- What documentation / templates do I need?
- What are the record keeping requirements?

What is the business requirements?

AEC personnel must understand the Services that are being procured, that is, know exactly what it is the AEC wishes to purchase, and be satisfied of the need for it. AEC personnel should consider:

- (a) the nature, scope and quantities (or estimated quantities);
- (b) any requirements to be fulfilled, including plans, drawings and instructional materials;
- (c) whether specialist advice needs to be sought within the AEC (e.g. ICT, Policy Owners);
- (d) whether the AEC requires installation, training, after sales support and/or maintenance;
- (e) specifications, including necessary licences or professional accreditation, particularly for the provision of legal or financial services;
- (f) timelines, allowing adequate time to:
 - (i) undertake the various tasks of the procurement;
 - (ii) identifying which tasks may be dependent on others;
 - (iii) consider minimum and maximum timeframes; and
 - (iv) where possible, incorporate a time buffer in order to cope with unforeseen delays,
- (g) available budget;
- (h) whether specified personnel are required (and associated travel); and
- (i) who will be the Contract Manager and what processes and resources are required (review Contract Management Plan Template for advice).

If required, draft a separate Statement of Requirements. Additional information on Statements of Requirements can be found in Appendix 1 of these Procedures.

Do other business areas have the same or similar requirements within the AEC?

AEC personnel must understand what the market for the Services required is within the AEC:

- (a) Do other business areas require similar or the same Services?
- (b) Does another business area already have an Agreement in place for the Services?
- (c) Is there a sufficient requirement in the AEC to establish a panel arrangement for those Services?

AEC personnel should also look at the [Election Procurement Strategy](#) to answer these questions.

What does the supply market dictate about the requirements?

To fully understand the market associated with a procurement AEC personnel should conduct market research to a scale appropriate to the procurement activity as a whole. For the purposes of procurement, market research is the act of gathering, analysing and interpreting information about the particular market in which the AEC is proposing to conduct a procurement.

Market research can provide a strategic understanding of:

- (a) how a market works,
- (b) the direction in which a market is moving (e.g. technological advancement),
- (c) the competitiveness of a market,
- (d) key suppliers,
- (e) sustainability options in the market; and
- (f) how to manage price variations over time or between suppliers.

Methods for conducting market research include:

- (a) online research,
- (b) contacting other Australian Government agencies,
- (c) consulting subject matter experts,
- (d) phone surveys,
- (e) visits to local potential supplier,
- (f) conducting workshops; and
- (g) conducting a request for expression of interest (EOI) or request for information (RFI).

Tip: Care must be taken to avoid the perception that any Potential Supplier has received information that provides them with an unfair competitive advantage, or the perception that work has been promised. Additional information on market research can be found in Appendix 1 of these Procedures.

What are the procurement risks?

AEC personnel must identify, analyse, allocate and treat risk throughout the entire procurement and contract management process.

Depending on an initial assessment and value, a full risk assessment may be required.

Additional information on Procurement and Contract Risk can be found in Appendix 2 of these Procedures.

As part of managing risk, the AEC Financial Delegate may require additional assurance by way of a financial analysis of the procurement and/or any Potential Suppliers. For any procurements valued at \$200k and above, it is recommended that business areas seek financial advice from the Financial

Management Section. The process for engaging this section is outlined in the [Financial Management Service Level Options for Procurements](#).

What is the estimated value?

Procurement processes are scalable, and therefore the value of the procurement must be estimated to determine the appropriate procurement method to be followed.

The procurement value must include:

- (a) all forms of remuneration, including any premiums, fees, commissions, interest, allowances and other revenue streams that may be provided for in the proposed arrangement,
- (b) the total maximum value of the Services being procured, including the value of any extension options in the proposed arrangement; and
- (c) any taxes or charges (including GST).

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

The estimated value will also be used to determine which Approach to Market request form is completed in My Procurement. Additional information on My Procurement can be found in Appendix 5 of these Procedures.

What procurement method can/should I use?

The table below provides a general guide for determining the method to be used for a proposed procurement. The procurement method is generally determined by the value of the procurement and the associated risk.

If the procurement relates to construction services, as defined in the CPRs, AEC personnel must contact CLP for guidance prior to commencing the procurement activity.

Procurement value	Risk	Possible procurement methods
\$80 000 or above (non-construction)	Low – High	<ul style="list-style-type: none">• WoAG arrangements• Open tender• AEC National Panels• Panel arrangements• Limited tender* (in very limited circumstances – see note below)
Between \$10 000 - \$79 999	Low – Medium	<ul style="list-style-type: none">• WoAG arrangements• AEC National Panels• Panel arrangements• Limited tender (with caution)
Below \$10 000	Low	<ul style="list-style-type: none">• WoAG arrangements• AEC National Panels• Panel arrangements• Limited tender

** A Limited Tender valued above the relevant threshold must only be used if allowed under the CPRs. Advice must be obtained from CLP before utilising this procurement approach and must be supported by a business case approved by the AEC Financial Delegate and attached to the Approach to Market in My Procurement. The reason for the limited tender (including clear identification of the exemption/condition in the CPRs to support this approach) **must** be clearly identified and reported in AusTender. If a limited tender has been conducted, and the contract value exceeds \$80 000, this will be a breach of the CPRs.*

Open tenders

An open tender involves publishing a Request for Tender (RFT) to the market and inviting Submissions from any interested Suppliers via the AusTender website.

Limited tenders

Limited tenders involve approaching one or more Potential Suppliers to make Submissions when the procurement process does not meet the rules for open tenders.

For procurements valued at or above the threshold of \$80 000, a limited tender can only be conducted in accordance with paragraph 10.3 of the CPRs or when a procurement is exempt, as detailed in Appendix A of the CPRs, as supported by a business case, approved by the AEC Financial Delegate and attached to the Approach to Market in My Procurement.

AEC personnel **must** contact CLP if considering undertaking a limited tender valued at or above \$80, 000.

Is there an Indigenous enterprise that I can approach?

The Indigenous Procurement Policy (IPP) mandates that Indigenous Enterprises be considered for the delivery of Services valued between \$80,000 and \$200,000, on a value for money basis prior to approaching the market.

Additional information on the Indigenous Procurement Policy can be found in Appendix 3 of these Procedures.

Are there any existing arrangements that can meet the AEC's business requirements?

Accessing Services through Existing Arrangements established by the AEC or other Commonwealth agencies (often referred to as 'piggybacking') may save the AEC time, resources and expense in conducting separate procurement processes. It can also enable the AEC to access more favourable rates and conditions that other larger agencies were able to negotiate.

Procurements from Existing Arrangements are only subject to the rules in Division 1 of the CPRs. However, the establishment of an Existing Arrangement is subject to both Division 1 and 2 of the CPRs.

Where there is an Existing Arrangement available to the AEC, with a scope that clearly meets the AEC's requirements, AEC personnel may use that Arrangement.

Important: If you intend on accessing an Existing Arrangement instead of completing an Open Tender procurement process, a business case, approved by the AEC Financial Delegate and attached to the Approach to Market in My Procurement, is required to outline the decision making process. The business case must include the following information at a minimum:

- why the Arrangement is being accessed,
- how the scope of the Arrangement meets the AEC's business needs,
- what Potential Suppliers will be approached; and
- why you have selected those Potential Suppliers.

Important: IF you intend on accessing an Existing Arrangement, AEC Contact Officers should consider how many Potential Suppliers are to be approached. Note that it will be very difficult to assess and demonstrate the achievement of value for money if only one Potential Supplier is approached.

Existing Arrangements may include:

(a) Whole of Australian Government (WoAG) arrangements

These are Arrangements, some of which are mandated, established by the Department of Finance to benefit Commonwealth agencies for the procurement of Services.

The Department of Finance procurement website provides the full consolidated list of these arrangements. When purchasing from an Arrangement, AEC personnel must ensure that the:

- (i) Services required are within the scope of the Arrangement;
- (ii) terms and conditions of the Arrangement are not being materially altered; and
- (iii) relevant templates are used to procure the Services.

An Agreement is formed under an Arrangement when a Work Order is issued, or executed by both parties, as specified in the Head Agreement or Deed of Standing Offer. The Work Order together with the Head Agreement or Deed of Standing Offer form the Agreement.

(b) AEC National Panels

The AEC has established National Panels for the provision of furniture and equipment, logistics and ballot material printing to ensure nationally consistent arrangements for key election services.

Refer to the Election Procurement Strategy intranet page for guidance on procuring under these Arrangements.

(b) Recruitment and labour hire services

National Work Orders (**WOs**) are in place with six (6) providers for the provision of recruitment and related services (excludes ICT recruitment). These WO's can be used by any business area within the AEC to fulfil recruitment and labour hire needs for both BAU and elections (as a contingency only to fulfil larger TEW requirements).

It is not mandatory to use these WO's but it is considered to be good practice should they meet your business requirements.

These WO's do not replace any existing contracts for recruitment services.

These WO's can be accessed using a simple 5-step process. Guidance on how to use these arrangements includes FAQs and applicable templates, as well as a capability matrix that provides contact details of providers and their service capabilities and jurisdictions. This document, as well as other relevant documents, are available through the CLP's [SharePoint site](#). AEC staff need permission to access this site. Submit a request to access the site by contacting [Commercial Law and Procurement](#).

(c) Panel arrangements

A panel arrangement (also known as Standing Offer Panel) is the end result of a procurement process, where a number of Suppliers are appointed through a head agreement or deed of standing offer.

A list of Existing (Panel) Arrangements that the AEC has access to can be found on the CLP's [SharePoint site](#). AEC personnel wishing to utilise one of these Existing Arrangements should first contact the relevant AEC Panel Manager to obtain general information and guidance on approaching the Existing Arrangement. Existing Arrangement documentations i.e. Agreements, templates and related documents can be found on DS4P. If an AEC Official requires access to DS4P they must contact CLP.

Piggybacking off an Arrangement

When AEC personnel identify an Arrangement (for example, by searching AusTender) that is open to other Commonwealth agencies, but the AEC does not already have access to it, [CLP](#) must be contacted. CLP will:

- (a) contact the relevant Commonwealth agency and obtain the documentation; and
- (b) provide procurement advice to AEC personnel on how to access the Arrangement. The method for piggybacking on any Arrangement will vary. For example, an Instrument of Acceptance or Notice of Inclusion must be completed and signed by both parties prior to procuring any Services under the Arrangement.

The business area will be required to nominate an AEC Panel Manager for the Arrangement, who will then be responsible for providing advice to other AEC Business Areas on accessing the Arrangement.

What documentation / templates do I need?

The templates to be used for a procurement process will depend on the procurement method and value of the proposed procurement.

Procurement method	Estimated value	Procurement templates
WoAG arrangements	Any value	In accordance with the provisions of each Arrangement.
AEC National Panels	Any value	In accordance with the provisions of each Arrangement.
Panel arrangements	Any value	In accordance with the provisions of each Arrangement.
Recruitment and labour hire services	Any value	Contact CLP
Open tender	\$80 000 to \$200 000	Commonwealth Contracting Suite (see Appendix 14)
	Over \$200 000	Contact CLP
Limited tender	Under \$10 000	Email templates on intranet
	\$10 000 to \$79 999	Commonwealth Contracting Suite (see Appendix 14)

What are the record keeping requirements?

Any planning undertaken should be documented in some format and file notes are available for this purpose. Please note that if you are conducting a high value (above \$80 000); high risk; or, election critical procurement, you **must** complete a business case outlining the reasons why your identified procurement process has been selected. The business case must be approved by the AEC Financial Delegate and attached to the Approach to Market in My Procurement. If a panel is being approached rather than conducting an open market approach – and the reasons behind that decision; why a particular panel has been selected; and, why particular suppliers are being approached.

This is important in ensuring the AEC Financial Delegate can comply with requirements to utilise public resources in accordance with the CPRs and the AEC AAls. Appendix 5 provides additional information.

5. Conduct the procurement process

This section provides detailed guidance on the steps required to conduct a procurement process according to the procurement method and/or the estimated value of the proposed procurement.

It is important to remember that every procurement is different and the level of detail should be appropriate to the scope, scale, complexity, value and estimated risk of the Services being procured. Once you have identified your preferred procurement approach you should follow the appropriate instructions under this Step.

Important notes:

1. For the procurement of recruitment and labour hire services from one of the six (6) Work Orders the AEC has in place you need to follow a simple five-step process. Guidance on how to access these Work Orders available through the CLP's SharePoint site. The guidance includes FAQs, templates, details of the services provided by each provider, capabilities and contact details.
2. For the procurement of recruitment and labour hire services outside of the six (6) Work Orders referred at point 1 above, you must follow the requirements specified in the Deed of Standing Offer for that Panel.

Procuring from an Existing Arrangement (ie. Panels)

✓	Procuring from Arrangements of any value
1: Plan	
	<p>Complete planning in accordance with the Planning section of these Procedures. Ensure decisions relating to the procurement approach have been recorded in a business case, including why the arrangement has been selected, and why the selected panel members were identified. A business case is required if the Procurement is high value (above \$80 000), high risk, or an election critical procurement. The business case must be approved by the AEC Financial Delegate and attached to the Approach to Market in My Procurement.</p> <p>Tip: <i>If the Indigenous Procurement Policy applies to your procurement please see Appendix 3.</i></p> <p>Tip: <i>For any procurements valued at \$200k and above or considered high risk, it is recommended that business areas seek financial advice in accordance with the Financial Management Service Level Options for Procurements in order that assurance can be provided to the AEC Financial Delegate.</i></p>
2: Draft Request Documentation	
	<p><u>Contact the AEC Panel Manager.</u></p> <p>An Arrangement will generally have their own templates and processes. This information is detailed in the Head Agreement or Deed of Standing Offer. The AEC Panel Manager can provide this information.</p> <p>Tip: <i>The Panel Manager will be able to advise if the Panel you are accessing has transitioned to Dynamic Sourcing for Panels (DS4P). If so, you will need to obtain training and access to the system from CLP and templates will be available on DS4P. See Appendix 14 for more guidance.</i></p>

✓	<h2 style="text-align: center;">Procuring from Arrangements of any value</h2>
	<p><u>Draft the Request for Quotation (RFQ).</u></p> <p>Draft an RFQ using the appropriate template. An email template is available from CLP for Arrangements without a specific template.</p> <p>Tip: <i>It is essential that the Request Documentation clearly states which Arrangement you are seeking quotations under. This is to ensure there is no misunderstanding, and that the quotation provided is in accordance with the relevant Head Agreement or Deed of Standing Offer.</i></p> <p><i>Note for procurements valued over \$4 million a requirement for Potential Suppliers to supply a Statement of Tax Record in their Submission must be included in the request documentation. For more information on STR and the Black Economy Procurement Connected Policy refer to Appendix 16.</i></p>
	<p><u>Draft a Statement of Requirements</u></p> <p>Appropriate to the scope, scale, complexity, value and estimated risk of the Services being procured, this may be as simple as describing the required goods required in the RFQ or a separate Statement of Requirements may be provided as an attachment to the RFQ. See Appendix 1 for more guidance.</p>
	<p><u>Draft an evaluation plan.</u></p> <p>It is best practice to finalise an evaluation plan prior to approaching the market. However, it is essential that the evaluation plan is finalised prior to the closing date of the RFQ or opening any Submissions.</p> <p>Tip: <i>An evaluation plan must be completed when procuring from Arrangements if the value is estimated to be over \$200 000. If CLP advise that a Probity Advisor is required for your procurement, you will need to arrange a Probity Briefing with CLP to occur before the RFQ closing date, and provide a draft Evaluation Plan to inform that Briefing. The Evaluation Plan can be finalised following the Probity Briefing. See Appendix 8 for more guidance.</i></p>
	<p><u>Complete an Approach to Market** and Procurement Plan in My Procurement*.</u></p> <p>The draft RFQ, Statement of Requirements, risk assessment, evaluation plan, delegate approved business case (if valued over \$80k, high risk or election critical) and any other relevant documentation must be attached to the Approach to Market in My Procurement. See Appendix 5 for more guidance.</p> <p>Tip: <i>Ensure the appropriate AEC Financial Delegate/s is selected in accordance with the AEC's Financial Delegations Schedule. See Appendix 6 for more guidance.</i></p> <p>Tip: <i>When procuring Services through Existing Arrangements, the procurement method reported is the method that was used to establish the Existing Arrangement.</i></p> <p><i>* If your procurement is below \$10 000 you are not required to complete a Procurement Plan.</i></p> <p><i>** If you are paying for the goods/services on an AEC Corporate Credit Card you are not required to use My Procurement</i></p>

✓	<h2 style="text-align: center;">Procuring from Arrangements of any value</h2>
	<p><u>CLP Review and Approval*</u></p> <p>CLP will review the Approach to Market and Procurement Plan and attached documentation. The Requesting Officer will be provided with any suggested changes and feedback by email.</p> <p>Once the Approach to Market and Procurement Plan is approved by CLP, it will workflow to the AEC Financial Delegate if the procurement is valued at or above \$200 000. For procurements valued under \$200 000, AEC personnel should ensure discussions have occurred with the AEC Financial Delegate prior to approaching the Arrangement.</p> <p><i>* If your procurement is below \$10 000 you are not required to complete a Procurement Plan.</i></p>
<h3>3: Approach the market</h3>	
	<p><u>Issue the RFQ.</u></p> <p>The number of Potential Suppliers you should approach for quotation is dependent on the scope, scale, complexity, value and assessed risk of the Services being procured. AEC personnel should obtain quotes from multiple Suppliers to create a competitive process and ensure the AEC achieves value for money. Value for money is difficult to demonstrate if only one quote is sought.</p> <p>If the Panel you are approaching has transitioned to DS4P:</p> <p>The RFQ should be issued through DS4P (a controlled system). Responses will then be received from Suppliers and downloaded through the same system. See Appendix 14 for more guidance.</p> <p>If the Panel you are approaching has <u>not</u> transitioned to DS4P:</p> <p>The RFQ should be sent individually via email to each Supplier, or all Suppliers can be blind copied. Group emails must not be sent. Quotes can be received from Suppliers via email, however it is recommended that a group inbox is used.</p> <p>It is recommended that the email includes a request for the Supplier to confirm the receipt of the email and indicate their intent to provide a response.</p>
	<p><u>Respond to any queries.</u></p> <p>Ensure all Potential Suppliers are provided access to the same information. Ensure all correspondence between Potential Suppliers and AEC personnel is completed in writing. Quotations must not be taken over the phone. See Appendix 8 for more guidance.</p>
<h3>4: Evaluate</h3>	
	<p><u>Evaluate Submissions.</u></p> <p>An evaluation team will evaluate the Submissions to determine best value for money response in accordance with the evaluation plan. A single AEC Contact Officer can evaluate the Submissions for procurements valued under \$10 000. See Appendix 4 for more guidance.</p> <p>Tip: <i>If in evaluating submissions, it is identified that there are any legal non-compliances or partial non-compliances with Supplier responses, you must provide full copies of the responses and the RFQ issued to CLP to enable a legal compliance review to be completed.</i></p> <p>Tip: <i>If your procurement is valued at over \$200k, or is considered high risk, it is recommended that a legal compliance review is sought even when non-compliances are not identified by the evaluation team.</i></p>

