AFP National Guideline on procurement and contracting

View document details (metadata)

1. Disclosure and compliance

This document is classified **OFFICIAL** and is intended for internal AFP use.

Disclosing any content must comply with Commonwealth law and the AFP National Guideline on information management.

This instrument is part of the AFP's professional standards framework. The AFP Commissioner's Order on professional standards (CO2) outlines the conduct expected of AFP appointees. Inappropriate departures from the provisions of this instrument may constitute a breach of AFP professional standards and be dealt with under Part V of the *Australian Federal Police Act 1979* (Cth).

2. Guideline authority

This guideline was issued by the Chief Financial Officer using power under s. 37(1) of the *Australian Federal Police Act 1979* (Cth) as delegated by the Commissioner under s. 69C of the Act.

3. Introduction

This guideline advises AFP officials of their obligations when:

- conducting procurement activities
- entering into and managing contractual arrangements on behalf of the AFP.

This guideline is a companion to the Commissioner's Financial Instructions (CFIs) and provides additional instruction for AFP officials involved in procurement and contracting activities. This guideline also provides links to broader Australian Government policy and guidance documents including the Commonwealth Procurement Rules and AFP templates related to procurement activities.

This guideline does not provide guidance on the management, business processes or drafting considerations for formal arrangements between the Australian Federal Police and other Australian or international government or non-government agencies. This subject is covered in the National Guideline on external agreements.

4. Policy

The *Public Governance, Performance and Accountability Act 2013* (Cth) (PGPA Act) requires the Commissioner to manage the resources of the AFP in an efficient, effective, economical and ethical manner.

AFP officials undertaking procurement activities on behalf of the AFP must adhere to the PGPA Act, PGPA Rule, the Commonwealth Procurement Rules (CPRs), the CFIs and this guideline.

Commonwealth and AFP procurement policies require ethical behaviour, achieving value for money (VFM), encouraging competition and making procurement decisions in an accountable and transparent manner.

AFP officials undertaking procurement and contracting activities on behalf of the AFP must adhere to guidance set out in this guideline and should adhere to the guidance provided in supplementary AFP templates.

AFP officials who elect to not adhere to the guidance set out in an AFP template must set out the rationale and justification for departing from the guidance in the relevant AFP template to ensure the relevant delegate is appropriately informed of the basis for the departure.

5. Roles and responsibilities

5.1 National Procurement and Contracts

The National Procurement and Contracts (NPC) team is responsible for:

- developing procurement-related mandatory obligations, guidance material and related templates
- providing advice to procuring business areas on the compliant procurement of goods and services
- ensuring compliance with the Australian Government procurement policy framework, including:
    - compliance review for all high-value spending proposals
    - compliance review for all spending proposals with a risk rating of significant or higher
    - compliance review for all spending proposals related to the procurement of consultancy services
    - compliance review of proposals related to any of the following matters:
        - termination or reduction of a contract
        - termination of a procurement process
        - acquiring goods or services valued at $10,000 (GST-inclusive) and above without a formal written contract in place

- ensuring that the AFP complies with Australian Government procurement reporting obligations
- providing advice and support to business areas on contracting and contract management activities
- providing assistance and support on the use of Whole-of-Government coordinated procurement and cooperative procurement arrangements.

5.2 AFP business areas

AFP officials, along with contractors and service providers, acting on behalf of procuring business areas must prepare and submit to NPC for compliance review:

- all spending proposals where the estimated value of the procurement is $80,000 (GST-inclusive) or more (**see 'exceptions' below**)
- all spending proposals for contract variations/extensions where the contract value is, or increases to, $80,000 (GST-inclusive) or more
- all spending proposals with a risk rating of 'significant' or higher
- all spending proposals related to the procurement of consultants or consultancy services
- all spending proposals related to any of the following matters:
  - termination or reduction of a contract
  - termination of a procurement process
  - procurement of goods or services valued at $10,000 (GST-inclusive) and above without a formal written contract in place.

