



The CPRs have changed - Here's what you need to know!

Introduction

A clear understanding of the Commonwealth Procurement Rules (CPRs) is fundamental for every government officer undertaking procurement activities. Staying up to date with the current policies is also important to ensure that government procurement legislation and principles are applied correctly, and their intent is not eroded due to cumbersome internal policies.

The CPRs were updated on 1 July 2022 to reflect the Australian Government's commitment to increase sourcing from small and medium enterprises (SMEs). The updated CPRs apply to new procurements undertaken from **1 July 2022**. A table detailing the changes is available from the Department of Finance website [HERE](#)

Reason for changes

There have been two sets of amendments to the CPRs since December 2020. The initial amendments (F2022L00409) titled *Commonwealth Procurement Rules 1 July 2022* and the more recent amendments (F2022L00874) titled *Commonwealth Procurement Rules 1 July 2022 (No. 2)*.

Both sets of amendments were undertaken to reflect the Australian Government's commitment to improving the competitive capability of small and medium enterprises when participating in Commonwealth procurements. They are designed to ensure more opportunities are made available for SMEs to participate in Commonwealth procurements, leading to better participation and outcomes for both Government and industry.

This Article

This article discusses four of the amendments and the effects they will have for relevant Officers. This article seeks to share knowledge with industry so they can best position themselves to support Government on strategic capability and projects.

Change #1 – Procurement-connected policies (4.9)

Summary

CPR rule 4.9 now states that non-corporate Commonwealth entities and prescribed Commonwealth corporate entities must comply with procurement-connected policies (PCPs) (where the policy indicates that it is applicable to the procurement process and to the entity.)

Original text

To assist relevant entities in complying with policies of the Commonwealth, Finance maintains a list of procurement-connected policies, which can be found at www.finance.gov.au/procurement.

New text

Non-corporate Commonwealth entities and prescribed corporate Commonwealth entities must comply with a procurement-connected policy where the policy indicates that it is applicable to the procurement process. Finance maintains a list of procurement-connected policies at www.finance.gov.au/procurement.

Reason for the change

PCPs are specific whole-of-government policies which Officials must comply with during a procurement process. These policies help ensure that future procurements align with broader Commonwealth policy objectives, specifically that procurements:

- Are well-considered;
- do not impose unnecessary red tape on businesses or community organisations; and
- do not introduce inefficiencies into procurement or grants activities.

In 2020-21 there were 84,054 contracts published on AusTender with a combined value of \$69.8b. Ensuring adherence to the PCPs strengthens confidence in the significant expenditure of Government funds.

Effect

PCPs are now mandatory. It is the responsibility of the Relevant Officials to ensure alignment and compliance with the various PCPs and their application to their procurements.

<https://www.finance.gov.au/government/procurement/buying-australian-government/procurement-connected-policies> sets out the relevant PCPs including the Indigenous Procurement policy, WGEA Principles and User Guide, and the Black Economy.

Relevant Officials must review the PCPs and ensure any new procurements from 1 July 2022 adhere to these amendments.

Next Steps

The EMA Advisory team can help to ensure your commercial strategy, procurement documentation and policies are updated to reflect the PCPs. Our team have extensive experience conducting Health Checks on procurement documentation and templates to ensure the procurement teams remain compliant while providing the most efficient process for upcoming procurements.

Additionally, our team can support industry to ensure that your approach / bid documentation is compliant and aligns to the PCPs seamlessly.

Change #2 – Small and Medium Enterprises (5.5 d)

Summary

Procurement Officials must now consider the disaggregation of large projects into smaller packages of work that maximise competition where appropriate.

Original text

d. the potential benefits of having a larger, more competitive supplier base.



New Text

d. the potential benefits of having a larger, more competitive supplier base, including the disaggregation of large projects into smaller packages, where appropriate, that maximise competition.

Reason for the change

Some procurements are large and complex, including in value and strategic importance, and are heavily reliant on large/mature industry for support. Large international entities often have no problem in bidding and winning work of such scale, while smaller industry bodies are restricted to either subcontracting arrangements (to gain such experience) or are cut out completely due to the risk or magnitude of work.