✓	<h2 style="text-align: center;">Procuring from Arrangements of any value</h2>
	<p><u>Draft an evaluation report.</u></p> <p>The evaluation report should be developed and provided to the AEC Financial Delegate for approval. Note that if a Probity Adviser has been assigned to your procurement, the draft evaluation report must be provided to them for a Probity review before the draft report is provided to the Delegate. See Appendix 8 for more guidance.</p> <p><i>Tip: If your procurement is below \$200 000 a business case / minute for may be used in place of an Evaluation Report.</i></p> <p><i>Tip: If a Supplier has requested information be treated as Confidential, ensure this is clear in the evaluation report as it is likely to require negotiation (see Appendix 7 for more guidance).</i></p>
	<h3>5: Draft Agreement</h3>
	<p><u>Draft the Work Order and review the Statement of Requirements.</u></p> <p>The Work Order should be drafted using the correct template for the Arrangement and the preferred Supplier. At this stage you should review and update the draft Statement of Requirements to ensure they are accurate. If there is no specific template for the Arrangement, CLP can provide a general one for use. See Appendix 1 for more guidance.</p> <p><i>Tip: The quotation provided by the Supplier cannot be included as an attachment to the Work Order, however the information contained within the quote (e.g. agreed pricing/dates) must be incorporated into the Work Order.</i></p> <p><i>Tip: If a Supplier has requested that information be treated as Confidential, ensure that you assess the request against the criteria within the 'Confidentiality Test' (See Appendix 7 for more guidance).</i></p>
	<h3>6: Seek approvals</h3>
	<p><u>Create a Spending Proposal against the Approach to Market in My Procurement*.</u></p> <p>The draft Work Order, Statement of Requirements, quotation, evaluation report and any other relevant documentation must be attached to the Approach to Market. See Appendix 5 for more guidance on My Procurement.</p> <p><i>* If you are paying for the goods/services on an AEC Corporate Credit Card you are not required to use My Procurement</i></p>
	<p><u>CLP Review and Approval.</u></p> <p>CLP will review the Spending Proposal and attached documentation. The Requesting Officer will be provided with any suggested changes and feedback by email.</p> <p><i>Tip: Procurements below \$10 000 will workflow directly to the AEC Financial Delegate. CLP will only be required to review and approve if you select you are entering into Supplier Terms and Conditions.</i></p>

✓	<h2>Procuring from Arrangements of any value</h2>
	<p><u>AEC Financial Delegate Approval.</u></p> <p>Following approval of the Spending Proposal by CLP, it will workflow to the nominated AEC Financial Delegate/s for the relevant approvals. The AEC Financial Delegate must ensure that funds are available for the procurement activity before providing approval. See Appendix 6 for more guidance.</p> <p>The AEC Contact Officer must not notify any successful or unsuccessful Respondents of the outcome of the procurement until the AEC Financial Delegate has made a decision.</p> <p><i>Tip: Procurements below \$10 000 will workflow directly to the AEC Financial Delegate. CLP will only be required to review and approve if you select you are entering into Supplier Terms and Conditions.</i></p>
7: Finalise the procurement	
	<p><u>Complete quality check of the Work Order.</u></p> <p>Ensure any outstanding items are negotiated with the Supplier for inclusion within the Work Order. You should also ensure that details remain current (e.g. dates).</p>
	<p><u>Execute the Work Order.</u></p> <p>The Work Order should be issued to the Supplier for signature, followed by the AEC, as best practice dictates that the AEC should execute an Agreement last.</p> <p>If your procurement is over \$10 000, please attach the executed Work Order to the Approach to Market in My Procurements within two weeks of execution to enable the creation of a Contract in My Contracts. This will ensure the AEC can meet our AusTender reporting obligations. See Appendix 5 for more guidance.</p>
	<p><u>Notify unsuccessful Respondents and conduct debriefs.</u></p> <p>A template letter is available for this purpose. Where requested, conduct debriefs.</p>
8: Manage the Agreement	
	<p><u>Actively manage the Agreement.</u></p> <p>Manage the Agreement in accordance with these Procedures, and the provisions of the Head Agreement or Deed of Standing Offer and the Work Order. See Appendix 2, 12 and 13 for more guidance.</p> <p>Note: A Contract Management Plan (including a risk assessment) must be developed and followed IF your contract is: valued at or above \$80 000; is high risk; or, is Election Critical.</p>

Procuring through an Open tender approach

An open tender involves publishing a Request for Tender (RFT) to the market and inviting Submissions from any interested Suppliers via the AusTender website. This includes multi-stage procurements where, for example, an Expression of Interest is sought in the first stage, and then interested parties are provided an opportunity to provide a quotation in the second stage.

Tip: If you are conducting a multi-stage procurement, the initial approach to market **must** include, for every stage, the criteria that will be used to select potential suppliers, and if applicable, any limitation on the number of potential suppliers that will be invited to make submissions.

The Government Procurement (Judicial Review) Act (**Act**) applies to all procurements conducted as an open tender. Complaints received under the Act have the potential to disrupt a process as activities may be ceased while an investigation is underway. For procurements of significant public interest a

Public Interest Certificate (**PIC**) may be issued at any time during the procurement process (including following receipt of a complaint under the Act). The PIC allows continuation of procurement activities while a complaint investigation is in play and may only be issued by the Electoral Commissioner.

For more information on the Act refer to Appendix 15.

The following process should be used for open tender procurements.

✓	Open tenders valued between \$80 000 and \$200 000	Open tenders valued \$200 000 and above
1: Planning		
	<p>Complete planning in accordance with the Planning section of these Procedures. Ensure decisions relating to the procurement approach have been recorded in a business case, including any market research that has been completed.</p> <p>Tip: <i>If the Indigenous Procurement Policy applies to your procurement please see Appendix 3 for more guidance.</i></p> <p>Tip: <i>For any procurements valued at \$200k and above or considered high risk, it is recommended that business areas seek financial advice in accordance with the Financial Management Service Level Options for Procurements in order that assurance can be provided to the AEC Financial Delegate.</i></p>	
2: Draft Request Documentation		
	<p><u>Draft an Approach to Market (ATM).</u></p> <p>The ATM should be drafted using the Commonwealth Contracting Suite (CCS). See Appendix 14 for more guidance.</p>	<p><u>Draft an Approach to Market (ATM).</u></p> <p>The ATM can be drafted using either the CCS or an AEC Template. CLP can provide templates if required.</p> <p>Note for procurements valued over \$4 million a requirement for Potential Suppliers to supply a Statement of Tax Record in their Submission must be included in the request documentation. For more information on STR and the Black Economy Procurement Connected Policy refer to Appendix 16.</p>
	Draft a Statement of Requirements	
	<p><u>Draft evaluation criteria (if required).</u></p> <p>The Commonwealth ATM Terms attached to the ATM set out the evaluation methodology to apply (at clause A.B.12).</p> <p>If any additional criteria are to be applied to the procurement, ensure they are specified in the ATM.</p> <p>See Appendix 1 for more guidance.</p>	<p><u>Draft evaluation criteria (if required).</u></p> <p>Contact CLP for AEC templates if CCS is not being used.</p> <p>Tip: <i>If you are not sure if the AEC template or CCS is more appropriate to your procurement, please contact CLP.</i></p> <p>See Appendix 1 for more guidance.</p>
	Draft an Evaluation Plan	
	An Evaluation Plan is required for all Open Tender Procurements, irrespective of the procurement value.	

✓	Open tenders valued between \$80 000 and \$200 000	Open tenders valued \$200 000 and above
	<p>Tip: The CCS includes a Procurement Plan template which includes planning for the evaluation that can be used as an evaluation plan. Alternatively, CLP can provide an Evaluation Plan Template for your use.</p> <p>Tip: As a Probity Advisor is required for your procurement, you will need to arrange a Probity Briefing with CLP to occur before the RFT closing date, and provide a draft Evaluation Plan to inform that Briefing. The Evaluation Plan can be finalised following the Probity Briefing.</p>	<p>Tip: CLP has an Evaluation Plan template that can be provided for your use.</p> <p>Tip: As a Probity Advisor is required for your procurement, you will need to arrange a Probity Briefing with CLP to occur before the RFT closing date, and provide a draft Evaluation Plan to inform that Briefing. The Evaluation Plan can be finalised following the Probity Briefing.</p> <p>See Appendix 8 for more guidance.</p>
	<p><u>Complete an Approach to Market and Procurement Plan in My Procurement</u> The draft ATM, Statement of Requirements, risk assessment, evaluation plan and any other relevant documentation must be attached to the Approach to Market. See Appendix 5 for more guidance.</p> <p>Tip: Ensure the appropriate AEC Financial Delegate/s is selected in accordance with the AEC's Financial Delegations Schedule.</p>	
	<p><u>CLP Review and Approval.</u></p> <p>CLP will review the Approach to Market and Procurement Plan and attached documentation. The Requesting Officer will be provided with any suggested changes and feedback by email.</p> <p>Once CLP has approved the Approach to Market and Procurement Plan, it will workflow to the AEC Financial Delegate for approval. You should ensure approval has been obtained prior to approaching the market.</p>	
3: Approach the Market		
	<p><u>Issue the ATM.</u></p> <p>The ATM must be issued through AusTender. Only CLP representatives have access to publish notices on AusTender and as such AEC personnel should contact CLP for assistance with this step in the process. See Appendix 5 and 8 for more guidance.</p> <p>Tip: Ensure you arrange for the Probity Briefing to be conducted by CLP before the ATM closes.</p>	
	<p><u>Respond to any queries.</u></p> <p>Any queries received must be responded to through an Addendum. An Addendum template can be provided by CLP if required. The Addendum should be drafted ensuring the question and response is de-identified. See Appendix 8 for more guidance on probity.</p> <p>Submit the Addendum to CLP via email for review and publishing.</p>	
4: Evaluate		
	<p><u>Evaluate Submissions.</u></p> <p>The evaluation team must evaluate the Submissions to determine best value for money in accordance with the evaluation plan. See Appendix 4 for more guidance.</p> <p>Tip: You must provide full copies of the responses and the ATM and Addenda as issued to CLP to enable a Legal Compliance review be completed.</p>	

✓	Open tenders valued between \$80 000 and \$200 000	Open tenders valued \$200 000 and above
	The CCS provides an ATM Response Evaluation Template that can be used for this purpose.	CLP can provide Evaluation Workbooks to assist, if required.
	<u>Draft an evaluation report.</u> The evaluation report should be provided to the Probity Adviser for review, before the report is provided to the AEC Financial Delegate for approval. See Appendix 8 for more guidance on probity. Tip: CLP can provide an Evaluation Report Template for use. Alternatively, if the CCS is being used, the Evaluation Report Template within the CCS can be used. Tip: If a Supplier has requested information be treated as Confidential, ensure this is clear in the evaluation report as it is likely to require negotiation (see Appendix 7 for more guidance).	
5: Draft Agreement		
	<u>Draft the Agreement and review the Statement of Requirements.</u> Draft the Agreement using the CCS template for the preferred Supplier. The Commonwealth Agreement Terms must be attached to the Agreement.	<u>Draft the Agreement and review the Statement of Requirements.</u> Draft the Agreement using either the AEC template or the CCS template for the preferred Supplier. The Commonwealth Agreement Terms must be attached to the Agreement if using the CCS.
	Review and update the Statement of Requirements to ensure they are accurate. See Appendix 1 for more guidance. Tip: If a Supplier has requested that information be treated as Confidential, ensure that you assess the request against the criteria within the 'Confidentiality Test' (See Appendix 7 for more guidance).	
6: Seek approvals		
	<u>Create a Spending Proposal against the Approach to Market in My Procurement.</u> – The draft CCS Contract, quotation, evaluation report and any other relevant documentation must be attached to the Approach to Market. See Appendix 5 for more guidance.	<u>Create a Spending Proposal against the Approach to Market in My Procurement.</u> – The draft CCS/AEC template Contract, quotation, evaluation report and any other relevant documentation must be attached to the Approach to Market. See Appendix 5 for more guidance.
	<u>CLP Review and Approval.</u> CLP will review the Spending Proposal and attached documentation. The Requesting Officer will be provided with any suggested changes and feedback by email.	
	<u>AEC Financial Delegate Approval.</u> Following approval of the Spending Proposal by CLP, it will workflow to the nominated AEC Financial Delegate/s for the relevant approvals. See Appendix 6 for more guidance on AEC Financial Delegates.	

✓	Open tenders valued between \$80 000 and \$200 000	Open tenders valued \$200 000 and above
	<p>An AEC Contact Officer must not notify any Supplier of the outcome of the procurement until the AEC Financial Delegate/s has made a decision.</p> <p>The AEC Financial Delegate must ensure funds are available before approving the Spending Proposal.</p> <p>See Appendix 6 for more guidance on AEC Financial Delegates.</p>	
7: Finalise the procurement		
	<p><u>Complete quality check of the draft Agreement.</u></p> <p>Conduct a final quality check of the Contract to ensure there have been no changes since drafting (eg. dates). Ensure any outstanding items are negotiated with the Supplier for inclusion within the Contract.</p>	
	<p><u>Issue the Contract for execution.</u></p> <p>Once formal approval has been provided by the AEC Financial Delegate/s, issue the Contract to the preferred Supplier for signature followed by the AEC. Best practice dictates that the AEC should execute an Agreement last.</p> <p>Attach the executed Contract to the Approach to Market in My Procurement within two weeks of execution to enable the creation of a Contract in My Contracts. This will ensure the AEC can meet AusTender reporting requirements. See Appendix 5 for more information.</p>	
	<p><u>Notify unsuccessful Respondents and conduct debriefs.</u></p> <p>The CCS provides a template that can be used for this purpose.</p> <p>CLP can also provide an unsuccessful respondent template letter.</p> <p>In accordance with clause A.B.12 of the Commonwealth ATM Terms, AEC personnel must, upon request, debrief any Suppliers following award of the Agreement.</p> <p>Where requested, conduct debriefs.</p>	<p><u>Notify unsuccessful Respondents and conduct debriefs.</u></p> <p>CLP can provide an unsuccessful respondent template letter.</p> <p>AEC personnel must, upon request, debrief any Suppliers following award of the Agreement.</p> <p>Where requested, conduct debriefs.</p>
8: Manage the Agreement		
	<p><u>Actively manage the Contract.</u></p> <p>Actively manage the Contract in accordance with your Contract Management Plan, these Procedures, and the provisions of your Contract. See Appendix 2, 12 and 13 for more guidance.</p> <p>Note: A Contract Management Plan (including a risk assessment) must be developed and followed IF your contract is: valued at or above \$80 000; is high risk; or, is Election Critical.</p>	

Procuring through a Limited tender approach

Limited tenders involve approaching one or more Potential Suppliers to make Submissions when the procurement process does not meet the rules for open tenders. For procurements valued at or above the threshold of \$80 000, a limited tender can **only** be conducted in accordance with paragraph 10.3 of the CPRs or when a procurement is exempt as detailed in Appendix A of the CPRs.

If you are considering undertaking a limited tender for a procurement valued at or above \$80 000, AEC personnel must:

- (a) contact CLP;
- (b) complete a business case approved by the AEC Financial Delegate, and attach it to the Approach to Market in My Procurement; and
- (c) clearly specify in the business case, the condition or exemption in the CPRs that allows this approach.

This must also be recorded in the Approach Market in My Procurement and reported on AusTender.

✓	Limited tenders valued under \$10 000	Limited tenders valued between \$10 000 and \$79 999	✓
1: Plan			
	Complete planning in accordance with the Planning section of these Procedures.		
2: Draft Request Documentation			
	<p><u>Draft Request Documentation</u></p> <p>AEC personnel must request quotations in writing and include all available information to ensure the Suppliers can provide accurate quotations. As a minimum, the Request Documentation should include the:</p> <ul style="list-style-type: none">(a) description of the requirement;(b) timeframes;(c) name and email address of the AEC Contact Officer to whom quotations and enquiries must be directed;(d) type of Agreement to be entered into (ie. Commonwealth Agreement Terms); and(e) closing date and time, ensuring a reasonable time for Potential Suppliers to respond. <p>An email template is available for issuing a request for quotation.</p>	<p><u>Draft an Approach to Market (ATM)</u></p> <p>The ATM should be drafted using the Commonwealth Contracting Suite (CCS). See Appendix 14 for more guidance.</p> <p>Note for procurements valued over \$4 million a requirement for Potential Suppliers to supply a Statement of Tax Record in their Submission must be included in the request documentation. For more information on STR and the Black Economy Procurement Connected Policy refer to Appendix 16.</p> <p><u>Draft a Statement of Requirements, if required.</u></p> <p>Appropriate to the scope, scale, complexity, value and estimated risk of the Services being procured, a separate Statement of Requirements may be provided as an attachment to the ATM. See Appendix 1 for more guidance.</p> <p>Draft evaluation criteria (if required) and evaluation plan.</p> <p>The Commonwealth ATM Terms attached to the ATM set out the evaluation methodology to apply at clause A.B.12. If there are any additional criteria to be applied to the procurement, ensure they are specified in the ATM. See Appendix 14 for more guidance. The CCS includes a Procurement Plan template which includes planning for the evaluation which can be used as an evaluation plan.</p>	

✓	Limited tenders valued under \$10 000	Limited tenders valued between \$10 000 and \$79 999	✓
		<p><u>Create an Approach to Market and Procurement Plan in My Procurement.</u></p> <p>The draft ATM, Statement of Requirements, risk assessment, evaluation plan and any other relevant documentation must be attached to the Approach to Market. See Appendix 5 for more guidance.</p> <p><i>Tip: Ensure the appropriate AEC Financial Delegate/s is selected in accordance with the AEC's Financial Delegations Schedule.</i></p>	
		<p><u>CLP Review and Approval.</u></p> <p>CLP will review the Approach to Market and Procurement Plan and attached documentation, if requested. The Requesting Officer will be provided with any suggested changes and feedback by email.</p> <p>Once the Approach to Market and Procurement Plan is approved by CLP, it will workflow to the AEC Financial Delegate for approval where the procurement is valued at or above \$80 000. For procurements valued under \$80 000, AEC personnel should ensure discussions have occurred with the AEC Financial Delegate prior to approaching the market.</p> <p>See Appendix 5 and 6 for more guidance.</p>	
3: Approach the Market			
	<p><u>Issue the request documentation.</u></p> <p>If approaching multiple Suppliers, email the RFQ individually to each Supplier, or blind copy all Suppliers. Group emails must not be sent. Quotes can be received from Suppliers via email, however it is recommended that you use a group inbox.</p>	<p><u>Issue the ATM.</u></p> <p>The number of Potential Suppliers you should approach for quotation is dependent on the scope, scale, complexity, value and assessed risk of the Services being procured.</p> <p>AEC personnel should obtain quotes from multiple Suppliers to create a competitive process and ensure the AEC achieves value for money. Value for money is difficult to demonstrate if only one quote is sought.</p> <p>If approaching multiple Suppliers, email the RFQ individually to each Supplier, or blind copy all Suppliers. Group emails must not be sent. Quotes can be received from Suppliers via email, however it is recommended that you use a group inbox.</p>	

✓	Limited tenders valued under \$10 000	Limited tenders valued between \$10 000 and \$79 999	✓
	<p><u>Respond to any queries.</u></p> <p>You should respond to any queries, ensuring all Potential Suppliers have access to the same information. Ensure all correspondence between Potential Suppliers and AEC personnel is confirmed in writing. Quotations should not be taken over the phone. See Appendix 8 for more guidance.</p>	<p><u>Respond to any queries.</u></p> <p>You should respond to any queries, ensuring all Potential Suppliers have access to the same information. Ensure all correspondence between Potential Suppliers and AEC personnel is confirmed in writing. Quotations must not be taken over the phone. See Appendix 8 for more guidance.</p>	
4: Evaluate			
	<p><u>Evaluate Submissions.</u></p> <p>A single AEC Contact Officer can evaluate the Submissions for procurements valued under \$10 000.</p> <p>A brief explanation of how the Submissions were assessed in terms of value for money is all that is required to record the evaluation. The assessment should be recorded in a File Note.</p> <p>See Appendix 4 for more guidance.</p>	<p><u>Evaluate Submissions.</u></p> <p>In most cases, an evaluation team will evaluate the Submissions to determine best value for money in accordance with the evaluation plan. See Appendix 4 for more guidance.</p> <p>CCS provides an ATM Response Evaluation Template that can be used for this purpose.</p> <p>Alternatively the AEC Evaluation Report template can be used.</p> <p><u>Draft an evaluation report.</u></p> <p>CCS provides an Evaluation Report template that can be used for this purpose. The evaluation report should be provided to the relevant AEC Financial Delegate for approval.</p> <p><i>Tip: If a Supplier has requested information be treated as Confidential, ensure this is clear in the evaluation report as it is likely to require negotiation (See Appendix 7 for more guidance).</i></p>	
5: Draft Agreement			
	<p><u>Draft email to accept the quotation.</u></p> <p>Acceptance of the quotation can be completed through the form of an email, attaching the Commonwealth Agreement Terms.</p> <p>Draft acceptance of the quotation using the Email for accepting a quote under \$10 000.</p>	<p><u>Draft the Agreement and review the Statement of Requirements.</u></p> <p>Draft the Agreement using the CCS Commonwealth Contract template for the preferred Supplier. The Commonwealth Agreement Terms must be attached to the Agreement. See Appendix 14 for more guidance.</p> <p>Review and update the Statement of Requirements. See Appendix 1 for more guidance.</p>	