Exceptions from the mandated NPC review in the first dot point above are where one of the following conditions are met:

- all new procurements to a current Commonwealth panel (with the exception of consultancies) below $200,000 where all panellists for the relevant category are approached or where a competitive approach to five or more panellists is conducted
- all new procurements involving an approach to a mandatory WoAG panel (with the exception of consultancies) for related goods or services
- all procurements for national and international leases including both commercial and residential leases.

Business areas are responsible for the identification, assessment and management of perceived and/or actual conflicts of interest as they relate to procurement or contract management activities.

NPC assists business areas to meet their obligations under the PGPA Act, PGPA Rule and the CPRs, and provides advice and compliance reviews on proposed procurement activities.

It is the responsibility of the relevant delegate to approve spending proposals as compliant with s. 23 of the PGPA Act (being the approval to commit relevant money for

the purposes of entering, varying or administering arrangements relating to the affairs of the AFP.)

5.3 AFP Legal

AFP Legal is responsible for:

- advising on the appropriate form of contract for all non-panel procurements with an estimated value of $200,000 (GST-inclusive) and above
- advising on the appropriate form of contract for all procurements with an assessed risk rating of significant or higher
- drafting bespoke forms of contract and bespoke contract clauses, as required
- drafting and updating AFP Act requirements (and AFP additional contract terms) for inclusion in contracts
- providing legal advice in relation to procurement probity, procurement complaints, complex contract negotiations, complex contract management issues and payments pending probate
- providing commercial legal advice on the assessment and acceptance or rejection of contingent liabilities, including warranties, indemnities and guarantees
- providing advice and assistance with termination and/or reduction of contracts and the exercise of higher-risk contractual rights such as claiming liquidated damages, service credits/rebate and claiming against bank or parent company guarantees.

5.4 AFP contract management

All AFP contracts should be managed with consideration of the Australian Government Contract Management Guide and NPC guidance material available on NPC's Contract Management Hub page.

There are four categories of contracts in the Australian Government Contract Management Guide based on characteristics, value and risk:

- strategic
- complex
- routine
- transactional.

Each of the above categories requires differing levels of planning and management to ensure the AFP receives VFM. It is recommended that all 'strategic' and 'complex' contractual arrangements have a contract management plan in place and that at a minimum the performance of the contract be formally monitored and documented.

Roles and responsibilities

There are three roles key to successful contract management: contract owner, contract manager and contract administrator. An overview of these roles is provided below.

Contract owner – the AFP official accountable for outcomes enabled by the contract, who has the necessary authority and delegations to make decisions in relation to the contract and takes the actions required to manage the AFP's obligations and optimise ongoing VFM.

Contract manager – the AFP official who is responsible for completing the activities and tasks required to manage the terms, conditions, outputs and AFP obligations under the contract.

Contract administrator – the AFP official who performs the activities and tasks necessary to administer the contract and is directed and instructed by the contract manager and guided by the relevant contract management plan.

For 'transactional' and 'routine' contracts, the roles of contract manager and contract administrator are often performed by the same AFP official.

Contract manager

AFP officials who have been designated by the relevant delegate as the contract manager of a contractual arrangement are responsible for:

- identifying and managing contract-related risks (including maintenance of risk assessment and treatment plans)
- relationship and expectation management of internal and external stakeholders
- performance and quality management (including contractor performance)
- initial dispute management
- capabilities and resources necessary to plan and manage the contract throughout the procurement life cycle
- assignment of contract management activities and responsibilities
- contract start-up and transition in/out activities
- contract administration activities and outputs including:
    - probity and conflicts of interest
    - payments
    - delivery
    - end dates
    - assessing and exercising options to extend the term
    - variations
    - meetings
    - records management (including AFP official records)
    - *Insight!* contract registration and reporting.

In accordance with the PGPA Act, the Commissioner has issued the CFIs. The CFIs are accountable authority instructions issued by the Commissioner, as the accountable authority under the PGPA Act. The CFIs outline AFP policies and practices necessary for carrying out or giving effect to the PGPA Act and PGPA Rule.

The CFIs also establish AFP-specific rules to provide instruction for compliance with the rules of the Australian Government procurement and financial management frameworks. The CFIs provide instruction to AFP officials carrying out duties relating to procurement in a manner tailored to the AFP's particular circumstances and needs.