While many Australian SMEs may not have the resource capacity to competitively bid for a large project, they do have the capability and capacity to compete and undertake smaller components of such projects.

The disaggregation of large projects into smaller packages, where appropriate, allows SMEs to compete to deliver elements of larger projects. By widening the field of potential suppliers, this enhances the opportunity for Government to consider a wider range of solutions and therefore increase the prospect of obtaining a value for money outcome, as well as allowing for increased engagement of SMEs in Australia.

It is important to note that disaggregation does not mean that a procurement can be separated into parts to avoid conducting an open tender (CPR r 9.5)¹.

Effect

Practically, a project can be disaggregated in two ways:

1. a large project is broken into multiple small packages (representing smaller project components of the larger project). In this scenario, each package represents a separate approach to market with one or more contracts awarded; or
2. a single approach to market that allows an entity to award a contract to one or more suppliers against one or more components within the larger procurement.

Designing a procurement for disaggregation, if done poorly, will prevent a value for money outcome from being obtained and may significantly blow out both timeframes and costs. It is vital that procurement Officials are familiar and diligent in this approach.

Further, disaggregation by breaking up a project will require more planning, industry consultation, and management by the relevant Department. One large procurement may be broken down into 10-15 smaller contracts. This means 10-15 approaches to market instead of one approach. This also means more evaluations, more and contracts negotiations and more work and management for contract managers.

Next Steps

Whether you are a supplier to Government or representing Government to facilitate a procurement, the EMA Advisory team can help to ensure that your commercial structure is set

¹ A procurement must not be divided into separate parts solely for the purpose of avoiding a relevant procurement threshold.



up to facilitate smaller packages of work which allows Australian SMEs the opportunity to bid for work – without impacting the risk or delivery of projects.

Our team can help to ensure your documentation is updated to reflect the new CPRs, upskill the procurement team to enable the engagement and contract management of SMEs, and ensure your engagement with Government/Industry is set up to facilitate the required project outcomes.

For industry, we can support your advocacy to Government for smaller work packages where a value for money outcome is more likely to be achieved. We can discuss how you can best approach government through consortiums of smaller SMEs, or individually, to ensure Government is aware of your service offering and the benefits it may achieve from segregating their approach to market (where appropriate).

Change #3 – Procurement from standing offers (9.14)

Summary

A new rule has been included to encourage Officials to approach multiple potential suppliers from a standing offer, to maximise competition.

New Text

9.14 To maximise competition, officials should, where possible, approach multiple potential suppliers on a standing offer.

Reason for the change

In our experience, many procurement officers have used standing offers to send direct requests to certain vendors, thereby getting around the limited tender requirements. Such approaches may have been done because of a positive previous delivery of services, a personal impression of the vendor, time pressures, or pressure from within the organisation.

In our view, a direct approach via a panel/standing offer may be required where value for money is unlikely to be achieved through other vendors, however, it is always encouraged that organisations validate this assumption by testing the market. Utilising a panel to approach for one vendor when procuring commercial-off-the-shelf (COTs) goods which is available through various suppliers would be difficult to prove value for money unless more than one panellist is approached.

Effect

Fortunately, this amendment is easy to implement. Relevant Officials should ensure internal policy documents specify the releasing of an RFQ to enough vendors to bolster a value for money outcome. This will be on a per-procurement basis, given the variability between procurements.

The relevant PGPA approval documentation should include a section stating how value for money was achieved, either through a multi-panellist approach or through a single vendor where competition to supply the goods or services is restricted to that supplier. If the value of the procurement is less than the new policy, a strong justification should be provided to state why more vendors were not approached. Fundamentally, value for money needs to be validated, therefore the number of vendors required to ensure a competitive process will vary from procurement to procurement.



Next Steps

Our team are available to support government procurement or project teams to understand the value for money requirement and further understand the requirements to appropriately test the market. There is no one answer, and it will depend on the goods or services you are seeking to procure.