✓	Limited tenders valued under \$10 000	Limited tenders valued between \$10 000 and \$79 999	✓
	<p><i>Is a Supplier seeking to apply their own Terms and Conditions?</i></p> <p>Where a Supplier proposes applying their own standard terms and conditions to the purchase, AEC personnel must seek legal advice from CLP prior to AEC Financial Delegate approval. See Appendix 11 for more guidance.</p>	<p>Tip: <i>If a Supplier has requested that information be treated as Confidential, ensure that you assess the request against the criteria within the 'Confidentiality Test' (See Appendix 7 for more guidance).</i></p>	
6: Seek Approvals			
	<p><u>Create an Approach to Market and Spending Proposal in My Procurement*</u></p> <p>Attach the draft email for accepting a quote under \$10 000, and any other relevant documentation.</p> <p>Once submitted, the Spending Proposal will workflow to the nominated AEC Financial Delegate/s for the relevant approvals.</p> <p>An AEC Official must not notify any Supplier of the outcome of the procurement until the AEC Financial Delegate/s has made a decision.</p> <p>See Appendix 5 and 6 for more guidance.</p> <p>The AEC Financial Delegate must ensure funds are available before approving the Spending Proposal.</p> <p>Tip: <i>Procurements below \$10 000 will workflow directly to the AEC Financial Delegate. CLP will only be required to review and approve if you select you are entering into Supplier Terms and Conditions.</i></p> <p><i>*This step is not required if goods/services are being paid for on an AEC Corporate Credit Card. AEC Financial Delegate approval can be sought via the File Note or the Email for Financial Delegate approvals under \$10 000.</i></p>	<p><u>Create a Spending Proposal against the Approach to Market in My Procurement.</u></p> <p>The draft CCS Commonwealth Contract, quotation, evaluation report and any other relevant documentation must be attached to the Approach to Market.</p> <p>CLP will review the Agreement and provide the Requesting Officer with any suggested changes and feedback by email.</p> <p>See Appendix 5 and 14 for more guidance.</p> <p><u>AEC Financial Delegate Approval.</u></p> <p>Following approval of the Spending Proposal by CLP, it will workflow to the nominated AEC Financial Delegate/s for the relevant approvals. See Appendix 6 for more guidance.</p> <p>AEC personnel must not notify any Supplier of the outcome of the procurement until the AEC Financial Delegate/s has made a decision.</p> <p>The AEC Financial Delegate must ensure funds are available before approving the Spending Proposal.</p>	

✓	Limited tenders valued under \$10 000	Limited tenders valued between \$10 000 and \$79 999	✓
7: Finalise the procurement			
	<p><u>Accept the quotation and receive acknowledgment.</u> Once the AEC Financial Delegate has given formal approval, AEC personnel should send the Email drafted to accept the quote. Ensure the Supplier acknowledges and agrees to the email in writing.</p> <p><u>Notify unsuccessful Respondents</u> Any unsuccessful Suppliers can also be notified at this time. Text is available for this purpose in the unsuccessful respondent template letter.</p>	<p><u>Complete quality check of the CCS Commonwealth Contract.</u> Conduct a final quality check of the Contract to ensure there have been no changes since drafting (eg. dates). Ensure any outstanding items are negotiated with the Supplier for inclusion within the Contract.</p> <p><u>Issue the Contract for execution.</u> Once formal approval has been provided by the AEC Financial Delegate/s, issue the CCS Commonwealth Contract to the preferred Supplier for signature followed by the AEC. Best practice dictates that the AEC should execute an Agreement last.</p> <p>Attach the executed CCS Commonwealth Contract to the Approach to Market in My Procurement within two weeks of execution to enable the creation of a Contract in My Contracts. This will ensure the AEC meets AusTender reporting requirements. See Appendix 5 for more guidance.</p> <p><u>Notify unsuccessful Respondents and conduct debriefs.</u> The CCS provides a template that can be used for this purpose. Text is also available for this purpose in the unsuccessful respondent template letter.</p>	
8: Manage the Agreement			
	<p><u>Actively manage the Contract.</u> Actively manage the agreement in accordance with these Procedures and the Commonwealth Contract Terms. See Appendix 2, 12 and 13 for more guidance.</p>	<p><u>Actively Manage the Contract.</u> Actively manage the Contract in accordance with your Contract Management Plan, these Procedures, and the provisions of the CCS Commonwealth Contract. See Appendix 2, 12 and 13 for more guidance.</p> <p>In accordance with clause A.B.12 of the Commonwealth ATM Terms, AEC personnels must, upon request, debrief any Suppliers following award of the Agreement.</p> <p>Where requested, conduct debriefs.</p>	

6. Premises

This section outlines the process for when AEC personnel procure the hire of premises for an Electoral Event or Business as Usual.

Agreements for Business as Usual

Where the hire of a premise is required for the conduct of Business as Usual, an AEC short-term venue hire agreement should be used in the first instance where possible.

If the premises insists that their 'own' agreement or terms and conditions (non-standard agreement) be used, AEC personnel must:

- (a) complete a [non-election premises hire risk assessment](#);
- (b) forward the premise's agreement or terms and conditions along with the risk assessment to CLP for legal advice prior to entering into the agreement; and
- (c) enter this agreement in My Procurement, attaching the legal advice, risk assessment and any other documents

Agreements for Electoral Events

Agreements relating to Electoral Events must be managed in accordance with the policies as supplied on the [Elections intranet page](#).

The Electronic Premises Inspection Tool

If required, the Electronic Premises Inspection Tool (the Tool) must be completed prior to entering into an Agreement for the hire of premises for an Electoral Event. The Tool enables AEC personnel to gather and record all information required regarding the hire of a premise, including risk assessments of premises. For more information on the Tool refer to the relevant [Elections intranet page](#).

Off-site scrutiny centers (including Out-posted Centres and Central Senate Scrutiny)

These are separately sourced through National Property. For OPC enquiries contact OPC Sourcing.

All other election premises (including Statics, Pre-poll Voting Centres, training, etc.)

Once a premise has passed inspection and is considered suitable, please comply with the following contracting, approval and record keeping requirements.

STEP 1: CONTRACTING REQUIREMENTS	
Situation	Action
Approaching the landlord for the first time	ELMS premises agreement should be used in the first instance. Examples of the ELMS premises agreements are available on the ELMS page .
Landlord is a state government school	Check with your State Office whether there is an overarching agreement with the state's education department and what terms and conditions apply.
Landlord does not accept the ELMS agreement	Provide landlord with the AEC's template short term venue hire agreement . This template agreement does not require the AEC to grant any indemnities.

Landlord insists on using their own terms and conditions		Email that to Commercial Law and Procurement (CLP) for legal advice and include the State, Division name, name of Premises, and purpose (e.g. static, PPVC, training venue, etc.), then follow the legal advice you receive.
STEP 2: APPROVAL REQUIREMENTS		
Situation		Action
Blanket PGPA Act approval issued by your State Manager	Indemnities required ¹	
Yes	Either Yes or No	Double check your budget and proceed
No	No	Obtain s23 PGPA Act approval in writing if payment is being managed through ELMS or via My Procurement if payment is being managed outside of ELMS.
No	Yes	Follow the legal advice you obtained from CLP (ie. may need both s23 and s60 PGPA Act approval)
STEP 3: RECORD KEEPING REQUIREMENTS		
Situation		Action
Value of the hire	Indemnities required ¹	
under \$10k	No	If you are paying by AEC Corporate Credit Card or through ELMS, simply keep all records on your file. If you are not paying by AEC Corporate Credit Card or through ELMS, you must use My Procurement
under \$10k	Yes	If you are paying by AEC Corporate Credit Card or through ELMS, send the written delegate approval and signed agreement to CLP . If not paying by AEC Corporate Credit Card or through ELMS, you must use My Procurement
\$10k or more	Either Yes or No	Use My Procurement.

¹ If you are using the ELMS premises agreement or the AEC's short term venue hire agreement, indemnities are not required. If the Landlord insists on using their own terms and conditions, the legal advice you obtain from CLP will state whether indemnities are required.

7. Vehicle hire

Whole of Australia Government arrangement (WoAG)

All vehicle hires within Australia must be made through the WoAG contracted provider, Hertz.

If vehicle hire is being arranged with domestic flights, it can be booked through the Online Booking Tool.

If you are only hiring a vehicle, you can book direct with Hertz, online or by telephone. The terms and conditions for hiring vehicles from Hertz are contained in the Deed between the Department of Finance and Hertz.

Upon collection of a vehicle from Hertz, the AEC official may be required to sign a document. The purpose of this document is to identify the Authorised Driver. Clause 14.2 of the Deed that the Department of Finance has in place with Hertz confirms this by stating that the Deed prevails over any other rental agreements, provisions or terms. Accordingly, the legal risk to the AEC is low if an AEC official is required to sign other terms and conditions as the terms of the Deed can be relied on. To limit the risk further however, we recommend resisting the requirement to sign any other document.

More information about vehicle hire under the WoAG arrangement can be found on the [Department of Finance's website](#). In particular you may find the [Department of Finance's FAQ section](#) useful.

General AEC procedures for hiring vehicles are contained in the [AEC's Travel Procedures](#).

Alternative providers

Where a Hertz rental office is not within reasonable proximity, or no vehicles are available, AEC personnel may use an alternative provider that represents best value for money.

In such instances, AEC personnel **must**:

- a. seek Commercial Law and Procurement section advice on the alternative provider's terms and conditions before you enter into any agreement; and
- b. advise [AEC Travel](#) in order that it can be reported to Department of Finance for contract review and compliance purposes.

To help make this process quicker for business areas, legal advice has been provided below for alternative providers that the AEC has previously used. If a business area uses a provider on a regular basis and they are not listed on the [Vehicle Hire intranet page](#), please provide the terms and conditions to CLP for review as soon as possible. Further, if a business area becomes aware that a provider listed on the [Vehicle Hire intranet page](#) has changed their terms and conditions, please provide the updated terms and conditions to CLP for review as soon as possible.

Indemnities

MOST vehicle hire arrangements, including those under the WoAG arrangement, require the AEC to indemnify the provider. Under section 60 of the *Public Governance, Performance and Accountability (PGPA) Act 2013*, the AEC cannot grant an indemnity in any arrangement unless there is delegate approval.

PGPA Section 60 Blanket Approval and Risk Assessment

To simplify the PGPA section 60 approval process and support compliance, the Chief Legal Officer has provided blanket approval based on a standard risk assessment for vehicle hire which can be found on the [Vehicle Hire intranet page](#).

Note that this PGPA section 60 blanket approval **only applies** where:

- a. a provider is used under the WoAG arrangement (ie. Hertz); **or**

- b. another provider is engaged and their standard terms and conditions have been reviewed by CLP and legal advice provided; **and**
- c. the risks of hire are adequately addressed in the risk assessment attached to the blanket approval.

For the avoidance of doubt, if an AEC official determines that the risks of hire (including through Hertz under the WoAG arrangement) are not adequately addressed in the standard risk assessment, a new risk assessment and PGPA section 60 approval will need to be undertaken separately.

Other points to note when hiring vehicles

PGPA Rule 18 approval is required prior to the hire of a vehicle from **any provider (Hertz or alternative provider)**.

The [email for financial delegate approvals under \\$10,000](#) can be used for Hertz vehicle hire, or alternative provider vehicle hire where the cost is less than \$10,000 (GST inclusive) and the purchase will be made by an AEC Corporate Credit Card.

All other vehicle hire (of any value) from an alternative provider must be entered into My Procurement and Rule 18 approval obtained through the Spending Proposal (Stage 2) process.

Questions about the travel policy should be directed to [AEC Travel](#).

8. Contract Management

Overview

Contract Management is critical in ensuring the AEC achieves value for money in the procurement process. Effective Contract Management requires actively engaging with the Supplier to achieve the outcomes or deliverables negotiated in the Agreement. The key to successful contract management is; monitoring the performance and obligations of both parties to an agreement; managing the contractual relationship; identifying and managing risks; and, identifying issues early to ensure they are managed proactively to limit their effect.

Contract Management should be considered during the planning stage of your procurement to ensure appropriate resources are identified to undertake this role. Consideration at this stage also allows the early identification and development of processes required to assist in the monitoring and management of your Contract (e.g. performance monitoring processes to support Service Levels in the Agreement).

The responsibilities of the Contract Manager officially begins once the Contract has been signed by both parties. An effectively managed contract can avoid situations for the AEC such as; unfunded additional expenditure; adverse audit findings; damage to the AEC's reputation; and, uncompleted projects.

A Contract Management Plan (CMP) is an essential tool that will assist Contract Managers to develop a good understanding of the Contract and the responsibilities and obligations of each party to the agreement.

Please note: A Contract Management Plan is mandatory for; all significant election related contracts (including MOU's and Deeds of Standing Offer); contracts valued at or above \$80 000; or contracts considered complex or high risk.

A CMP template and a Contract Management Overview (CMO) template (for use with low value Contracts) has been developed for use and can be found on the AEC Contract Management Intranet site. Please note that the CMO is not mandatory, but it may be useful for Contract Managers to have all essential information consolidated in one document.

Handover (or transition in)

In the event the Contract Manager did not form part of the Tender Evaluation Team (TET), a handover from the TET should be conducted in order to assist transition from the tendering process to the Contract Management phase.

Contract Managers are responsible for ensuring a seamless transition to the new Supplier, where a transition phase is applicable. This is important to minimise the risk of reduction or loss of Services where a new Supplier will be providing a Service to the AEC. Developing a transition plan can assist in this process and should be incorporated into your CMP.

Manage Contract start-up

At the commencement of a Contract, Contract Managers must:

- (a) develop a CMP for significant election related Contracts, Contracts valued at or above \$80 000 or considered complex or high risk, and attach to the Spending Proposal;
- (b) have an intimate understanding of the entire Contract, including any Deed of Standing Offer or
- (c) Head Contract to the Contract;

- (d) complete a contract risk assessment and risk mitigation plan if required; (d) address any issues that were not resolved when the Contract was signed;
- (e) follow up with the Supplier/s on key initial obligations, such as obtaining evidence of their insurances , financial viability and signed Deed Polls from Specified Personnel;
- (f) identify how the achievement of deliverables will be measured;
- (g) establish processes for monitoring and reporting on the performance of the Supplier in relation to the key performance indicators; and
- (h) establish roles and responsibilities for internal stakeholders.

Note: The above items are inclusions within the CMP template developed for your use.

Administer the Contract

To assist with the overall management of the Contract, it is important that Contract Managers:

- (a) regularly review and update the Contract Management Plan including risk assessment when appropriate;
- (b) maintain up to date records of key personnel and contact details;
- (c) schedule meetings at specific times throughout the life of the Contract, giving the time, place and purpose of the meeting as well as any planned reviews or other key actions;
- (d) inspect Services on delivery (particularly where delivery will be phased) to ensure they meet the standards specified in the Contract,
- (e) make payments only in accordance with the terms of the Contract,
- (f) document any changes, significant decisions or events and file all documentation and correspondence in relation to any procurement;
- (g) report to senior management and stakeholders on the status of the Contract at appropriate intervals; and,
- (h) develop and maintain an effective and professional relationship with the Supplier.

Relationship Management

Relationship management is an essential element to contract management, and a basis for this relationship can often be established in the procurement phase. However, if a Contract Manager is new to the procurement or the contractual arrangement, the Contract Manager must undertake to understand the relationship that already exists between the AEC and the Supplier. This includes understanding any problems or issues that occurred earlier in the procurement process.

The type of contract (including size, duration, deliverables, personalities involved) will influence the relationship between the parties to the arrangement, and the structure of your approach to managing the relationship. It is important to develop and maintain a constructive relationship with regular communication and this can be achieved through both informal (e.g. day to day discussions and interactions), and formal (e.g. formal contract management meetings and performance reviews with nominated personnel) means. Formal meetings should be captured in your CMP.

An effective relationship with your Supplier can allow the quick and simple identification and resolution of issues, before they become critical to the delivery of the contract. Maintaining a good relationship does not mean that the terms of a contract are not enforced, rather it is about professionally enforcing the terms of a contract based on evidence of contractual performance.

Relationships should be managed professionally and be based on cooperation and mutual understanding. It is important to remember that this relationship is a professional one and should not become too intimate, as this can affect your ability to manage the arrangement and can bring ethics and probity considerations into question.

Stakeholder and Communication Management

It is important to ensure that stakeholders to the contract are kept informed of relevant matters such as contract developments, and are continually engaged or consulted where required throughout the life of the contract. In order to achieve this you should first identify the internal and external stakeholders, and their role in relation to the Arrangement.

A key item to consider at this point is any other AEC contractual arrangement that may have intersecting contract deliverables. This is an important step in developing a system to manage information between Suppliers with intersecting deliverables, to ensure a coordinated and seamless delivery of the operational activity relating to the arrangements. Intersecting contract deliverables could include scenarios such as; the manufacturer for Cardboard material and the Supplier contracted to manage collection/delivery; or, a hired premise and a furniture hire company; or a Ballot Material Printing Supplier and the Supplier contracted to manage collection/delivery.

Communication Plan

A Communication Plan should be developed as part of a CMP to identify the type of information that needs to be shared with/between Stakeholders, the frequency, the method and where the responsibility sits for sharing the information.

This should include how you will communicate Services to be delivered under the contract to end users; how you will receive feedback on Supplier Performance from end users; how you will engage with your Supplier for ongoing contract requirements (including performance issues); how you will engage with other Internal / External stakeholders.

Performance Management

Effective management of a Contract is the most efficient means of ensuring performance is in line with contractual obligations. Contract Managers must undertake performance management over the life of the Contract in accordance with the provisions of the Contract, including non-performance provisions.

Performance management involves:

- (a) performance monitoring to ensure that progress is being made in line with agreed time frames, and that the Supplier is performing in accordance with the Contract. Contract Managers should focus on monitoring the key deliverables outlined in the Contract, as very detailed monitoring can be costly and shift the focus away from achieving outcomes;
- (b) determining whether performance meets the AEC's needs through performance assessments.
- (c) The primary responsibility for performance rests with the Contract Manager, who should ensure that standards and targets are met on time and within budget;
- (d) taking appropriate action such as correcting areas of underperformance through contract management mechanisms, or amending the contract requirements to meet changing needs. If performance issues cannot be resolved by the AEC Contract Manager, this should be escalated in accordance with the escalation process identified in your CMP (see the AEC Escalation Framework section of these Procedures and Appendix 12);
- (e) making reasonable enquiries to determine compliance with any applicable Standards including:
 - (i) gathering evidence of relevant certifications; and
 - (ii) periodic auditing of compliance by an independent assessor, and
- (f) seeking reasonable evidence to satisfy the AEC that contractors have not breached the regulations and/or regulatory frameworks and have demonstrated their sustainability credentials.

It is important that Contract Managers attempt to address any issues with the Supplier (including under performance) at the lowest possible level in the first instance. It should also be considered what role the AEC may have played in contributing to the issue, as a contract includes obligations on both parties to the arrangement.

Managing under performance

- (a) Contract Managers should address any problems with the Supplier promptly, in accordance with the terms of the Contract. While there is no set procedure for managing under performance, it is essential to clearly address poor performance as soon as the problem is identified, including providing timeframes for resolution if appropriate. The longer poor performance is allowed to continue, the more difficult it becomes to attain a satisfactory resolution.
- (b) When addressing issues of non-performance with a Supplier, Contract Managers should specifically identify the problem, and determine how wide the gap is between what is expected, and what is being delivered. Contract Managers should address the issue with the Supplier in a professional, fair and just manner, documenting all meetings and communications.
- (c) Generally, consequences for under performance will be addressed in the Contract, and may involve:
 - (i) replacing Specified Personnel;
 - (ii) using additional Specified Personnel;
 - (iii) amending progress reporting procedures to make status reports more frequent;
 - (iv) modifying processes or systems;
 - (v) clarifying the AEC's requirements with the Supplier, escalation involving senior management from both parties in formal discussions or written communications; or
 - (vi) withholding payments until the performance returns to an acceptable level (this remedy must reflect the seriousness of the underperformance, and careful consideration needs to be given when adopting this approach).
- (d) In formally addressing underperformance, Contract Managers must follow any formal escalation procedures as identified in the Contract where necessary. Contract Managers should contact CLP for advice when dealing with formal under performance. Any formal management of a performance issue should must be recorded in the Supplier Performance Register section of the CLP's [SharePoint site](#) (for procurements valued at or above \$80 000).
- (e) All major stakeholders should be regularly informed of the status of the Contract and Supplier's performance, particularly where there are any issues.