The CFIs provide instructions for dealing with a number of procurement-related activities. AFP officials must consider and follow the instructions set out in the CFIs in conjunction with this national guideline.

7. Commonwealth Procurement Rules

Compliance with the CPRs is mandated under s. 101 of the PGPA Act and referenced under s. 105B.

The CPRs set out the rules for all procurement and the requirements for all AFP officials. Non-compliance with the mandatory requirements of the CPRs must be reported in the AFP's certificate of compliance.

The CPRs are the centrepiece of the Australian Government procurement framework. For additional procurement guidance, the following are available:

- Procurement section of the Department of Finance website
- CFIs
- AFP national guidelines
- Other Australian Government procurement guidance, including publications, better practice guides and templates issued by the:
  - National Indigenous Australians Agency on Indigenous Procurement Policy (IPP)
  - Department of Industry, Innovation and Science on Commonwealth Government procurement
  - Australian National Audit Office on ANAO audits, reports and guides
  - Digital Transformation Agency (DTA) on ICT procurement.

8. Commitment to spend relevant money

In determining the genuine need to progress a procurement activity, the AFP official must first consider all reasonable alternatives to procuring. Only where no reasonable alternative can be identified may an AFP official progress a procurement activity.

Prior to committing public money, the AFP official must obtain approval from the relevant delegate in accordance with s. 23(3) of the PGPA Act.

The relevant delegate, in considering the procurement activity and providing approval, must be satisfied after making reasonable inquiries that approving the commitment to spend relevant money would be an efficient, effective, economical and ethical use of public resources and that the procurement method is consistent with the Australian Government procurement and financial policy frameworks.

This approval must be documented in writing using the relevant AFP templates, and stored on an AFP official record (in accordance with s. 9 below).

9. Record keeping

Maintaining records covering how procurement and contracting activities were conducted, the decisions made and approvals obtained for all procurement and contract activities is critical to accountability and transparency.

All AFP officials engaged in procurement and contracting activities must maintain appropriate documentation which meets the requirements of the National Guideline on information management and which is commensurate with the scale, scope and risk of the activity. In each case, AFP officials must ensure there are sufficient records documenting:

- the business requirement and justification for the procurement
- the operational, business and procurement risks
- any perceived or actual conflict of interests and how these were managed
- the procurement method, evaluation process, and evaluation criteria and applicable weightings
- how value for money VFM was assessed (i.e. evaluation outcome) and whether value for money VFM was achieved or not
- all relevant decisions and the basis for those decisions, and approvals made throughout the life cycle of the procurement activity.

A member of the public under the Freedom of Information Act 1982 (Cth) may request access to procurement-related information held by the AFP. The information, unless exempt under that Act, may be disclosed.

Record-keeping checklists and spending proposal templates are available from the NPC home page.

10. Divisions of the Commonwealth Procurement Rules and procurement thresholds

The CPRs are split into two divisions:

- Division 1 sets out rules that must be applied to all procurement activities, regardless of the value.
- Division 2 sets out additional rules that must be applied to procurements valued at or above the relevant procurement threshold where no exemption applies.

The following procurement thresholds apply to non-corporate Commonwealth entities (including the AFP) and trigger compliance with the rules at Division 2:

- $80,000 (GST-inclusive) for procurements other than construction services
- $7,500,000 (GST-inclusive) for construction services.

Section 2.6 of the CPRs provides the relevant delegate of an agency with the ability to apply measures deemed necessary to maintain or restore international peace and security, to protect human health, to protect essential security interests or to protect national treasures of artistic, historic or archaeological value. In applying measures, the justification for applying the measure, along with which CPRs require modification, must be documented. AFP officials should note the delegation relating to the approval of applying measures under section 2.6 of the CPRs is separate from the financial delegation limits (refer to CFIs, Annexure A: Schedule of delegations and authorisations).

Appendix A of the CPRs lists the exemptions that apply to Division 2; however, such procurements are still required to be undertaken in accordance with the rules at Division 1 of the CPRs.