For our industry colleagues, we are available to discuss the value for money principles in more detail so you can actively engage with government clients and understand their requirements. This is particularly important if you are an SME and unsure as to how you will be tested amongst other competitive bids (if any are available).

Change #4 – Appendix A: Exemption 17 (Defence Only)

Summary

This amendment allows the Department of Defence to directly engage an SME for procurements valued up to \$500,000.

Original Text

17. procurement of goods and services from a SME for procurements valued up to \$200,000 (note: the requirements under the Indigenous Procurement Policy must first be satisfied before this exemption is applied).

New Text

17. procurement of goods and services valued up to \$200,000, or up to \$500,000 by or on behalf of the Department of Defence, from a SME (note: the requirements under the Indigenous Procurement Policy must first be satisfied before this exemption is applied).

Reason for the change

Defence has a budget which is significantly higher than most other Departments. The nature of spending for matters up to \$500,000 is similar to other Department's spending for much lower values, which creates backlogs and project delays due to additional red tape requirements. Defence will also benefit from issuing smaller work packages out to Australian SMEs to reduce single vendor risks, and to increase sovereign capability.

Effect

Relevant Officials at the Department of Defence should ensure that their internal guidelines are updated to reflect the increased exemption for \$500,000. This means updating the s23 document, and relevant supporting documents.

Summary

It is important that government and industry have a clear understanding of the CPRs and regularly update their internal policies to comply with the amendments. This is especially important in the early stages of a procurement where planning for disaggregation is done. Further, 'approach to market' documentation must also be aligned with the new CPR requirements including the Supplier Pay on Time or Pay Interest Policy, the amendments to insurance requirements, and any other mandatory conditions of participation and evaluation criteria.



EMA Advisory rigorously reviews the legislation, regulations, and policies relating to procurement and contract management, to ensure our advice is always up-to-date and reflects the intent of the regulation.

If you would like to gain a better understanding of the CPRs, and the legislation and policies governing Commonwealth procurements more broadly, please contact EMA Advisory for a Compliance Health Check consultation by our team of legally qualified consultants at admin@emaadvisory.com.au

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14 July 2022

Table of CPR Amendments

Achieving value for money (4.5 e)	Amended text to include climate change impacts in relevant financial and non-financial considerations of value for money.
Achieving value for money (4.5 e. ii)	Amended text to reflect the new Department of Climate Change, Energy, the Environment and Water.
Small and Medium Enterprises (5.6)	Amended text to increase the Australian Government's commitment to non-corporate Commonwealth entities sourcing 20 per cent of procurement by value from SMEs.
Procurement from standing offers (9.14)	New text advising officials to approach multiple potential suppliers from a standing offer, to maximise competition.
Figure 1: Legislation and Policy	Inclusion of Government Procurement (Judicial Review) Act 2018 under Legislation heading and inclusion of new text 'free trade agreements and other commitments' under International obligations heading within Legislative and policy environment.
Compliance with the two divisions of the CPRs (3.8)	Amended text to provide clarification that the CPRs apply to the administrative services of the Commonwealth Superannuation Corporation that relate to the superannuation schemes it administers.
Procurement-connected policies (4.9)	Amended text stipulates that non-corporate Commonwealth entities and prescribed Commonwealth corporate entities must comply with procurement-connected policies where the policy indicates that it is applicable to the procurement process and to the entity.
Small and Medium Enterprises (5.5 d)	Updated sub-paragraph requiring procuring officials to consider the disaggregation of large projects into smaller packages that maximise competition where appropriate.
Small and Medium Enterprises (5.8)	Amended text reflecting the removal of the \$1 million threshold in the Supplier Pay On-Time or Pay Interest Policy – Resource Management Guide (RMG 417).
Procurement risk (8.4)	New text to provide that suppliers do not need to take out insurance until a contract is to be awarded and to limit insurance imposts in contracts and embed the principle of risk sharing by better reflecting the actual risk in contractual liability.
Appendix A: Exemption 17	Amended text allowing the Department of Defence to directly engage an SME for procurements valued up to \$500,000 (note: the requirements under the Indigenous Procurement Policy must first be satisfied before this exemption is applied).