Managing disputes

- (a) Disagreements and disputes often arise when the parties cannot agree on issues related to the interpretation of the provisions of the Contract, the definition of deliverables, meeting performance standards and/or the effect of unexpected events. In most circumstances, disputes will be reduced where both parties have a sound understanding of their roles and responsibilities under the Contract.
- (b) However, where a dispute arises, it is important that it is dealt with as quickly as possible in order to prevent escalating the matter, which may impact on deliverables.
- (c) Contract Managers must strictly follow the dispute resolution procedures provided in the Contract.

AEC Escalation Framework

Contract management may at times involve managing and resolving issues that arise during and after the delivery of services by a contracted supplier. It is the responsibility of the nominated AEC Contract Manager to effectively and actively manage their contract, including resolving any issues experienced during the term of the agreement. However, at times a Contract Manager may be unable to adequately

influence the situation with the Supplier's Contract Manager, or may require approval or decisions to be made by the AEC that are above their level of authority. At these times, it may be required to escalate the issue in the appropriate channel within the AEC.

The appropriate escalation channel within the AEC will vary for each contract, and it is important that Contract Managers identify this when establishing the CMP.

The AEC Escalation Framework has been developed to assist Contract Managers in understanding their responsibilities in identifying the escalation process applicable to their contract, and prompt the development of communication channels with end users and identified escalation points to assist in effective management of the contract. The AEC Escalation Framework incorporates information in these Procedures, a Stepped Escalation Diagram including worked scenarios (see Appendix 12), in addition to sections included within the CMP template.

Risk and Work Health Safety (WHS)

Risk must be considered at all stages of the procurement process, including the contract management phase. It is important that a risk assessment is completed within your CMP to identify and mitigate potential risks that may impact on successful delivery of the contract. Additional information on Risk can be found in Appendix 2.

The AEC must ensure that the work health safety of workers engaged by the AEC under contracts; and the safety of products the AEC procures and supplies to others. Entering into contracts creates shared WHS legislative duties for the AEC and the other party to the contract.

AEC shared duties can be discharge in two ways:

- (a) Directly - taking the necessary actions required, or
- (b) Indirectly - by requiring necessary actions to be taken by the AEC contracted Supplier on the AEC's behalf, and then ensuring or verifying that the Supplier has completed these actions.

The management of the WHS aspects of your contract should be recorded in your Contract Management Plan. Additional information on WHS legislation and requirements of AEC personnel can be found on the AEC intranet site for WHS and Safety.

Contract variations and options to extend

A variation is an amendment to a Contract that changes the Contract's original terms or conditions. For example, you may need to vary a Contract if there is a change to the Services required, personnel or pricing. Provisions which allow for Contract variations should be outlined in the Contract.

Variations must not significantly change the Contract requirement, or a substantial part of the original Contract.

Important: Any proposed variation to an agreement must be assessed to ensure that the contract will continue to deliver value for money to the AEC, and does not breach the CPR's.

Tip: A variation to extend a Contract beyond the terms of the original Contract (rather than exercising an extension option within the terms of a Contract), is a new procurement that must be conducted in accordance with the CPRs. Variations to include new extension options generally increase the scope of the Contract and are therefore not allowed.

An option to extend the term of a Contract is a legal right within a Contract to unilaterally extend the term of the Contract by a specified period.

Provisions that allow for Contract variations must be outlined and exercised in accordance with the Contract and prior to the expiry date. A Contract cannot be varied to include extension options.

Important: Before any extension option is taken, a Contract Evaluation must be completed. A contract evaluation template is available on the AEC Contract Management Intranet site for use. All contract evaluations are to be recorded in the Supplier Performance Register section of the CLP's SharePoint Site [SharePoint site](#).

Options to extend

Process

- (a) Complete a variation request in My Contracts and submit to CLP.
- (b) CLP will draft the required document (Deed of Variation or Letter of Extension) and email it to the Contract Manager.
- (c) Once the request has been approved by CLP and the AEC Financial Delegate in My Contracts, the document can be issued to the Supplier.
- (d) Contract Managers must ensure they clearly document the reasons for varying the contract and/or exercising the extension option and update the Contract Management Plan.
- (e) The Contract Management Checklists in Appendix 13 can guide you in extending a Contract.

Termination

Termination of an Agreement is a serious step with potential probity and legal risks that must be considered before any decision is made. For this reason CLP must be consulted prior to any considering any termination.

Handover (or transition out)

Where a handover from the outgoing Supplier to a new Supplier is to occur, the process must be carefully managed. Ideally, handover arrangements should involve an agreed period of overlap where the new Supplier works alongside the outgoing Supplier to achieve as seamless a transition as possible.

Attention should be paid to conditions in the Contract which relate to the handover, including any financial matters, intellectual property, transfer of material, and training procedures for the incoming Supplier.

Evaluation and lessons learned

A Contract Evaluation should be undertaken at the end of each Contract and should include an overall performance of the contract, including the AEC's management of the contract. This can be useful in identifying lessons that have been learned throughout the life of the contract to better understand and improve overall contract management in future.

When a transition from one Contract to another is to occur, it is best practice for an evaluation to be undertaken before the Contract ends so that any problems that have occurred with aspects of the Contractual arrangement are identified, and where appropriate, improvements made and implemented in future Contractual arrangements.

AEC personnel are required to report to CLP any variations to any Contracts (eg. final expenditure is less than the Spending Value) in order that AusTender can be updated.

The Contract Evaluation Template available on the AEC Contract Management intranet site can guide you in evaluating a Contract.

The CLP SharePoint site includes a 'Supplier Performance Register' that must be used by business areas to record Contract Evaluations that have been completed at the end of a Contract. The Supplier Performance Register is intended to assist business areas in leveraging supplier performance information from across the AEC network and benchmark supplier performance. It may also be used to assist in conducting market research by identifying Suppliers that have provided excellent quality Goods / Services to the AEC.

9. Useful links

Link	Purpose
<u>ABN Lookup</u>	Provides access to publicly available information supplied by businesses when they register for an Australian Business Number.
<u>AEC Financial Delegations</u>	Provides detail of AEC personnel Financial Delegations.
<u>ANAO Better Practice Guide Developing and Managing Contracts</u>	A guide to best practice development and management of contracts.
<u>AusTender</u>	The central web-based facility for the publication of Australian Government procurement information, including business opportunities, annual procurement plans and contracts awarded.
<u>Commonwealth Contracting Suite</u>	Mandatory documentation for procurements valued up to \$200k.
<u>Commonwealth Procurement Rules 2018</u>	Rules with which Commonwealth entities must comply with when undertaking any procurement.
<u>Commonwealth Resource Management Framework</u>	Governs the Commonwealth public sector use of public resources.
<u>Freedom of Information Act 1982</u>	Legislation providing a right of access to documents held by Australian Government ministers and most agencies.
<u>Resource Management Guides</u>	A set of guides providing guidance and best practice advice relating to the Commonwealth Resource Management Framework.
<u>Sustainable Procurement Guide</u>	Assists Australian Government purchasers to include sustainability considerations in all stages of the procurement process.
<u>Indigenous Procurement Policy</u>	Stimulates the Indigenous business sector by leveraging the Commonwealth's purchasing power to boost Indigenous Enterprises.
<u>AEC Procure-to-Pay System: My Procurement</u>	The AEC's central access procurement and contract management data base to assist in ensuring compliance obligations.
<u>Department of Finance – Procurement Policy and Guidance</u>	Provides guidance materials to assist all Commonwealth entities.
<u>Privacy Act 1988</u>	Legislation regulating how personal information is handled.
<u>Public Governance, Performance and Accountability Act 2013</u>	Legislation for the governance, performance and accountability of, and the use and management of public resources.
<u>Public Governance, Performance and Accountability Rule 2014</u>	Supports the operation of the PGPA Act and establishes accountability and control mechanisms to support Commonwealth transactions.
<u>Public Service Act 1999</u>	Legislation governing the operation of the Australian Public Service.

<u>Supply Nation</u>	Membership body dedicated to growing diversity in supply chains. Enables searches of Indigenous Enterprises.
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10. Definitions and interpretation

All capitalised terms used throughout these Procedures are set out in the table below.

Term	Interpretation
AAI	means Accountable Authority Instructions.
AEC	the Australian Electoral Commission ABN 21 133 285 851.
AEC Contract Manager	the AEC Official who will manage all aspects of an Agreement to ensure successful delivery of Services.
AEC Contact Officer	a person who is responsible for the planning, undertaking and successful completion of a procurement activity within the AEC.
AEC Financial Delegate	an AEC Official that has the authority to provide approvals in relation to procurement activities under the PGPA Act.
AEC Officials	a person who is in the AEC or is part of the AEC.
Agreement	<p>refers to any contractual arrangement for the provision of Services under which public money is payable or may become payable.</p> <p>Term encompasses contracts, deeds of standing offer, head agreements, Work Orders, service agreements, memorandums of understanding, leases, terms and conditions, letters of acceptance or service requests.</p>
Approach to Market	<p>Refers to the procurement request forms in My Procurement. The Approach to Market captures key procurement and contract information. There are three request forms to choose from depending on the estimated value of your procurement:</p> <ul style="list-style-type: none"> • Under \$10 000; • \$10 000 – \$79 999; and • Over \$80 000
ATM	<p>an approach to market inviting Potential Suppliers to participate in a procurement. Encompasses requests for tender, requests for quote, requests for expression of interest, requests for application, requests for information or requests for proposal.</p>
AusTender	the Commonwealth's procurement information system.
Australian Government	relates to the procurement activities of the Australian Government; it does not relate to the activities of State, Territory or local government bodies.
Business Day	in relation to the doing of any action in a place, any day other than a Saturday, Sunday or public holiday in that place.
Confidentiality Test	the four limb confidentiality test prescribed by the Department of Finance to assess against the criteria as to whether the information is considered confidential.

Term	Interpretation
Conflict of Interest	includes any circumstances where: <ul style="list-style-type: none"> (a) due to a direct or indirect relationship or interest, the Respondent or any of their personnel is, or may reasonably be perceived to be, unable to discharge their obligations or duties in relation to the AEC in an objective and independent manner to the best of their ability; (b) due to a direct or indirect relationship or interest the Respondent or their personnel may be seen to compromise the political neutrality of the AEC; or (c) there is not necessarily an actual conflict of interest, but a reasonable person would or would be likely to perceive that a conflict of interest exists.
Confidential Information	information that is by its nature confidential and is: <ul style="list-style-type: none"> (a) designated by a party as confidential; (b) described in the Agreement as confidential; or (c) information of the AEC that the Supplier knows or ought to know is confidential, but does not include information which is or becomes public knowledge otherwise than by breach of the Agreement or any other confidentiality obligation.
Contingent Liabilities	commitments that may give rise to a liability as a result of a future event. They often result from indemnities, guarantees, warranties or other commitments of this type which are included in Agreements.
Deed of Standing Offer	an offer between the AEC and another party to supply Services under certain terms and conditions for a predetermined length of time.
Deed Poll	A legal document binding only to a legal entity, single person, or several persons acting jointly to express an active intention. These are used by the AEC in relation to political neutrality for AEC Suppliers.
Electoral Event	includes general elections, senate elections, by-elections, referendums and plebiscites.
Existing Arrangements	refers to arrangements established by the AEC or other Commonwealth agencies to improve consistency and control and to deliver savings and efficiencies. Encompasses Whole of Australian Government arrangements, AEC National Panels and panel arrangements.
FOI Act	the <i>Freedom of Information Act 1982</i> (Cth).
GST	has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
Indigenous Enterprise	an organisation that is 50 per cent or more Indigenous owned that is operating a business.
Indigenous Procurement Policy	the Commonwealth Indigenous Procurement Policy dated 1 July 2015, as updated from time to time.
My Contracts	The AEC's central database used to record contracts, allow payment of invoices and support contract management.

Term	Interpretation
My Procurement	The AECs central database used to capture the procurement process and obtain spending approval.
PGPA Act	the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth).
PGPA Rules	the <i>Public Governance, Performance and Accountability Rule 2014</i> (Cth).
Potential Supplier	an entity or person who may respond to an ATM.
Privacy Act	the <i>Privacy Act 1988</i> (Cth).
Procedures	the AEC's Procurement and Contract Management Procedures.
Probity Adviser	an AEC Official within CLP that provides advice as requested throughout a procurement process to ensure the procurement is conducted ethically.
Procurement Plan	Refers to stage one in My Procurement. This should be completed prior to an ATM
PS Act	the <i>Public Services Act 1999</i> (Cth).
Request Documentation	documentation provided to Potential Suppliers to enable them to understand and assess the requirements of the AEC in order to prepare a Submission in response to the ATM.
Request for Tender	a published notice inviting businesses who satisfy the conditions for participation to submit a tender in accordance with requirements of the request for tender and other request documentation.
RFQ	a request for quotation issued to the Supplier by the AEC.
Respondent	an entity or person who has responded with a Submission to an ATM.
Services	encompasses goods and/or services to be procured by the AEC.
Specified Personnel	the Supplier's personnel specified in an Agreement to undertake the Services.
Spending Proposal	Refers to stage 2 in My Procurement. This is used to obtain CLP and AEC Financial Delegate approvals prior to entering into an Agreement.
SoR	the statement of requirements which clearly, concisely and logically describe the Services that the AEC requires or a Supplier must deliver.
Standards	means a document approved by a recognised body such as Standards Australia, the International Organization for Standardization, the International Electrotechnical Commission or the International Telecommunication Union that provides for common and repeated use, rules, guidelines or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory, unless the goods or services are subject to regulation by government.
Submission	a formal quotation or response from a Potential Supplier to an ATM.
Supplier	an entity or person who has entered into an Agreement with the AEC.
Work Order	an Agreement issued under an Existing Arrangement to the Supplier. Encompasses official order, order, services order or official work order.

11. Appendices

Appendix 1 – Market Research and drafting a Statement of Requirement

Market Research

Overview

Conducting market research is an important step to assist in planning your procurement. Collecting information about the market enables the AEC to:

- (a) understand how the market works, its competitiveness, capabilities or constraints;
- (b) better define AEC requirements;
- (c) identify Potential Suppliers;
- (d) better anticipate costs and timeframes;
- (e) achieve value for money;
- (f) minimise risks; and
- (g) identify lessons learnt.

The results of market research should be documented to assist in justifying any decisions made based on that research, and inform future market research conducted by the AEC.

When conducting market research, care must be taken to avoid the perception that any Potential Supplier has received information that provides them with an unfair competitive advantage, or that work has been promised through this process.

Sources

Commensurate with the scope, scale, value, type of Services required and estimated risk of the procurement, market research can be undertaken:

- (a) informally by:
 - (i) contacting other Commonwealth agencies or other users of similar Services;
 - (ii) meet or call known or key stakeholders;
 - (iii) contacting the business area within the AEC relevant to the Services being procured for knowledge or advice (eg. ICT);
 - (iv) reviewing existing market research conducted by a business area,
 - (v) searching My Procurement for previous procurements undertaken or Agreements entered into;
 - (vi) attending industry exhibitions;
 - (vii) searching the Yellow Pages;
 - (viii) conducting searches on AusTender; and/or
 - (ix) conducting searches on the internet.
- (b) formally via AusTender by undertaking an open approach to market through a multi-stage procurement process. Note that if you are intending to use a multi-stage approach, you must consult with CLP early in the planning stage as specific procurement rules apply.
- (c) in rare cases, sourcing a specialist consultant to conduct the market research which in itself would be a separate procurement exercise.

Analysis

Following are some questions to consider when researching the market to determine how you will structure your approach to the market:

- (a) Where do my requirements fit in the market? Is it insignificant, significant or innovative?
- (b) What is the capability of the market in order to meet the AEC's needs? Is it a well-developed, emerging or immature market? Is it dynamic and does it have a high level of business activity? Or is the industry on the decline or under threat?
- (c) What is the risk profile of the market? Is there a risk to supply?
- (d) What is the capacity of the market? Do skill shortages exist? Is the industry at full capacity? Are there any seasonal factors?
- (e) Are there any Australian standards, certifications, licences or professional accreditations applicable to the goods or services being procured?
- (f) Do any relevant regulations and/or regulatory frameworks apply (eg. National Construction Code or Safework Australia regulatory framework)? (g) What is the potential number of suppliers?
- (h) How attractive are the requirements to suppliers? High or low? Can it be made more attractive?
- (i) Are there any sensitivity or probity issues in the market that may affect the procurement? Is there a high level of political interest or public sensitivity?

In accordance with paragraph 10.30 of the Commonwealth Procurement Rules, if the procurement is valued above \$4m, AEC personnel must consider what the economic benefit of the procurement is to the Australian economy.

Consider how the Australian economy may benefit from the procurement activity. Consider what economic benefit information will be collected, and how it will be used as an evaluation criteria to assess value for money.

The level of information collected should be commensurate with the procurement. It should not introduce excessive red tape and cost for tenderers bidding for government contracts.

Drafting Statements of Requirements

Overview

The Statement of Requirements (SoR) is fundamental to the overall success of a procurement as it forms the foundation of the Agreement. The SoR should be comprehensively developed during the planning stage as this provides the best opportunity to consider what you want to achieve and clearly define the requirements. This will then guide the development of evaluation criteria for the procurement.

What is an SoR?

A SoR (also known as business requirements, specifications or statement of work) must clearly, concisely and logically describe the Services that the AEC plans to procure.

The SoR ensures that:

- (a) Potential Suppliers can; clearly understand what is expected; calculate their quotation; confirm their capabilities and resources; and, develop an accurate response;
- (b) the evaluation criteria can be easily and clearly defined. Responses can then be evaluated against clear criteria to assist in identifying overall value for money;
- (c) the AEC can monitor performance and confirm that the goods and services are delivered according to our requirements; and
- (d) potential risks are reduced.

Commonwealth Procurement Rules (CPRs)

For procurements that are subject to Division 2 of the CPRs, AEC personnel must ensure that paragraphs 10.9 to 10.13 of the CPRs are adhered to when developing SoRs.

Information resources

AEC personnel should consider the following channels when developing a SoR:

- (a) accessing requirements or specifications for previous or similar procurements conducted in the AEC;
- (b) circulating the draft requirements or specifications to internal stakeholders for comment and review;
- (c) consulting with the end-users;
- (d) where relevant, obtain input from specialist business areas (eg. ICT); and
- (e) for complex procurement, consider conducting a two stage procurement process.

Developing requirements

The length and level of detail of a SoR should be commensurate with the value, risk, complexity and procurement method to the proposed procurement.

The type of details to include in the SoR will depend on whether the procurement is for a Good or Service, or both. The table below outlines possible differences in specifications:

Specifications required for services	Specifications required for goods
The services	The products
Hours or timeframes for services to be performed	Volume of products
Location for the services to be performed	Standards the products must meet
Key performance indicators	Delivery date, time and place
Contract management meetings, reporting milestones, gate reviews	One off or ongoing provision of goods

The following is a list of common concepts that should be considered in requirements however is not intended to be exhaustive:

- (a) the nature, scope, timeframes and quantities (or estimated quantities);
- (b) requirements for plans, drawings and instructional materials;
- (c) technology, systems, compatibility and acceptance testing;
- (d) security;
- (e) communications;
- (f) implementation;
- (g) quality;
- (h) environmental and sustainability considerations;
- (i) whole of life considerations, support and transition;
- (j) installation, training, after sales support and/or maintenance and operating costs;
- (k) AEC policies (eg. the AEC's Ballot Paper Handling Policy);
- (l) adherence or reference to any industry standards or accreditations that the AEC or potential supplier must meet;
- (m) alignment with the AEC's Strategic, Corporate, Business Plans, Values and Commitments; and
- (n) the Commonwealth Electoral Act 1918.

The SoR should not include any information that relates to the supplier's participation in the procurement process (ie. the RFT template).