AFP officials must consult and receive compliance assurance from NPC when procuring goods and services with an estimated value of $80,000 (GST-inclusive) or above, regardless of whether the procurement is for construction services or an exemption applies.

11. Definition of a procurement

Section 2 of the CPRs defines 'procurement' as the process of acquiring goods and services. It begins when a need has been identified and a decision has been made on the procurement requirement. Procurement continues through the processes of risk assessment, seeking and evaluating alternative solutions and the awarding and reporting of a contract.

In addition to the acquisition of goods and services by a relevant entity for its own use, procurement includes the acquisition of goods and services on behalf of another relevant entity or a third party.

Procurement does not include:

- grants (whether in the form of a contract, conditional gift or deed)
- investments (or divestments)
- sales by tender
- loans
- procurement of goods and services for resale or procurement of goods and services used in the production of goods for resale
- any property right not acquired through the expenditure of relevant money (for example, a right to pursue a legal claim for negligence)

- statutory appointments
- appointments made by a minister using the executive power (for example, the appointment of a person to an advisory board)
- the engagement of employees, such as under the *Australian Federal Police Act 1979* (Cth) or the common law concept of employment.

12. Value for money

The requirement to achieve value for money (VFM) for all procurements is the core rule of the CPRs. AFP officials undertaking procurement activities must clearly understand and express at the commencement of the activity how the procurement will achieve VFM for the Commonwealth.

Price is not the sole factor in determining whether a procurement represents value for money. VFM requires consideration of the financial and non-financial costs and benefits associated with the procurement and takes into account:

- quality of the goods and services
- fitness for purpose
- a potential supplier's experience and performance history
- operational, business and procurement-related risks
- flexibility of the goods or service including innovation and adaptability over the life of the procurement
- environmental sustainability (Sustainable Procurement Guide)
- whole-of-life costs (including administrative and disposal/transition-out costs).

AFP officials must ensure the procurement method chosen, the evaluation process and contract management arrangements proposed will achieve VFM.

13. Valuing procurements

AFP officials must estimate the whole-of-life value of the procurement before the procurement method is determined.

The estimation of value must include all contract extension options, any additional services and procurements which result in more than one supplier being awarded a contract.

Where a procurement is conducted in multiple parts with more than one contract awarded at the same time or over a period of time, the estimated value must include the value of all the expected contracts.

A procurement must not be divided into separate parts solely for the purpose of avoiding a relevant procurement threshold. AFP officials should refer to rule 9 of the CPRs when estimating the value of procurements.

The total value of a contract may also be influenced by factors such as provision for:

- indexation over the life of the contract
- an increase to the scope of services due to changes in operational requirements
- resources required to transition into and manage the contract
- foreign exchange currency fluctuations
- costs associated with the transition out of an existing contract to a new supplier
- costs associated with the return, destruction and disposal or storage of goods.

The approval to commit relevant money in accordance with s. 23 of the PGPA Act should include a contingency amount to cover the realisation of these factors.

13.1 Valuing panel arrangements

When establishing panel arrangements, the value of the procurement is the estimated total value of all goods or services that may be procured from all members of the panel over the life of the panel arrangement.

13.2 Online ordering (online contract click terms and conditions)

Procurement activities involving online purchasing or ordering still require AFP officials to be compliant with the PGPA Act, PGPA Rule, the CPRs, the CFIs and this guideline. In progressing an online purchase or order, AFP officials must comply with the requirements of these instruments including obtaining the relevant delegate approvals, keeping appropriate records and achieving VFM.

It is likely that online purchasing or ordering portals (websites) will attempt to impose supplier terms, sometimes referred to as online contract click terms and conditions.

AFP officials should follow the guidance set out in s. 21 to ensure the supplier terms are appropriate before agreeing to, or proceeding with, an online purchase or order.

13.3 Purchasing through online brokers and private sellers

Procurement activities involving the procurement of goods and/or services from online brokers and private sellers (such as eBay and Gumtree) may be necessary and appropriate.

Procurement activities involving online brokers and private sellers still require AFP officials to be compliant with the PGPA Act, PGPA Rule, the CPRs, the CFIs and this guideline. AFP officials must comply with the requirements of these instruments including obtaining the relevant delegate approvals, keeping appropriate records and achieving VFM.

