



EMA ADVISORY
Commercial Consultants

Report 498 – Key Findings & Recommendations

Report 498 has made 19 recommendations which, if implemented, should help to drastically improve Commonwealth procurement.

Contract Management

Contract Management isn't called out specifically in the recommendations, but it is identified as a shortcoming, so we want to briefly address it here. A **procurement does not end** when the goods or services are acquired. It ends when the contract comes to an end. Proper **Contract Management is fundamental** to ensure ongoing **value for money** is derived, and to ensure the Department is getting what it agreed to and paid for.

Too often **procurements are rushed**, creating a situation where a contract manager is left having to manage an unjustifiably complex contract. In many cases the contract manager moves on, and some poor new contract manager has the unenviable task of figuring out what has happened and trying to manage the contract.

A **good procurement** should start with the bulk of the work performed in the early stages, ensuring that the resulting contract is **easy to understand**, sets out **clear obligations**, provides a few **simple and measurable KPIs**, and has regular reporting requirements. Unfortunately, we tend to find that procurements are rushed, and a lot of the work and effort is deferred to the contract management stage. This often results in a contract where **underperformance can't be captured**, and when it can, there are **no useful remedies** available.

Contract Management should be proactive and simple. We will release a separate article on contract management at a later date. In the meantime, if you would like to increase your contract management toolkit, we offer a training course on '**Contract Management Essentials**' for our Federal Government clients.

Recommendations

The rest of this article explores recommendations: 1, 5, 7, 8, and 9

All recommendations are provided in full at [Recommendations – Parliament of Australia \(aph.gov.au\)](https://aph.gov.au/parliamentary-business/committees-and-inquiries/procurement-reports/recommendations)

Key Recommendations

Recommendation 1

The Department of Finance should work to advance public sector procurement capability and professionalisation by rolling out professional procurement streams within the APS and expanding the current definition of procurement.

EMA Advisory comments

EMA Advisory agrees entirely with the recommendation to develop a **professional procurement** stream and with the creation of procurement pathways and courses. We know from experience that a Procurement, when it is undertaken properly, can be complex.

At EMA Advisory we have hired highly experienced procurement professionals from a range of backgrounds. We actively share knowledge to solve complex problems, and we are constantly upskilling our staff. Our employees hold degree qualifications, have decades of experience, and/or have worked in niche areas including procurement for space sector.

EMA Advisory has already developed and delivered a number of training packages for our clients to help upskill the APS in Procurement, including:

- Procurement 101
- Elements of Contract Formation
- Probity in Procurement
- Advanced Procurement
- Engaging with and Managing Stakeholders
- the Basics of Accounting and Finance in Procurement
- Contract Management Essentials, and a range of other useful courses

Commonwealth procurement requires a significant level of effort to help upskill individuals through the use of courses and certifications.

Recommendation 5

Finance should amend its guidance to Commonwealth entities, to recommend that where a significant or complex procurement is being undertaken, the entity's audit committee and internal audit program should increase scrutiny of the particular procurement.

EMA Advisory Comments

It is unclear to us how 'significant' or 'complex' procurement is defined in this context, and we would welcome a definition of these terms to ensure consistency across Federal Departments. What may be simple at Defence, may be complex or significant at a smaller Department. The same may apply to an individual undertaking a procurement. While we note that most Senior APS within Federal Departments already have 'lists' of the more complex procurements, it would be beneficial for all branches within a Department to be consistent on such issues.

When a procurement is thrust into the spotlight for its complexity (and not just hefty price tag) we see a noticeable lift in the interest and standards applied to the procurement. Such procurements should be visible to all relevant personnel and be actively updated to ensure senior personnel are across developments, issues, and deadlocks as soon as possible. We believe this requirement would ensure more appropriate record keeping, and **higher levels of personal accountability** from APS officers involved in such procurements.

Supporting procurement officers with the 'spotlight' will allow for easier stakeholder management, especially where legal and technical personnel are taking too long to respond. **Having a senior APS Stakeholder as your support will provide substantial benefit to the procurement officer, and in turn, the Department.**

Recommendation 7

Finance should amend its guidance on panel usage to ensure a VFM assessment is still undertaken when conducting a procurement from a panel, and ensure multiple providers are selected, instead of sole sourcing - which should be considered inadequate to prove VFM.

EMA Advisory comments

A consistent topic in procurement that we come across is the use of 'sole sourcing' from a panel, often justified with a statement that 'the tenderer was determined as value for money when they were approved to the panel'. In these cases, a panel arrangement is often used to justify 'sole sourced' procurements where there are a number of tenderers who can provide a similar solution.

Some department's have provided guidance to their staff to obtain a minimum number of quotes when obtaining goods and services (where possible) from a panel arrangement.

However, this is not black and white. Mandating the use of multiple vendor approaches will **encourage competition**, but **it must be done without eroding the value for Vendors who have already been deemed value-for-money at an entity level.**

Industry spends a significant amount of resources to secure positions on panels, which in itself is a highly competitive process. If panel access is not deemed a consideration in value-for-money, perhaps we need to revisit the purpose of panel arrangements and the process for Industry to gain access?

Recommendation 8

Finance should refresh panels earlier and allow entrants to enter a panel on an ongoing basis.

EMA Advisory comment

One of the Commonwealth's most **significant failures in procurement is panel access**. The CPRs note the importance of encouraging competition, and yet in most situations Departments which own a Panel arrangement(s) flat out refuse to allow new entrants onto the panel. This does not encourage competition. Rather it creates a situation where competition is reduced to only those who are on a panel, barring new entrants for years after its establishment. Some panels won't allow a new entrant for 3-5 years after its establishment.

Finance can look towards the NSW Panel arrangements to learn from their 'rolling wave' approach to new entrants.

EMA Advisory and presumably most SMEs operating in the Commonwealth environment, are in absolute agreement with this recommendation.

Recommendation 9

Finance should amend the reporting requirements on AusTender to ensure that it is clear for every procurement: how many suppliers were invited to submit a quote (including from panels and standing offers); and reasons for amendments or variations to a contract.

EMA Advisory comment

It is important that the most relevant information is uploaded to AusTender, to allow the public to review Contract Notices in more detail.

We suggest that if Government really wish to provide transparency on how value-for-money was derived in the spending of taxpayer money, then the **VFM statement used to justify the procurement should also be uploaded to AusTender**. This would ensure more appropriate emphasis is placed on the s23 documentation, and hopefully lead to more critical thinking and accountability from procurement officers.

Conclusion

We welcome the recommendations from Report 498 and note we have only addressed some of the 19 recommendations. Report 498 reveals significant deficiencies in the procurement process within Federal Departments, with requests for Finance to report back 12 months after its release. We are eager to support the upskilling of Commonwealth procurement and look forward to helping our government clients to achieve cost optimisation through promoting true market competitiveness and better outcomes for both Government and Australian Industry.

Author

Mr. Matthew Bautz, Director | EMA Advisory , 11 October 2023