Tip: The CPRs require minimum standard of information that **must** be included in request documentation (10.6), including estimated quantities (if the quantity is not known), the relative importance of evaluation criteria, and any known dates for the delivery of goods and services

Structure of a SoR

A SoR template is available for use as a base when commencing to draft your requirements and may be amended as appropriate to address your particular requirements.

Other considerations:

- Service Level Agreements;
- Key Performance Indicators;
- Fee Credits; Performance payments;
- Milestone payments; and,
- Volume Discounts.

In clearly detailing the AEC business requirements through developing a SoR, you can identify what contract mechanisms may be appropriate for your procurement and can be included in your documentation to market. This may include mechanisms such as a Service Level Agreements, Key Performance Indicators, a Fee Credit / Performance payment regime, Milestone Payments or a request for volume discounts.

Service Level Agreements* / Key Performance Indicators*

A Service Level Agreement (SLA) formalises the minimum level of service that is expected from Supplier. A SLA must be specific, measurable and achievable and should be based on the requirements included within the SoR.

Key Performance Indicators is a conventional method of monitoring the performance of Suppliers and a contract. They are a set of agreed measures or metrics that are used to define and evaluate the critical success factors in a contract – a measure of how well something is being done.

There are similarities between these mechanisms and different contract / procurements may be better suited to either of these approaches. Regardless of which mechanism is being used, the critical performance elements of the contract deliverables must be identified by the AEC Business Area before any agreement can be drafted.

Fee Credits* / Performance Payments regimes*

Fee Credits and Performance payments are often linked to SLA's and KPI's in contracts, and act as an incentive for Suppliers to meet the level of performance that is required in the contract.

Milestone Payments and Volume Discounts

AEC personnel should also consider if a milestone payment approach, or volume discounts, is appropriate to include within their procurement. Milestone payments may assist in managing performance of a contract, and volume discounts may assist in demonstrating that Value for Money is achieved.

** CLP is able to provide guidance and assist in drafting these items if required.*

“It’s often said that a requirement that is not specified up front is just a contract variation waiting to happen”

Appendix 2 – Risk Management

Overview

Risk management is a critical component of procurement and contract management. Proper risk management helps the AEC to ensure that it is mindful of the risks it faces, that it makes informed decisions in managing these risks, and identifies and harnesses potential opportunities. Therefore, it is very important that risk assessment is commenced from the initial planning stage of a procurement and is continued throughout the entire procurement. Once an Agreement is executed, there will be limited opportunities to further mitigate risks.

Section 8.2 of the CPRs state that:

*Relevant entities **must** establish processes for the identification, analysis, allocation and treatment of risk when conducting a procurement. The effort directed to risk management should be commensurate with the scale, scope, value and risk of the procurement.*

Process

When undertaking risk management, AEC personnel should comply with the AEC's risk management policies and documentation (including the AEC Risk Matrix and Ratings).

It is in the AEC's interest to consider risks and their potential impact when making decisions relating to value for money assessments, approvals of proposals to spend relevant money and the terms of the Agreement.

It is important to note that risks will change throughout the procurement and contract management cycle, and risk assessments should be completed in each various stage of the process e.g. procurement risk assessments should focus on risks to the procurement activity, as opposed to a contract management risk assessment that would focus on risks to successful delivery of the contract.

AEC personnel should ensure that compliance with AEC Policies (e.g. Ballot Paper Handling Policy, and AEC Security Policies), and any relevant Commonwealth legislation (e.g. WHS Act 2011, Privacy Act 1988, PGPA Act 2013), by the AEC and any potential or contracted Suppliers is considered during risk assessments during both procurement and contract management stages.

Procurement risk assessments

The following table outlines the requirements that AEC personnel must undertake in relation to documenting risk assessments for procurements.

Procurement value	Estimated overall risk	Procurement risk assessments
Under \$10 000	Low – High	File Note for procurements under \$10 000
Between \$10 000 and \$80 000	Low – Medium	File note for procurements between \$10 000 and \$79 999; and/or the Procurement Plan in My Procurements.
	Medium – High	Procurement and contract risk assessment
\$80 000 or above	Low – High	Procurement and contract risk assessment
Premises (Electoral Event)	Low – Medium	Premises Suitability Inspection Tool (EF005)
Premises (BAU)	Low – Medium	Procurement and contract risk assessment
Vehicle Hire	Low – Medium	Blanket risk assessment as available on the CLP Intranet page. If you form the view that the risks are not adequately addressed in the above risk assessment, you need to complete the Procurement and contract risk assessment.

Where the estimated overall risk or risk ratings for premises or vehicle hire are considered high, alternate premises or vehicle hire should be sought.

AEC personnel must ensure that risk assessments are regularly reviewed and updated throughout the entire procurement process so that any new risks or changes are identified and managed accordingly.

Financial Management Service Level Options

As part of managing risk, this may include assurance that the AEC Financial Delegate is satisfied with a financial analysis of the procurement and/or suppliers. For any procurements valued at \$200k and above, it is recommended that business areas seek financial advice from the Financial Management Section. The services that can be provided by the Financial Management Section and how to request are outlined in the [Financial Management Service Level Options for Procurements](#).

Contract Management

A Contract Management Plan (CMP) must be completed for Agreements valued over \$80k or above, or for high risk, complex or significant election related Agreements. The Contract Management Plan includes a risk assessment that must be completed and regularly reviewed and updated when appropriate throughout the term of the Agreement.

Tip: *as outlined earlier, your contract Risk Assessment should focus on risks associated with management of the agreement, including delivery of Goods/Services.*

Further Information and Assistance

The Disclosure, Assurance and Engagement Branch has responsibility for risk assessment and management within the AEC. The Risk and Assurance section provides advice and assistance to AEC personnel on how to undertake risk assessments. For assistance contact §22.

Appendix 3 – Indigenous Procurement Policy

Overview

The mandatory Indigenous Procurement Policy (IPP) aims to stimulate the Indigenous business sector by leveraging the Commonwealth's purchasing power to boost Indigenous Enterprises. An Indigenous Enterprise is any business that is 50 per cent or more Indigenous owned.

The IPP has three main parts:

- (a) a target number of contracts that need to be awarded to Indigenous Enterprises;
- (b) a mandatory set-aside of contracts for Indigenous Enterprises to apply in certain situations; and
- (c) mandatory minimum requirements for Indigenous employment and Indigenous supplier use applying to certain high value Commonwealth contracts.

Further information and a copy of the IPP can be accessed at <https://www.niaa.gov.au/resource-centre/indigenous-affairs/indigenous-procurement-policy> **Mandatory set-aside**

While Indigenous Enterprises can bid for any Approach to Market, the IPP requires that the AEC first check whether an Indigenous Enterprise can deliver Services if the procurement is:

- (a) valued between \$80 000 and \$200 000 of the initial agreement period; and/or
- (b) a Remote Procurement (see [RIPP Location Map](#)); and/or
- (c) the goods/services total \$7.5 million during the initial agreement period AND where 50% of the agreement value is being delivered anywhere in Australia AND the goods/services are in any of the 8 industry categories listed on Section 4, Page 32 of the [IPP](#).

Note: The mandatory set-aside does not apply if the procurement method is to approach a mandatory whole of government arrangement.

Prior to approaching the market, AEC personnel must:

Step 1: Search [Supply Nation](#) to determine if there is an Indigenous Enterprise that provides the Services within the scope of your requirements.

The search (eg. screen capture) for Indigenous Enterprises must be saved to the Approach to Market raised in My procurement.

Step 2:

Where a suitable Indigenous Enterprise(s) is identified:

- (a) If through the initial search suitable Indigenous Enterprise(s) are identified (commensurate to the scale, scope and risk of the procurement) the AEC Official must take steps to determine whether the Indigenous Enterprise can deliver the required Services through an Approach to Market.
- (b) If an Indigenous Enterprise is identified as representing best value for money through the Approach to Market, an Agreement awarded to the Indigenous Enterprise (under Exemption 17 of the Commonwealth Procurement Rules). The Commonwealth Contracting Suite (CCS) Contract template must be used to enter into an Agreement as outlined at Appendix 13 of these Procedures.
- (c) All information must be entered into the Approach to Market in My Procurement as outlined at Appendix 5 of these Procedures.

Where no suitable Indigenous Enterprise(s) are identified:

- (d) If no suitable Indigenous Enterprise(s) are identified, then normal procurement processes apply according to value.

Tip: Just prior to entering into any Agreement, it is recommended that AEC personnel conduct another search of Supply Nation to confirm that the business(es) is still considered an Indigenous Enterprise(s).

Note: The AEC may use Exemption 17 of the CPRs to contract with an Indigenous Enterprise, regardless of whether the Indigenous Enterprise is registered with Supply Nation. In these instances, the AEC Official must satisfy themselves that the business is at least 50 per cent Indigenous owned and follow Step 2 of the process outlined above.

Appendix 4 – Value for Money assessment and Evaluation of Supplier Responses

Value for Money Assessments

Overview

The CPRs identify that a thorough consideration of value for money should begin with a clear understanding and statement of the goals and purpose of the procurement. When a business requirement is identified, AEC personnel should consider if a procurement will deliver the best value for money. This consideration should include:

- (a) stakeholder input;
- (b) the scale and scope of the identified business requirement;
- (c) the AEC's resourcing and budget;
- (d) obligations and opportunities under other existing Arrangements;
- (e) relevant Commonwealth policies; and,
- (f) the capacity of the market to competitively respond to a procurement.

The above items should be used to inform AEC personnel when a procurement represents the best value for money, and in considering the most appropriate procurement approach for the activity. It is important that this consideration is recorded in writing and maintained with procurement documentation in accordance with AEC record keeping requirements.

Achieving Value for Money

Achieving Value for Money is the core rule of the Commonwealth Procurement Rules. AEC personnel responsible for a procurement (Delegates) must be satisfied, after reasonable enquiries, that the procurement achieves a value for money outcome.

Procurements should:

- (a) encourage competition within the market and be non-discriminatory;
- (b) use public resources in an efficient, effective, economical and ethical manner that is not inconsistent with the policies of the Commonwealth;
- (c) facilitate accountable and transparent decision making;
- (d) encourage appropriate engagement with risk; and,
- (e) be commensurate with the scale and scope of the business requirement.

When conducting a procurement, an AEC Official must consider the relevant financial and non- financial costs and benefits of each submission including, but not limited to;

- (e) the quality of the goods and services;
- (f) fitness for purpose of the proposal;
- (g) the potential supplier's relevant experience and performance history.

IMPORTANT NOTE: Value for Money Assessments must be comprehensively documented and recorded. It is important that you demonstrate to the Delegate that the preferred Supplier represents Value for Money for the AEC.

Scenario: What if only one quote is received? How can I demonstrate Value for Money?

As outlined above, there are various aspects that should be considered in evaluating Value for Money.

This includes: the quality of the goods and services; fitness for purpose of the proposal; the Supplier's experience and performance history.

When you are evaluating a procurement that has only received one response, you may also wish to consider: benchmarking; looking at pricing/Services in other Commonwealth Agency panel rates; or utilising consultants that have industry expertise.

Value for Money Assessment is required for all procurement activities, regardless of the value or the procurement approach. A Value for Money Assessment must also be completed when taking any extension option to an existing contract to ensure the Delegate can be satisfied that extending the arrangement continues to deliver a value for money outcome to the AEC.

Evaluation

Please note: For all open tender procurements; Limited Tender procurements valued at \$80 000 and above; and, procurements valued at \$200 000 and above through Existing Arrangements, a formal evaluation plan and evaluation report are required.

In order to ensure probity is maintained throughout your procurement process, you must ensure that your Evaluation Plan is developed, consulted, and approved by the Delegate as soon as possible in the procurement process. Ideally, this would be completed prior to approaching the market/suppliers, which would also provide the opportunity to confirm that clear evaluation criteria has been included in the approach to supplier. At a minimum, Evaluation Reports must be approved by the Delegate prior to the closing date of responses from potential suppliers.

Once the response period has passed, Submissions can be accessed and must be evaluated by the evaluation in accordance with the approved Evaluation Plan.

The evaluation must be commensurate with the scale and scope of the procurement, and be sufficient enough to satisfy the Delegate that Value for Money can be demonstrated.

Tip: A single AEC Official can evaluate the Submissions for procurements valued under \$10 000.

Appendix 5 – My Procurement, Record Keeping and AusTender Reporting

My Procurement (including My Contracts)

Overview

My Procurement and My Contracts are central access modules located within the AEC Procure-to-pay System: My Procurement (My procurement). They support best practice procurement processes and contract management in the AEC.

My Procurement must be used by AEC Officials to record all procurement activities, with the exception of low value procurements being paid for with an AEC Corporate Credit Card, from the initial procurement planning stage through to executing the final Agreement.

Once all stages have been completed in My Procurement, a contract will be created in My Contracts.

My Contracts must be updated throughout the life of the Agreement, including to record any variations or extensions.

Access

My Procurement and My Contracts can be accessed at:

s22

User Guide

A step-by-step guide on how to use My Procurement is available: [Link to be inserted].

Record Keeping and Reporting

Overview

AEC personnel are responsible for ensuring that every procurement process is open and transparent, and that decisions can be publicly justified. This section details the AEC's record keeping and procurement reporting requirements, and should be used as a guide to AEC personnel to inform them of their responsibilities when conducting a procurement.

AEC personnel should contact Commercial Law and Procurement for further advice on their individual reporting obligations. Include reporting on Austender.

Record Keeping

AEC personnel must use appropriate templates, and follow [AEC Recordkeeping policy](#). As an example, once a procurement process is concluded, AEC personnel must file all documents (executed Agreements, invoices etc) on a corporate file to provide a record of procurement activity and how the process has been conducted.

In order to ensure we meet our obligations under the CPR's (Section 7.2-7.4) documentation should provide accurate information on

- (a) the requirement for the *procurement*;
- (b) the procurement process that was followed;
- (c) any business decisions that influenced the selection of the procurement process (e.g. why a panel was approached in place of an open tender procurement);
- (d) how value of money was considered and achieved;
- (e) relevant approvals; and
- (f) relevant decisions and the basis of those decisions.

You must ensure that appropriate security classifications are listed on all documentation. It is anticipated that most procurement and contractual documentation should be classified as *For Official Use Only* given the documents will likely include commercially sensitive information.

Please Note: My Procurement is not a record management system and you are required to maintain records and appropriate files.

AEC personnel should contact AEC records management area for assistance, if required.

AusTender

AusTender is the Commonwealths procurement information system. It is the central point for mandatory publication of all publicly available Commonwealth Government (AEC) business opportunities for:

- (a) publishing of all publicly available Approaches To Market, Annual Procurement Plans, panel arrangements and Agreements awarded;
- (b) electronic distribution of documentation and addenda for Approaches To Market; and
- (c) a secure lodgement for Submissions.

AusTender provides the following benefits to suppliers:

- (a) one central point to find publicly available business opportunities and planned procurements advertised by the Commonwealth;
- (b) automatic notification of business opportunities;
- (c) automatic notification of addenda;
- (d) electronic lodgement of Submissions into a secure electronic tender box;
- (e) access 24 hours a day 7 days a week;
- (f) reduced costs, by eliminating the need to print, bind and courier Submissions; and
- (g) online access to information about panel arrangements and Agreements awarded.

Reporting

The Australian Government is required to make its procurement activities visible and transparent to the public. The AEC has the following obligations in regards to the reporting of Agreements:

- (a) all Agreements with a value of \$10 000 or more must be published on AusTender within 42 days of entering into the Agreement;
- (b) all amendments (including extensions) to Agreements of \$10 000 must be published on AusTender within 42 days;
- (c) all Agreements involving consultancy services valued at \$10 000 or above must be published in the Annual Report;
- (d) Agreements valued at \$100 000 or above must be published twice yearly to meet the Senate Order on Departmental Agency Contracts;
- (e) all Agreements involving a limited tender approach above \$80 000 must include the exemption or condition from the CPR's that supported the procurement approach;
- (f) the AEC must publish and regularly update an Annual Procurement Plan (APP) on AusTender of significant planned procurements expecting to proceed to an open Approach to Market; and
- (g) in accordance with the IPP, publish every six months:
 - (i) subcontracts with Indigenous Enterprises;
 - (ii) agreements with Indigenous Enterprises valued at less than \$10 000;
 - (iii) purchases from Indigenous Enterprises using a credit card; and

(iv) multi-year Agreements with Indigenous Enterprises.

Appendix 6 – Responsibilities of AEC Financial Delegates

Overview

AEC personnel must not enter into Agreements unless the appropriate approvals and authorisations have been given in accordance with the PGPA Act and Rules.

AEC personnel must ensure that the following powers under the PGPA Act are exercised by AEC personnel with the correct financial delegation. These are the powers to:

- (a) commit public money (s 23(3) PGPA Act) and then record that approval under PGPA Rule 18, including the commitment of future year expenditure if required;
- (b) enter into and vary an arrangement (s 23(1) PGPA Act), such as a contract; and
- (c) grant an indemnity, guarantee or warranty (s 60 PGPA Act).

Responsibilities of all AEC Financial Delegates

AEC Financial Delegates must only purport to exercise a power in accordance with:

- (a) their [Financial Delegation](#);
- (b) the AEC's AAls; and
- (c) lawful direction given from time to time in relation to the exercise of that power.

Financial Delegations Schedule

Only a select number of AEC personnel hold a financial delegation, as set out in the [Financial Delegations Schedule](#) administered by Finance and Business Services Branch.

s23(3) power to commit public money

In exercising this power, the AEC Financial Delegates must:

- (a) take all reasonable steps (including by seeking advice from specialists) to ensure that they are sufficiently and appropriately informed on the matters that must be considered when exercising their delegation;
- (b) be satisfied that sufficient funds are available within the relevant budget to support all proposed payments under the Agreement, costings are sound accurate;
- (c) be satisfied that the commitment of relevant money would be a proper use and management of public resources (ie. efficient, effective, economical and ethical);
- (d) be satisfied that the benefits of entering into the arrangement outweigh the risk of locking away future budget flexibility if a commitment of relevant money spans multiple financial years);
- (e) perform functions and discharge duties with the degree of care and diligence that a reasonable person would exercise;
- (f) perform functions and discharge duties honestly, in good faith and for a proper purpose;
- (g) not improperly use their position;
- (h) not gain, or seek to gain, a benefit or an advantage for themselves or any other person;
- (i) not cause, or seek to cause, detriment to the entity, the Commonwealth or any other person;
- (j) disclose details of any material personal interest that relates to the commitment of relevant money;
- (k) make reasonable inquiries to ensure this procurement activity meets all required procurement obligations;
- (l) consider a supplier's political activity (if any) to determine if there are any risks to the AEC's actual or perceived political neutrality associated with the supplier's political activities, and if so, whether those risks can be mitigated; and

(m) record the approval in writing as soon as practicable after giving it.

Further guidance for AEC Financial Delegates approving commitments of relevant money is available in [RMG-400](#).

s23(1) power to enter into and vary arrangements

AEC Financial Delegates must not exercise his or her delegation to enter into an arrangement unless:

- (a) the arrangement has been approved by the AEC Financial Delegate under Section 23(3) of the PGPA Act; and
- (b) the value of the arrangement does not exceed the amount approved.

s60 power to grant an indemnity, guarantee or warranty

In exercising his or her powers to grant a contingent liability, AEC Financial Delegates must first seek legal advice from CLP. Further guidance on this issue is provided in [RMG-414](#).

Process

Approval for commitments valued under \$10 000 being paid for on AEC Corporate Credit Card

Approvals for procurements valued under \$10 000 that are being paid for on an AEC Corporate Credit must be obtained in writing. A template for seeking approvals for procurements valued under \$10 000 is available at [Procurement procedures and templates](#).

Where the arrangement requires the grant of an indemnity, guarantee or warranty by the AEC, legal advice from CLP must be obtained. The approval may be obtained from the AEC Financial Delegate in writing (including by email). Once the arrangement is entered into, records must be provided to CLP.

Approval for commitments all values

For all procurements no matter the value (excluding those valued under \$10,000 and being paid by AEC Corporate Credit Card), approvals must be obtained through My Procurement.

Once an AEC Official submits an Approach to Market in My Procurement, CLP will review and workflow to the AEC Financial Delegate nominated by the requesting AEC Official. The AEC Financial Delegate will receive an automated email to consider the request for approval and a link to the Approach to Market in My Procurement.

Where an arrangement requires the grant of an indemnity, guarantee or warranty by the AEC, this must be stated in the Approach to Market in My Procurement and legal advice from CLP must be obtained. Where it is so stated, the Approach to Market in My Procurement will workflow to the AEC Financial Delegate nominated by the requesting AEC Official to grant the indemnity, guarantee or warranty to consider the request for approval. The AEC Financial Delegate will receive an automated email to consider the request for approval and a link to the Approach to Market in My Procurement.

Entry into an arrangement of any value

To enter into an arrangement usually means signing an agreement. For arrangements where a written agreement is not required (usually low risk arrangements valued under \$10 000), payment or confirmation to proceed (whether written or verbal) may suffice.

To maintain transparency in the exercise of powers, it is important to have written evidence of an arrangement, rather than rely on verbal confirmation.

To reduce the AEC's exposure to fraud, the separation of duties is important. It is therefore best practice for the powers to approve and enter to be exercised by different AEC Financial Delegates.

Appendix 7 – Confidentiality and Unfair Contract Terms

Confidentiality

Overview

The Commonwealth's confidentiality interests must be appropriately protected and managed in accordance with any relevant legislation, the Commonwealth Procurement Rules, relevant guidance published by the Department of Finance, and confidentiality provisions in an Agreement.

Confidentiality throughout the procurement process

Planning

When planning a procurement, AEC personnel should consider the nature of the procurement and whether it is likely to raise confidentiality issues for the Commonwealth. Such issues can arise in a number of ways including where:

- (a) potential Suppliers require access to confidential information in order to lodge a Submission;
- (b) Suppliers require access to confidential information in order to fulfil the requirements of the Agreement; or
- (c) the information generated as a result of performing the Services is confidential.

Approaching the Market

Request documentation, including any draft Agreement, should reflect the AEC's requirements for confidentiality as assessed during the procurement planning process.

Evaluating

AEC personnel must ensure all Submissions are treated as confidential for the duration of the procurement process and after the award of the Agreement. Where appropriate, ensure assessments include the ability to meet confidentiality obligations.

Awarding an Agreement

There are two broad types of confidentiality clauses used in Agreements:

- (a) general confidentiality clauses such as legislative obligations under the *Privacy Act 1988* or how to deal with confidential information between the parties; and
- (b) specific confidentiality clauses which protect the confidentiality of all or part of the Agreement itself or information obtained or generated in performing the Services.

The need to maintain the confidentiality of information should always be balanced against the public accountability and transparency requirements of the Australian Government.

If a Supplier has requested that any part/s of an agreement be treated as confidential, the AEC must assess the request against the criteria that comprise the Department of Finance's 'Confidentiality

Test'. This test includes four (4) criteria that all **must** be met for a Supplier's commercial information to be considered confidential by the AEC.

Suppliers will often request that information be kept confidential even where it is unlikely to satisfy the Confidentiality Test (such as pricing information). It is strongly recommended that you not accept such requests, or that you negotiate with a Supplier to amend their request so that it satisfies the Confidentiality Test. If you decide to accept such a request, you must record the reasons behind your decision, including the justification of how the request meets each of the four criteria in the Confidentiality Test.

Confidentiality Test Criteria are outlined below:

- (a) Criterion 1: The information to be protected is specifically identified.
- (b) Criterion 2: The information is commercially 'sensitive'.
- (c) Criterion 3: Disclosure would cause unreasonable detriment to the owner of the information or another party.
- (d) Criterion 4: The information was provided under an understanding that it would remain confidential.

Further details regarding the AEC's obligations in relation to the application of the Confidentiality Test are set out in the guidance on *Confidentiality Throughout the Procurement Cycle* at:

<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/contract-issues/confidentiality-procurement-cycle/practice.html>

Important: A 'Confidentiality Test – File Note' template is available to record your assessment of a Supplier's request to treat part/s of an agreement as Confidential. This is available on the AEC Procurement Procedures intranet page, or by contacting CLP.

Note: This template must be completed if you are agreeing to a Supplier's request to treat part/s of an agreement as Confidential, and must be attached to the Approach to Market in My Procurement.

Confidentiality during Contract Management

Depending on the terms of the Agreement, confidential information may remain confidential for the period of the Agreement, a period specified in the Agreement, or as governed by legislation. Confidentiality of information should only be maintained for the length of time that the information remains sensitive. Generally:

- (a) Agreements should specify a period of confidentiality; and
- (b) the period of confidentiality should not be unlimited.

Reporting

The AEC must report on AusTender whether Agreements include confidentiality provisions and the reason for the confidentiality. Examples include:

- (a) artistic, literary or cultural secrets, such as photo shoots, historical manuscripts or secret indigenous culture;
- (b) costing/profit information, where the confidential information might reveal the supplier's internal costing information or information about its profit margin;
- (c) Intellectual Property;
- (d) protection under the *Privacy Act 1988*, which should only be used to protect specific personal information contained in a contract or generated in performing the contract;
- (e) public interest issues, including national security, defence and Cabinet decisions and/or deliberations;
- (f) secrecy provisions which will generally apply irrespective of a contractual clause to maintain the confidentiality of the information, and could cover information in the contract or obtained or generated from a contract; or
- (g) Other. This reason would be used for any reason that is different from those set out above.

For example, where disclosure of information would have a substantial adverse effect on the financial or property interests of the Australian Government.

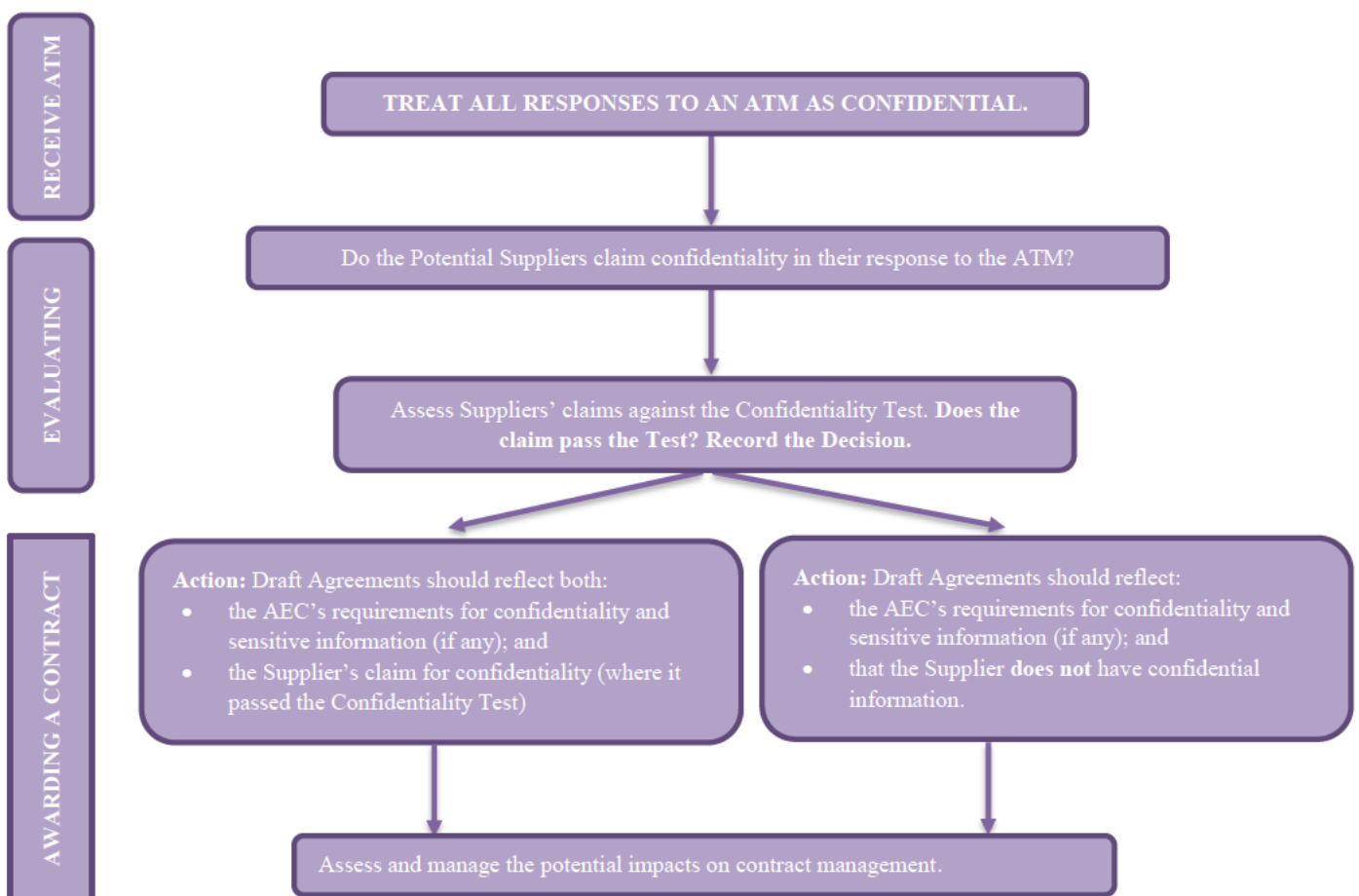
Required disclosure of a Supplier's confidential information

From time to time, the AEC may be obliged to:

- (a) disclose information to the Parliament and its Committees, as appropriate;
- (b) provide information required by the Public Service Commissioner;
- (c) disclose information under the *Freedom of Information Act 1982*; and
- (d) disclose discoverable information that is relevant to a case before a court.

Therefore, the terms of the Agreement must allow the disclosure of confidential information in the circumstances set out above. Where confidential information is required to be disclosed, the AEC must provide reasonable notice in writing to the party from whom the information originated.

Flowchart



Unfair Contract Terms

Where the AEC is carrying on a business (for example, providing fee for service elections) and enters into a standard form contract with a small business (i.e. a business with less than 20 employees) where:

- (a) (for contracts for 12 months or shorter) the value of the contract is less than \$300 000; or
- (b) (for contracts over 12 months) the value of the contract is less than \$1 million,

any provision in that contract that is unfair can be declared by a court to be void, as if that provision had never existed.

An unfair contract term is a term in a standard form contract that:

- (a) causes a significant imbalance between the parties,
- (b) is not reasonably necessary to protect the business's interests, and
- (c) causes detriment to the small business, in the context of the entirety of the contract.

Action

Where the AEC is carrying on a business and enters into a contract with a small business, make sure that the wording of the template that your contract uses has been reviewed by CLP.

Even where the AEC is not carrying on a business, always make sure that the contract you use is:

- (a) a standard Commonwealth or AEC template contract provided by CLP; or
- (b) where the supplier's terms and conditions are used, that legal advice on the terms and conditions have been obtained from CLP.

If you have any questions or concerns, please do not hesitate to obtain advice from CLP.

Complaints and Disputes

Overview

Paragraph 6.8 of the CPRs require that:

If a complaint about procurement is received, relevant entities must apply timely, equitable and non-discriminatory complaint-handling procedures, including providing acknowledgement soon after the complaint has been received. Relevant entities should aim to manage the complaint process internally, when possible, through communication and conciliation.

Complaints

Any general complaints that arise during a procurement process, for example complaints about an AEC Official's conduct, must be managed in accordance with the [AEC Complaints Management Framework](#).

Disputes

If a Respondent disputes the conduct of a procurement, or its outcome, the disputed matter should be made in writing to the AEC Official nominated in the procurement documentation. CLP must be immediately notified of any likely or actual dispute, so that assistance can be provided.

The AEC will at first instance respond to the Respondent, in writing, and seek to resolve the disputed matter between the parties through communication. If the dispute cannot be resolved within 30

Business Days, then the matter will be escalated to the Chief Legal Officer (CLO) for consideration and internal legal review by the CLO or his delegate (if required).

Should an internal legal review be required, at the conclusion of the review the Respondent will be provided with a written decision, including reasons for the decision.

Despite the above process, a Respondent may, at any time, seek external review of the dispute matter. Depending on the nature of the dispute, the dispute may be externally reviewed by the:

- (a) Commonwealth Ombudsman;
- (b) Procurement Coordinator, Department of Finance; or
- (c) court system.

Appendix 8 – Ethics and Probity

Overview

Probity is the evidence of ethical behaviour, and can be defined as complete and confirmed integrity, uprightness and honesty in a particular process.

Probity covers the core values for achieving value for money and non-discrimination in Commonwealth procurement, and must be integrated into every procurement process.

Principles

The principles underpinning ethics and probity in Commonwealth Procurement are:

- (a) *Officials must act ethically, in accordance with the APS Values and Code of Conduct, as set out in the Public Service Act 1999, at all times in undertaking any procurement.*
- (b) *Officials must not make improper use of their position.*
- (c) *Officials should avoid placing themselves in a position where there is the potential for claims of bias.*
- (d) *Officials must not accept hospitality, gifts or benefits from any potential suppliers.*
- (e) *Agencies must not seek to benefit from supplier practices that may be dishonest, unethical or unsafe.*
- (f) *All tenderers must be treated equitably. This means that all tenderers must be treated fairly - it does not necessarily mean that they are treated equally.*
- (g) *Conflicts of interest must be managed appropriately.*
- (h) *Probity and conflict of interest requirements should be applied with appropriate and proportionate measures informed by sound risk management principles.*
- (i) *Value for money outcomes are best served by effective probity measures that do not exclude suppliers from consideration for inconsequential reasons.*
- (j) *Confidential information must be treated appropriately during and after a procurement process.*
- (k) *External probity specialists should only be appointed where justified by the nature of the procurement.*

Applying probity in procurement

Probity provides a level of assurance to AEC Financial Delegates, Suppliers and the Commonwealth that a procurement was conducted in a manner that is fair, equitable and defensible.

Fairness and impartiality

As a minimum, AEC personnel must ensure that:

- (a) each Potential Supplier has equal access to the same material, including any information shared through communications with other Potential Suppliers;
- (b) any market research activities or discussions do not provide an advantage to Potential Supplier;
- (c) the Request Documentation clearly details the conditions for participation and evaluation criteria, and is equally available to all Potential Suppliers;
- (d) AEC personnel involved in the evaluation are not responsible for approving the expenditure;
- (e) potential tenderers are evaluated on their capability of obtaining, if selected as the preferred tenderer, any relevant Australian Standards, certifications, licences or professional accreditations, not whether they have the certification at the time of tendering,
- (f) site visits, where relevant, are offered to all Potential Suppliers and should be of similar duration;

- (g) Request Documentation directs Potential Suppliers to a single nominated AEC Official to respond to queries;
- (h) all unnecessary contact with Potential Suppliers is avoided; and
- (i) there is no Conflict of Interest or bias towards a particular Respondent.

Competitive process

The procurement method selected should aim to ensure that the cost of responding does not deter competent Potential Suppliers, and achieves value for money for the Commonwealth.

Reasonable timeframes should be set for any procurement process to enable Potential Suppliers to confidently allocate resources to their Submissions.

Probity Briefing

A Probity Advisor is required to be assigned to the following procurements;

- (a) Procurements from Existing Arrangements valued at or above \$200 000*.
- (b) Open Tender procurements of any value.
- (c) Limited Tender procurements above the procurement threshold (\$80 000).

**Note that CLP will determine for each procurement if a Probity Advisor is required.*

The Probity Advisor assigned to the procurement activity will provide a probity briefing to the Evaluation Team. This briefing should ideally occur before the Request for Quote/Tender (RFQ/RFT) is issued to the market, but **must** occur no later than before the closing date. The draft Evaluation Plan should be provided to the Probity Advisor, with the expectation that the Evaluation Plan be finalised following the probity briefing.

Conflicts of interest

AEC personnel and external advisers should avoid any conduct that has the potential to increase the risk of integrity issues being raised as a matter of public concern.

AEC personnel must declare whether they have any Conflict of Interest at the commencement of a procurement process, and update it should circumstances change throughout the entire procurement process, particularly as Respondents are known later in the process. Any Conflict of Interest should be reported to the relevant AEC Financial Delegate for direction on how it should be managed or resolved.

AEC personnel should use the Conflict of Interest declaration for this purpose; external advisers should use the conflict of interest and confidentiality undertaking attached to the Evaluation and Probity Plan.

Gifts and hospitality

Any AEC Official involved in a procurement process must not seek or accept any gifts, hospitality or any other benefits, including offers of employment, from any Potential Supplier. The AEC Financial Delegate or chair of an evaluation team must be informed immediately if this occurs.

Security and confidentiality

AEC personnel must put measures in place to manage the security and confidentiality of all documentation related to a procurement process in accordance with the [Protective Security Policy Framework](#).

Communications

If queries or requests for clarification are received from Potential Suppliers for further information or a modification to the Request Documentation is required, all Potential Suppliers must be notified at the same time. The notification must be provided in the same method as the original Request Documentation:

- (a) AusTender - the Addendum template should be drafted and submitted to CLP for review and publishing; or
- (b) Email – all Potential Suppliers must be blind copied.

Where any question or request is received, this must be included and 'de-identified' in the response to all Potential Suppliers.

AEC personnel may need to consider that an extension to the Submission deadline may be necessary depending on any modifications made to Request Documentation.

Industry briefings

Depending on the value, complexity, risk and types of Services being procured, an industry briefing can provide an opportunity for Potential Suppliers to learn more about the AEC's requirements and for Potential Suppliers to ask questions. AEC personnel should provide consistent information when briefing Potential Suppliers, and any questions and answers at briefing sessions should be communicated to all Potential Suppliers in writing following the industry briefing.

Requests for extensions

Requests for extensions can be a difficult issue, primarily due to the deadlines in maintaining the integrity and probity of the procurement process. To ensure fairness and impartiality to all Potential Suppliers, if a request for extension is accepted then all Potential Suppliers need to receive the same extension.

Decisions on extensions need to be made with due care and consideration as a refused requires may exclude the best Respondent or place a Respondent at a disadvantage. Extensions cannot be given once the deadline for Submissions has passed.

Receipt and opening of Submissions

Submissions must not be opened until:

- (a) the deadline for Submission has passed;
- (b) the evaluation plan is completed; and
- (c) all AEC personnel have declared any Conflicts of Interest.

Late Submissions

Submissions received after the deadline must not be accepted unless due to mishandling by the AEC. Any late Submissions should be returned unopened, unless they must be opened to determine the return address.

Shortlisting

Where an AEC Official intends to shortlist Submissions received at any stage of the evaluation, it is imperative that this process be clearly outlined in the Request Documentation and evaluation plan.

The reasons for excluding a Submission from further evaluation must be defensible, properly documented, and agreed by the Delegate. The final Evaluation Report must include reasons for shortlisting.

Interviews and presentations

The AEC may request Respondents to attend an interview or to provide a presentation on their Submission. If only shortlisted Respondents will be invited, it is best practice that this is specified in the Request Documentation.

All Respondents will need to be given the same amount of notice to prepare, and all presentations/interviews should be of similar duration. All Respondents must be advised that while a

presentation/ interview is an opportunity to highlight aspects of their Submission, it is not an opportunity to revise or alter their Submission.

Clarification requests

After the initial analysis of Submissions, AEC personnel may need to seek clarification from Respondents on errors of form in a submission, such as technical omissions, ambiguities and anomalies. Where clarification is required, all communication with Respondents must be undertaken in writing. It is integral that requests for clarification do not allow a Respondent to revise or modify their Submission in any substantive way.

Compliance Statements

Submissions must state whether it complies with each clause of the Request Documentation and Contract for the AEC to consider during evaluation of the level of risk.

As a general principle, the party best placed to manage risks should bear those risks, that is, the AEC should generally not accept risks which a Supplier is better placed to manage. Similarly, where the AEC is best-placed to manage a particular risk, it should not seek to inappropriately transfer that risk to a Supplier.

Before accepting a non-compliance, AEC personnel must first seek the advice from CLP.

Conduct financial viability assessment

Financial viability assessments are undertaken on all Potential Tenderers that have submitted a response to an approach to market on AusTender. However, depending on the value, complexity, risk and types of Services being procured, a full financial viability assessment may likely need to be arranged by the Tender Evaluation Team through the Financial Services Section. This would assist in reducing the risk that a Respondent may not be able to:

- (a) deliver the Services as specified in the Agreement; or
- (b) fulfil any guarantees or warranties provided for in the Agreement.

Negotiations

In some instances, it may be appropriate for AEC personnel to negotiate with the Supplier/s to finalise the details of their offer and the resultant Agreement.

Generally, negotiations will focus on the identified areas of non-compliance with the draft Agreement. AEC personnel should be mindful that the scope of requirements should not be part of negotiations, and the negotiation stage is not an opportunity for the Suppliers to substantially amend their submission.

Develop a negotiation strategy

Negotiations are more likely to be successful when planning includes:

- (a) identification of the Agreement's terms and conditions that will be subject to negotiation;
- (b) establishing the roles and responsibilities of the negotiating team;
- (c) identifying any problems or barriers which may affect the Supplier performing its role, as well as opportunities, and developing an approach to address these;
- (d) defining the objectives and constraints of the negotiation; and
- (e) involving senior management in setting the policy parameters and communicating progress and/or changes in circumstances to them.

Formal negotiation protocols should be established where AEC Officials are negotiating with shortlisted Respondents prior to selecting the Supplier, or where negotiations are being conducted with a number of Respondents in order to establish a panel arrangement.

Assign roles and responsibilities

AEC personnel must ensure that the parties involved understand their responsibilities and the other various tasks required to negotiate and formalise the Agreement.

When negotiating Agreements identified as complex, high value and/or high risk, a CLP representative must be involved in the negotiation process from the outset. An AEC Official can be appointed lead negotiator.

The negotiation team should have an understanding of the:

- (a) the AEC's requirements;
- (b) basis on which the Supplier/s has been selected;
- (c) background to why certain terms and conditions are subject to negotiation (often these are as a result of the evaluation of submissions); and
- (d) include the Contract Manager details.

Conduct negotiations

It is important that negotiations are conducted in a professional and structured manner. Addressing the following issues will assist in achieving this objective:

- (a) agreeing the location and agenda for each negotiating session;
- (b) obtaining sign-off on the negotiation arrangements with the Probity Adviser;
- (c) establishing timeframes in which negotiations of individual issues, as well as negotiations overall, will be conducted;
- (d) establishing any interrelationships between individual issues/provisions that are subject to negotiation to ensure these are taken into account during negotiations. For example, there will generally be a relationship between service levels and pricing;
- (e) focussing on achieving the objective sought over the life of the Agreement, rather than on short term gains;
- (f) keeping issues that are not negotiable to a minimum and being prepared to trade-off less important requirements to achieve outcomes that are central to the AEC's objectives; and
- (g) assigning responsibility for taking formal minutes of the negotiations and ensuring minutes are circulated and agreed within specified timeframes.

During negotiations AEC personnel must avoid any suggestion that a Supplier/s is certain to be awarded the Agreement because this could imply a commitment by the AEC, and can undermine the effectiveness of the negotiations.

Debriefs

Debriefs must be conducted individually and in a professional manner and must focus on the Respondent's performance against the evaluation criteria in the Request Documentation. It is important not to address any matters not covered by the evaluation criteria.

AEC personnel should plan all debriefs carefully. The confidence of the Respondents in the procurement process is likely to increase if the debriefing demonstrates that the procurement decision was the result of a fair and considered decision-making process.

Topics covered in debriefings may include:

- (a) project methodology and/or design issues;
- (b) organisation, management and administration;

- (c) price;
- (d) nominated personnel including the experience and quality of operational, management and other personnel;
- (e) experience of the Respondent generally;
- (f) work schedule issues;
- (g) vagueness or unacceptability on delivery dates if important to the decision;
- (h) facilities and equipment if inappropriate, inefficient or out-dated, or if they would increase costs or affect timeframes;
- (i) subcontracting the arrangements where inappropriate or inefficient, including where the proposed subcontractor lacked necessary qualifications or experience, or if a proper control system was lacking;
- (j) industrial relations and/or work health and safety issues;
- (k) failure to comply with government policies or requirements;
- (l) quality management issues (such as inadequate quality assurance certification or other control methods, or systems people and training); and
- (m) support, warranty or after sales service issues.

In all cases, AEC personnel should inform Respondents that the debrief will only include discussion of their Submission. AEC personnel must not discuss other Respondents.

Probity Advisers

AEC personnel can best manage probity risks by conducting a risk assessment in the planning stage of the procurement.

A Probity Adviser can provide advice as requested before and during the course of the procurement process. Appropriate probity advice will ensure that the procurement process complies with legislation, policies, these Procedures and the evaluation process described in Request Documentation and evaluation plan.

AEC personnel must appoint a Probity Adviser for all open tender procurements, and CLP will determine if a Probity Adviser is required for Panel or Limited Tender procurements with a value over \$200 000. CLP has capacity to provide probity advice, and in certain circumstances CLP may recommend that a Probity Adviser external to the AEC be appointed.

Appendix 9 – Political Neutrality

Political Neutrality

Overview

The AEC operates in a politically sensitive environment. Any person engaged by the AEC (inclusive of Suppliers) who is, and is seen to be, active in political affairs, and intends to publicly carry on this activity, may compromise the strict political neutrality of the AEC. The [AEC's Political Neutrality Policy](#) establishes the principles that underpin the political neutrality requirements.

Managing political neutrality for procurements

AEC personnel must ensure that:

- (a) Suppliers and Potential Suppliers complete political neutrality declarations within the AEC procurement templates; and/or
- (b) when using an Existing Arrangement, the Agreement incorporates the AEC's political neutrality requirements.

AEC Financial Delegates must:

- (c) consider a Supplier's political activity (if any) to determine if there are any risks associated with the Supplier's political activities before providing any approval; and
- (d) if risks are identified, whether those risks can be mitigated.

Funding disclosure checks

All new procurements entered into My Procurement will have the Supplier's (including any approved subcontractors) 'political activity' for the last three (3) financial years searched using existing Funding and Disclosure Branch's (FAD) systems.

The results of this search will be identified in the automated email to the AEC Financial Delegate following approval of the Spending Proposal by CLP, with detail of any identified activities attached to the Approach to Market in My Procurement. If any political activities are identified, CLP offers the following matters for consideration by the AEC Financial Delegate:

- (a) Does the Supplier's political activity conflict with their ability to provide the Services to the AEC?
- (b) Is there a real or perceived risk (to the AEC's political neutrality) if we proceeded with this Supplier and can this risk be mitigated by implementing control measures?
- (c) Should the approval be granted on a conditional basis (ie. the Supplier must implement identified control measures)?

CLP will not request political activity searches if:

- (a) the Supplier is a Commonwealth agency (eg. Services Australia);
- (b) the spending value is less than \$10 000; or
- (c) a search for that legal entity has already been completed in the last 6 months.

Managing political neutrality for contracting

The AEC contracting templates include provisions to encompass AEC political neutrality requirements of Suppliers. AEC personnel may require Deed Polls (that incorporate these requirements) to be completed by specific Service Provider personnel in some circumstances. This may include

- (a) where the AEC requires Service Provider's Advisors, Specified Personnel or other third parties to provide specific undertakings;

- (b) where a party discloses Confidential Information;
- (c) where Personnel of the Service Provider is to be given Personal Information; or,
- (d) where the AEC requires political neutrality undertakings from a specific Service Provider Personnel.

Signed Deed Polls must be attached to the relevant Approach to Market in My Procurement.

Before any Agreement is extended or varied, a funding disclosure check (if the check is older than 6 months) will be conducted using existing FAD systems as part of the value for money assessment.

Appendix 10 – Consultancies

Overview

The AEC is required to report if an Agreement has been entered into for the provision of consultancy services on both AusTender and the AEC's Annual Report.

Consultancy services are required for one of the following reasons:

- (a) the need for independent research or assessment;
- (b) the need for specialised or professional skills, or
- (c) the skills are currently unavailable within the AEC.

Process

When determining whether a procurement is a consultancy AEC personnel should consider whether the:

- (a) Services involve the development of an intellectual output that assists with decision making (eg. outputs might include the expression of an original concept, research, findings, analysis, advice and/or recommendations);
- (b) output will reflect the independent views of the supplier (eg. if the output is being produced for the AEC it is likely to be a consultancy and if it is being produced on behalf of the AEC it is not likely to be a consultancy); and
- (c) output is the sole or majority element of the Agreement, in terms of relative value and importance.

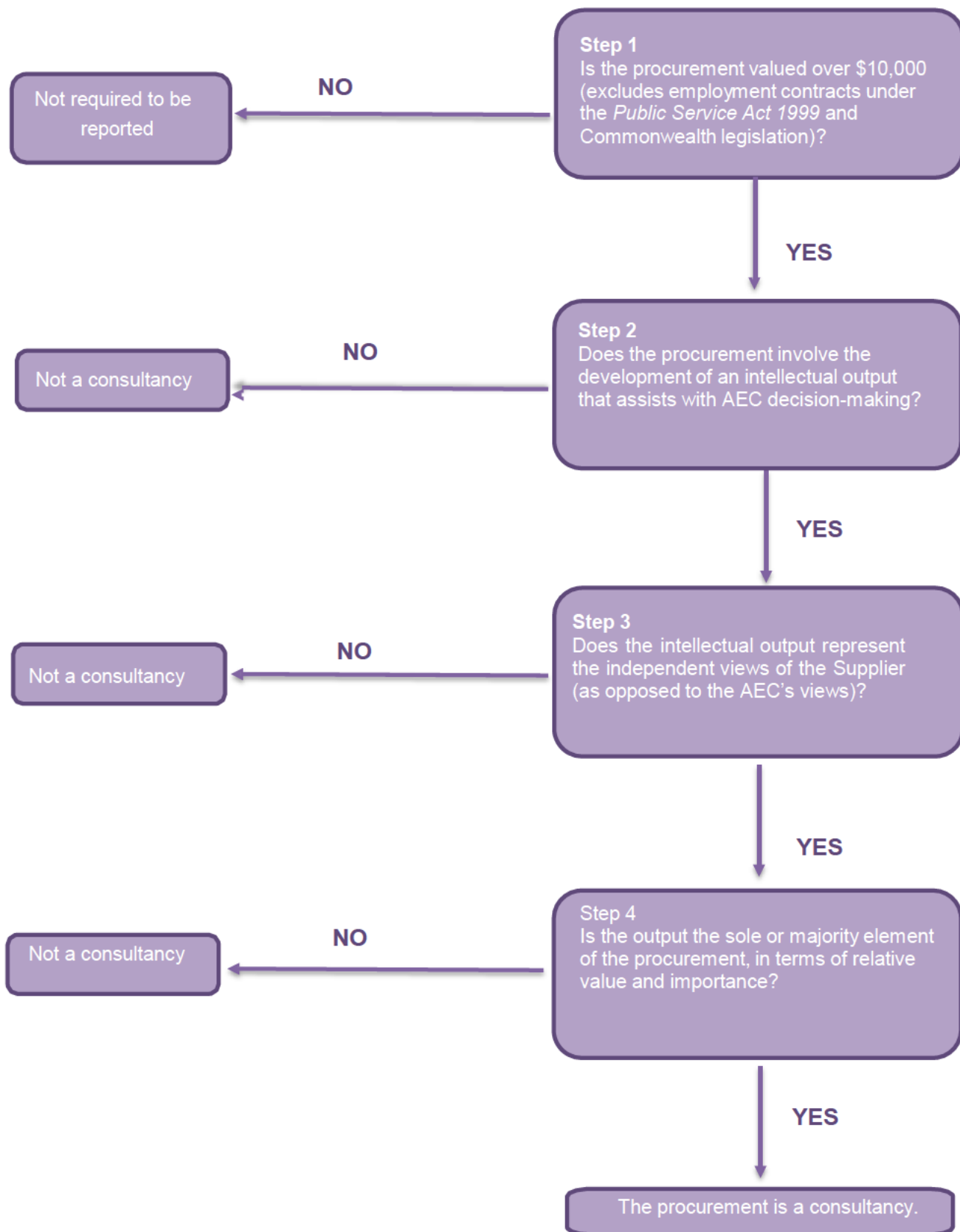
If all of these criteria are satisfied, then the Agreement must be reported as a consultancy.

Some Agreements will exhibit different outputs which are consistent with both consultancy and non-consultancy services. In these cases AEC personnel should consider the value and relative importance of the consultancy when deciding whether to report the Agreement as a consultancy.

When raising a Procurement Plan in My Procurement AEC personnel must identify whether the planned procurement is a consultancy or not and the reason.

Flowchart

The following flowchart may assist AEC Officials to identify whether their procurement is a consultancy:



Examples of consultancy services

The table below sets out examples of consultancy services and general contracting services.

Examples of consulting services Type of project	Examples of general contracting services (i.e. not consultancy services) Type of assignment
<ul style="list-style-type: none"> • investigating an issue or problem • diagnosing a problem • undertaking defined research • design, analysis and reporting of formal market research studies • carrying out an independent review • business process analysis, design and other advice • undertaking independent evaluations • evaluation of programme performance and recommendations regarding changes • providing independent advice • providing independent information • developing advertising and marketing campaigns • providing advice on training needs and developing training plans • legal services, such as: - general legal advice (not related to litigation or potential litigation or given incidentally in connection with the • development of contracts or other legal documents); - advice on the application of • legislation and on development of new legislation; and - legal audit, probity and process advice, in relation to contracting out or tendering • reviews of, and the provision of advice on, workplace health and safety matters • provision of internal audit services • probity adviser/audit services • undertaking risk assessments • analysis of technology needs and development of software and hardware specifications • change facilitation advice • undertaking business and property valuations • development of a framework for 	<ul style="list-style-type: none"> • individuals undertaking operational work within the entity under temporary external labour hire arrangements • conducting a recruitment activity • provision of travel services, including travel booking • provision of communications services, eg telephones • provision of information technology support services • development of software in line with already developed specifications • printing and copying services • scribe services • provision of cleaning and waste removal services • indoor plant maintenance services • provision of security services • delivery of training • writing of manuals and guidance materials covering existing processes • legal services, such as conveyancing; • development of contracts or other legal documents (and any incidental advice given relating to such work); • litigation services (including any drafting or advice connected with litigation or potential litigation); • drafting of legislation and legislative instruments • data processing • project management • interpreter services

Appendix 11 – Contingent Liabilities

Overview

This Appendix provides guidance on entering into an arrangement that requires the AEC to grant an indemnity, guarantee, or warranty. This is generally referred to as entering into an arrangement that gives rise to contingent liabilities.

What are contingent liabilities?

Contingent liabilities are legally enforceable obligations that give rise to a liability on the occurrence of a future event. Once a party enters into an arrangement that obliges that party to take on contingent liabilities, the party has undertaken to accept obligations that ordinarily fall with others. [RMG-414](#) provides detailed guidance on different arrangements that may give rise to contingent liabilities.

Contingent liabilities can be difficult to identify. However, they are not present in contractual documentation that are standard Commonwealth contracts, such as:

- (a) contracts that use the Commonwealth Contracting Suite terms and conditions; or
- (b) contracts that use the AEC's standard template terms and conditions obtained from CLP.

Therefore, whenever AEC personnel are requested by suppliers to accept contractual terms and conditions that are not standard Commonwealth or AEC contracts, legal advice from CLP must be sought to identify whether accepting the supplier's preferred contractual terms and conditions would hold the AEC to contingent liabilities.

Controls

The PGPA Act allows AEC personnel with the appropriate level of delegation under s 60 of that Act to enter into an arrangement that gives rise to contingent liabilities on behalf of the Commonwealth. Details on these delegations are stated in the [Financial Delegations Schedule](#). By exercising this power, the AEC delegate is ultimately agreeing, on behalf of the Commonwealth, to accept particular risks (often a greater level of risk) so that the other party will bear less risk.

The AEC delegate can only exercise this power where a risk assessment concludes that:

- (c) the likelihood of an event occurring that exposes the AEC to contingent liability are remote (i.e. less than 5%); and
- (d) the probable expenditure would not be significant (i.e. less than \$30 million).

Further, the AEC's Comcover insurance normally will not pay where the most probable expenditure that would need to be made if the event giving rise to the liability occurred is over \$5 million. Therefore, AEC personnel **must** inform CLP if the risk assessment concludes that the estimated financial loss is over \$5 million but less than \$30 million, so that CLP can notify Comcover.

Process

Steps	Payment method	
	Credit card payment	Electronic Funds Transfer
Step 1: Obtain legal advice from CLP	Before agreeing to accept contractual terms and conditions from a supplier that are not standard Commonwealth or AEC contracts, AEC personnel must provide those terms and conditions to CLP to obtain legal advice.	
Step 2: Check risk assessment	<p>Complete the appropriate risk assessment template, taking into account all of the risks brought about by the contingent liabilities identified in the legal advice from CLP. IF the conclusion of the risk assessment is that:</p> <ul style="list-style-type: none"> the likelihood of an event occurring that exposes the AEC to contingent liability is 5% or more; OR the probable expenditure would be \$30 million or more, you cannot proceed to sign this agreement without amending it. Please contact CLP if that is the case. <p>Further, the AEC's Comcover insurance normally will not pay where the most probable expenditure that would need to be made if the event giving rise to the liability occurred is over \$5 million. Therefore, AEC personnel must inform CLP if the risk assessment concludes that the estimated financial loss is over \$5 million but less than \$30 million, so that CLP can notify Comcover.</p>	
Step 3: Obtain approval under the PGPA Act	<p>Obtain approval from the relevant delegate via email:</p> <p>I approve the expenditure of \$insert value (GST inclusive) under s 23(3) of the PGPA Act. I approve the AEC undertaking the contingent liabilities outlined in the attached legal advice under s60 of the PGPA Act, noting that the risks identified are assessed as remote and not significant.</p>	<p>Use My Procurement to obtain approval by:</p> <ul style="list-style-type: none"> ticking 'yes' to the question 'Does the draft contract/agreement contain contingent liabilities?'; and nominating the relevant delegate. <p>Please remember to attach the risk assessment and legal advice as those documents will inform the delegate's decision.</p>
Step 3: Signature	Both the AEC and the supplier sign the agreement.	
Step 4: Record keeping	<p>Within two weeks of signing, provide these documents in one email to CLP:</p> <ul style="list-style-type: none"> the signed agreement; the risk assessment; this legal advice; and email containing the PGPA Act approval. 	<p>Within two weeks of signing, attach the following to your approved Approach to Market in My Procurement:</p> <ul style="list-style-type: none"> the signed agreement; the risk assessment; and the legal advice.

Appendix 12 – AEC Escalation Framework

AEC Escalation Framework

Overview

At times a Contract Manager may require approval or decisions to be made by the AEC that are above their level of authority, or may require assistance in managing an issue with a Supplier. At these times, escalation may be required within the AEC.

The AEC Escalation Framework is designed to assist Contract Managers in identifying the escalation process applicable to their contract, and prompt the development of communication channels with end users and identified escalation points to assist in effective management of the contract. The Stepped Escalation Diagram and worked scenarios (intended to demonstrate how and when issues may need to be escalated – and to what level) should assist Contract Managers in identifying their escalation process applicable to their contract. This must be recorded in the Contract Management Plan.

If Escalating?

As a Contract Manager, if you are required to escalate any issue/decision you must first identify the correct escalation points for your contract using the AEC Contract Management – Stepped Escalation Process as a guide (see following page).

You should also ensure that you have made all attempts to resolve issues at the lowest possible level before escalating – utilising the relationship that you have built with your Supplier.

If you are escalating an issue you must ensure that you provide the escalation point (e.g. Delegate, Panel Manager) with:

- (a) a complete and comprehensive explanation of the situation;
- (b) a summary of the issue;
- (c) AEC instructions / involvement to date;
- (d) all discussions/correspondence to date;
- (e) a clear timeframe of events; and,
- (f) what you require assistance with (e.g. decision / negotiate with Supplier).

An escalation point can only act on the information with which they are provided, and it is important that they are fully informed.

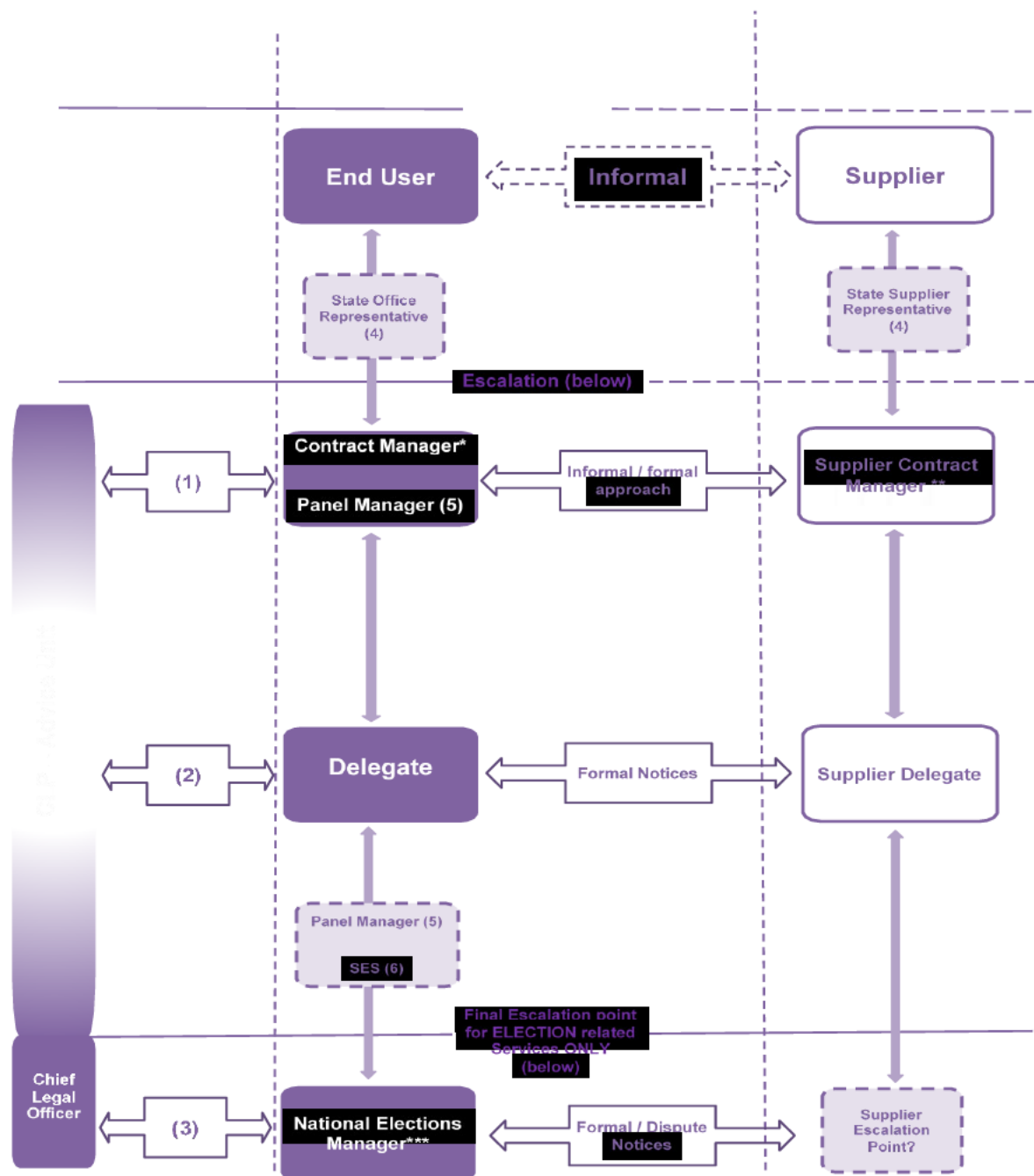
AEC Contract Management – Stepped Escalation Process

Commercial Law and
Procurement (CLP)

AEC escalation structure

Contracted supplier
escalation structure

Issues reported by (below)



Key:

- (1) = CLP to provide advice, if requested
- (2) = CLP to provide advice, if requested. At a minimum, CLP must be informed of formal notices
- (3) = Chief Legal Officer and CLP must be involved
- (4) = AEC and Supplier State Office representatives may be involved prior to escalation to Contract Managers
- (5) = Panel Managers may need to be involved for contracts procured from Panels
- (6) = Issues may need to be escalated beyond the Delegate (to SES) where legal and/or financial implications are deemed High Risk for the AEC.

Reference:

- *Responsible for the whole of life management of a contract and ensuring escalation plans are identified before Services commence. Any performance management issues during the term of the Agreement will need to be reported in contract management plans and contract reviews.
- **Suppliers may have different arrangements in place for their escalate processes. This should be raised with the supplier to ensure AEC have correct contact details.
- ***This escalation should only be used by exception, where legal and/or financial implications are deemed to be High Risk leading up to and during an Election period.

Stepped Escalation Process – Contract Scenarios

Scenario 1: Furniture Hire Contract

Scenario: A Service Provider is contracted to provide furniture to the AEC at a number of venues (including OPCs, PPVCs and PPs), through a Work Order issued under *the AEC Panel for Furniture and Equipment Hire* and managed by State Office. At one venue the AEC representative notices that some of the tables delivered are damaged and unsuitable for use. The AEC representative identifies that replacement tables are required within a certain timeframe in order for the AEC to effectively conduct its business.

Resolution and escalation: The AEC representative should not accept the unsuitable furniture, and should discuss the issue with their contact at the Service Provider to attempt to receive replacement furniture. The AEC representative should report the matter through the appropriate communication channel to the AEC Contract Manager in State Office to ensure visibility of the performance issue. If the AEC representative is not able to obtain replacement furniture by discussing the matter with their contact at the Service Provider, the issue should be escalated to the AEC Contract Manager for assistance.

If further escalation is required?

In the event the AEC Contract Manager cannot resolve this performance issue, they might escalate to the Panel Manager, or the Delegate.

Scenario 2: Cleaning Contract

Scenario: A Service Provider is contracted nationally to deliver cleaning Services at all AEC State, Territory and National Office locations. At a number of offices, AEC employees have complained about the quality of cleaning, noting it has significantly dropped in standard. It is noted that this issue has been raised directly with the cleaners at these locations, however there has been no improvement. This contract is managed at the National Office Level.

Resolution and escalation: This issue should be escalated to the AEC Contract Manager in National Office for performance management as the issues have not been resolved at the local level. The AEC Contract Manager will require detailed information on the performance issue and information on the attempts made to improve Services at the local level. The AEC Contract Manager should then raise the matter with the Service Provider to seek resolution. This may include developing an agreed performance improvement plan and rectification process, increased reporting, and increased contract meetings to monitor the delivery of Services until the performance standard is being consistently met.

If further escalation is required?

In the event the AEC Contract Manager cannot resolve this performance issue, they may seek guidance from CLP and issue formal performance notices, or escalate to the Delegate.

Scenario 3: Logistics Contract – Critical Elections Services

Scenario: A Service Provider is contracted to the AEC to provide time critical Logistics Services in the direct support of an Electoral Event. The Service Provider is contracted under a number of Work Orders across multiple States/Territories.

An issue has been experienced under one Work Order in relation to invoicing, with the State disputing a submitted invoice and refusing to make payment until a new invoice is issued. The Service Provider disputes the changes requested by the AEC Contract Manager.

The AEC Contract Manager and Delegate have attempted to resolve the issue with the Service Provider, however no agreement can be made. The Service Provider is now refusing to undertake Services against any of the Work Orders until payment is made. This represents a significant risk to the successful delivery of the Electoral Event, given the volume of work to be completed by this Service Provider.

Resolution and escalation: This represents a high risk and election critical performance issue and should be escalated to the National Elections Manager (NEM) and the Chief Legal Officer (CLO) for resolution.

Appendix 13 – Contract Management Checklists

Overview

The following checklists assist AEC Contract Managers by providing a guide of basic tasks that should be completed at various contract stages. **Note** that these checklists are generic and not exhaustive.

Checklist for Contract Start Up

This checklist supports contract start up and should be commenced before the contract is signed.

Checklist 1: Contract Start Up		
Step 1: Finalise Contract		
✓	Task	Comment
	Ensure AEC Financial Delegate approval has been received and recorded.	
	Ensure any outstanding negotiation issues have been resolved and execute the Contract (ensure the AEC signs the contract last). Ensure that work is <u>not</u> commenced until the Contract has been executed.	
	Attach a copy of the executed Contract to the Approach to Market in My Procurement and update the Spending Proposal if required (e.g. Start Date).	
Step 2: Contract Management		
	Develop a Contract Management Plan (or Contract Overview for low value procurements). <ul style="list-style-type: none">• Complete a risk assessment and mitigation plan• Establish a transition in plan (if required)• Identify stakeholders and develop a communication plan (including informing stakeholders of obligations in relation to the Contract)• Establish payment and validation processes• Establish contract monitoring processes• Arrange regular contract meetings	
	Ensure any documentation required under the contract is provided to the AEC (e.g. Certificate of Insurances, Confidentiality Deeds, Risk mitigation plans).	
	Ensure AEC obligations are met: <ul style="list-style-type: none">• Security passes provided and/or access and workstations provided• Applicable AEC policies provided to the Supplier for compliance (e.g. Ballot Paper Handling Policy)	
	Attach Contract Management Plan (including the Risk Assessment) to the Approach to Market in My Procurement.	

Checklist for Contract variation / extension

This checklist supports contract managers seeking to vary or extend a contract. A variation is an amendment to a contract that changes the contract's original terms or conditions. For example, you may need to vary a contract if there is a change to the services required, personnel or pricing. A contract extension is the exercise of a contract option to extend the agreed terms for a further period. Negotiations for contract extensions must be agreed before the expiry date of the contract.

Checklist 2: Contract Variation or Extension		
Step 1: Identify if a Variation or Extension is required		
✓	Task	Comment
	Assess the reasons for the proposed variation or extension. For an extension: Identify what alternatives have been considered (including approaching the market) and any risks associated with not extending the Agreement and complete a contract evaluation.	
	Assess the impact of the proposed variation or extension on the Agreement Deliverables and price by completing an updated Value for Money Assessment.	
	Consult with Senior Management and internal stakeholders on rationale for the variation/extension. Ensure that the proposed variation/extension reflects value for money, and that the reasons for the variation/extension are agreed by the AEC Financial Delegate. Note: Ensure Step 1 is documented.	
Step 2: Request a Variation / Extension		
	Complete and submit a Deed of Variation Request Form in My Contracts. CLP will then draft the Deed of Variation or letter of extension.	
	Where the contract value and/or contract end date is being varied, following CLP approval, the Variation Request will workflow to the AEC Financial Delegate for approval .	
	Once the variation request has been approved by CLP and, where required, the AEC Financial Delegate, you will receive email notification.	
	The Deed of Variation (or letter of extension) can now be executed. Attach a copy to the contract in My Contracts.	
Step 3: Update documentation		
	Document and file relevant details of the variation/extension and its impact.	
	Update the Contract Management Plan and Risk Assessment.	

Checklist for contract completion

This checklist should be commenced before the completion of the contract, and takes you through a number of steps to be completed at the end of a Contract.

Checklist 3: Contract Completion		
Step 1: Return of Materials / Access		
✓	Task	Comment
	Identify all items that need to be returned to the AEC by the Supplier, and arrange to record the receipt of these items. You should consider: <ul style="list-style-type: none"> Documents, information, records, reports AEC Material (including access passes) 	
	Arrange termination of any access arrangements (e.g. system and premises access).	
	Commence Transition Out phase (<i>if required</i>).	
Step 2: Financial / Reporting considerations		
	Ensure processes for the final payments payable for the contract are in order (including the application of any Service Levels/Fee Credits).	
	Obtain all final reports and clearances from the Supplier.	
Step 3: Contract documentation and Evaluation		
	Undertake an evaluation of the Contract (see Checklist for contract evaluation and Contract Evaluation template).	
	Review and update the Contract Management Plan (CMP) and Risk Assessment to reflect contract completion. Note: the CMP should be updated to include lessons learnt as identified through the contract evaluation step above.	
	Ensure all documents are filed in accordance with the AEC Record keeping Policy. Note: Ensure the value and dates in My Contracts are updated to reflect the final contract state.	

Checklist for contract evaluation

This checklist helps you to undertake an **evaluation** of the overall performance of the contract and of the management of the contract.

Evaluating a contract is **best practice** and should be conducted before you exercise an option to extend the contract, and at the completion of any contract. This activity can be completed in a File Note, particularly for low value procurements. A Contract Evaluation template is available on the AEC Contract Management intranet page and recommended for use for high value or high risk arrangements. All contract evaluations should be recorded in the Supplier Performance Register.

Checklist 4: Contract Evaluation	
Step 1: Review achievement against AEC requirements	
✓	Task
	Review the requirements identified in the original File Note for the procurement and the original approach. Has the contract achieved the activity identified in the approach to market?
	Assess how the AEC requirements developed throughout the life of the contract.
	Compare planned and actual milestones and activities completed under the contract. Did the contract achieve its objectives, and did the contract deliver quality outcomes?
	Were the stakeholders requirements met?
	Note: This will generally involve further consultation with stakeholders concerned.
Step 2: Review Contractor performance	
	Has the Contractor met all their contractual obligations?
	Review performance against standards and indicators in the contract. How well did the performance regime work?
Step 3: Review AEC Contract Management	
	Did the AEC Contract Management arrangement facilitate the achievement of the contract outcomes? (Consider; financial expenditure tracking; variations; monitoring processes; performance management / escalation processes)
	How was the relationship managed? Was this adequate?
	Was there adequate skills/resources allocated to manage the contract?
	Identify the lessons learnt and include this as an attachment in the final update to your Contract Management Plan. If you do not have a Contract Management Plan, lessons learnt can be captured in a File Note. Note: The contract evaluation should be analysed to underpin both continuing and future contracting activity.

Appendix 14 – Commonwealth Contracting Suite and DS4P

Commonwealth Contracting Suite (CCS)

Overview

The Commonwealth Contracting Suite (CCS) was introduced to create consistency across Commonwealth contracts to minimise the burden on businesses contracting with the Commonwealth Government and to streamline and simplify procurement processes for Commonwealth entities (AEC).

The mandatory components of the CCS are:

- (a) the Approach to Market (ATM) (incorporating the Commonwealth ATM Terms); and
- (b) the Commonwealth Contract (incorporating the Commonwealth Contract Terms). The CCS also includes a range of non-mandatory documents.

To ensure that the CCS is being used appropriately, the Decision Tree smart form can assist AEC personnel in the process for procurement under \$200,000.

Policy

The use of the CCS is mandatory when purchasing goods or services valued under \$200 000 unless an exemption applies as outlined in Department of Finance [RMG 420](#) (eg. Services are being procured through a panel arrangement).

For procurements (non-construction or non ICT) valued between \$200 000 and \$1 000 000 (, the use of the CCS is encouraged but is not mandatory.

Access

The CCS is available at the following link: <http://www.finance.gov.au/procurement/commonwealth-contracting-suite/>. A user login must first be created at http://ccs.hosted-gov.net.au/Infiniti/Produce/wizard/eec8694a-fa4a-4a18-a13b-c5d0e23ff9f7/#./null?&_suid=145205636728407839819597050268 to access CCS.

It is suggested that business areas consider developing a group login to allow multiple people to access the documentation developed for each procurement.

Please note: AEC personnel need to generate new documents by use of the online smart-form for each new procurement activity. This will ensure that the documentation contains relevant content and is tailored to your procurement.

Dynamic Sourcing for Panels (DS4P)

The Department of Finance (DoF) has established a system called Dynamic Sourcing for Panels (DS4P). DS4P provides a new standardised and streamlined tool through AusTender for Commonwealth agencies to access detailed information about panels and to conduct procurements.

DS4P enables Commonwealth agencies to issue Requests for Quote through a controlled system, rather than emailing providers. Responses will be received and then downloaded through the same system. This will help ensure receipt and provide an audit trail for the procurement.

A number of panels have now been made available on DS4P. Agencies are progressively publishing Panel as their internal DS4P implementations are completed. As a result, the manual processes for request for quotes to some Panels will continue as normal (ie. via email) until transition is complete.

No panel arrangements established by the AEC are currently available are managed through DS4P. Where a Panel arrangement that you wish to approach has transitioned to DS4P, you will need to issue and receive responses to the RFQ using this system.

Access to DS4P

In order for individuals to be granted access to DS4P, training on the system must be completed. To request attendance at a training session on the system, please contact CLP.

Appendix 15 – Government Procurement (Judicial Review) Act

Overview

The Government Procurement (Judicial Review) Act 2018 (**Act**) provides Suppliers, Potential Suppliers or subcontractors with the right to seek judicial review of contraventions of the Commonwealth Procurement Rules (CPRs) by a Commonwealth entity or its officials, where this relates to a "covered procurement".

What is considered a “covered procurement”?

All open tender procurements are considered a covered procurement under the Act as well as limited tender procurements where an exemption under Appendix A of the CPRs is not applicable.

How can complaints under the Act be received?

Complaints may be received by the Contact Officer or via the complaints form on the external facing AEC website. Any complaints received in relation to a procurement activity must be managed in accordance with the AEC Complaints Management Policy.

What is a Public Interest Certificate (PIC)?

A Public Interest Certificate (PIC) is a certificate, issued by the department or agency, stating that a delay to the procurement process is not in the public interest. The issue of a PIC has the effect of enabling the covered procurement to continue as scheduled while complaints received under the Act are being investigated.

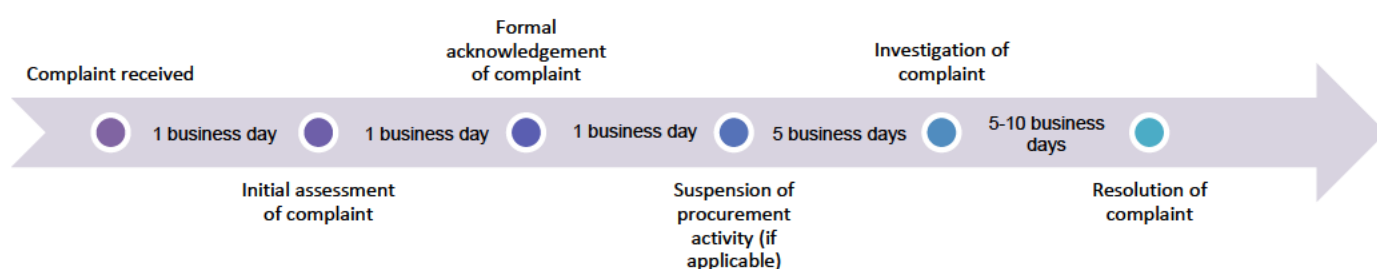
A PIC may be issued at any stage of the covered procurement process, including after a complaint is made. If issued, a PIC must be published on the AEC website as well as made known in the approach to market documentation (where issued before approach to market is undertaken).

How do I issue a PIC?

The Electoral Commissioner as the accountable authority for the AEC can issue PICs and will make the final determination on whether a PIC is appropriate in each scenario.

Complaints process overview

Below is a high-level overview of the complaints process undertaken for complaints received under the Act. For full details refer to the AEC Complaints Management Policy.



Additional information

For full details pertaining to the Act, when it can be leveraged and the AEC's approach to managing complaints received under the Act please refer to the following documentation:

- [RMG-422](#): Handling complaints under the Government Procurement (Judicial Review) Act 2018
- [Commonwealth Procurement Rules](#) (20 April 2019)
- [Public Governance, Performance and Accountability Act 2013](#)
- [AEC Complaints Management Policy](#)

Appendix 16 – Black Economy Procurement Connected Policy

Overview

From 1 July 2019, businesses seeking to tender for Australian Government procurement contracts over \$4 million (**Threshold**) are required provide a statement from the Australian Taxation Office showing they have a satisfactory tax record.

This change in policy is known as the Black Economy Procurement Connected Policy (**PCP**) and aims to increase the integrity of government procurement, as recommended in the Black Economy Taskforce's final report.

The AEC is required to adhere to this policy for all procurement with an estimated value of \$4 million or more regardless of the procurement method being undertaken.

How do I make sure my procurement adheres to the PCP?

Any procurements meeting the threshold must include a mandatory requirement for all Potential Suppliers to provide a Statement of Tax Record (STR). Potential Suppliers can request an STR using the Australian Taxation Office (ATO) business or myGov portals.

If a Potential Supplier is unable to produce an STR their Submission will be excluded from consideration in the procurement process. If the Supplier has requested an STR but has not received it before the submission date, it is at the AEC's discretion to include them in evaluation activities pending production of the STR. At no time will the AEC be able to enter into an Agreement over the Threshold without citing a valid STR.

Additional information

- [Frequently asked questions for Commonwealth procurement officers and tenderers](#)
- [Black Economy Procurement Connected Policy](#)