AFP officials must ensure the risks of procuring through online brokers and/or private sellers are appropriately considered and documented within the procurement risk assessment and that any proposed supplier terms are acceptable to the AFP.

Refer to guidance set out in s. 21.

13.4 Deposits, prepayments and early payments

Suppliers or contractors often offer a discount to an agency for paying for goods or services up-front before the goods or services are provided. As the goods or services have not been delivered, these arrangements may increase costs and risks to the AFP. Careful consideration should be given to whether a prepayment is efficient, effective and ethical, and whether VFM will be achieved.

The payment of deposits, prepayment and early payments must not be undertaken unless VFM can be demonstrated and achieved.

Common examples of circumstances where deposits may be requested include for procurements relating to bespoke, bulk or custom orders.

Common examples of circumstances where it is industry practice for prepayment or early payments include registration fees for training courses, rental payment, software licences, software support on a subscription basis, airfares and accommodation bookings.

The risks, costs, justification and delegate decision to pay a deposit, prepayment or early payment must be documented in the relevant spending proposal and risk documentation.

The act of paying deposits, prepayment and early payments must not be used to avoid rebidding or rolling over of funds from one financial year into another.

14. Indigenous procurement policy

The Indigenous Procurement Policy (IPP) aims to stimulate Indigenous business development by awarding Australian Government contracts to Indigenous enterprises.

Appendix A of the CPRs permits the AFP to procure goods or services directly from a small to medium enterprise with at least 50 per cent Indigenous ownership (an 'Indigenous enterprise') without running an open tender process, where the proposed procurement represents VFM.

The process is tied to CPRs Appendix A: Exemption 16 and has two components comprising:

- a 'mandatory 'set-aside' that applies to certain procurements which could result in contracts being directly sourced to Indigenous enterprises
- a set of 'mandatory minimum requirements' that apply to certain high-value procurements aimed at enhancing Indigenous enterprise participation for certain types of contracts.

A range of Indigenous enterprises are listed on the Indigenous Business Direct website but the list is not exhaustive and using an enterprise on the list is not mandatory.

When approaching an Indigenous enterprise which is not listed on the Indigenous Business Direct website, AFP officials must make reasonable inquiries and should keep

records which demonstrate how they satisfied themselves that the enterprise meets the IPP definition of an Indigenous enterprise.

14.1 The IPP mandatory set-aside

The IPP mandatory set-aside applies to procurements in two key circumstances:

- where the majority, by value, of the goods or services will be delivered in a remote area (except where a credit card is used)
- where the estimated value of the procurement is between $80,000 and $200,000 (GST-inclusive).

The set-aside requirement does not apply to AFP exempt procurements addressed at section 2.6 of the CPRs, which provides the relevant delegate of an agency with the ability to apply measures deemed necessary to maintain or restore international peace and security, to protect human health, to protect essential security interests or to protect national treasures of artistic, historic or archaeological value.

If the set-aside applies, AFP officials must first determine whether an Indigenous enterprise could deliver the required goods or services on a value-for-money basis before making a broader approach to market (ATM). AFP officials must:

- confirm whether the majority of the goods or services being procured will be delivered in a remote area
- confirm whether there is an Indigenous enterprise with the necessary capability and investigate whether it offers VFM
- where it does offer VFM, offer the contract to the Indigenous enterprise.

When VFM cannot be achieved with an Indigenous enterprise, AFP officials may procure from non-Indigenous enterprises using an appropriate procurement method.

14.2 IPP mandatory minimum requirements

The mandatory minimum requirements apply to procurements where:

- the contract will be performed in Australia and has an estimated value of $7.5 million (GST-inclusive) or more
- more than half of the value of the contract is anticipated to be spent in one or more of the following industry sectors:
  - building, construction and maintenance services
  - transportation, storage and mail services
  - education and training services
  - industrial cleaning services
  - farming, fishing, forestry or wildlife contracting services
  - editorial and design or graphic and fine art services
  - travel, food, lodging or entertainment services
  - politics or civic affairs services.

ATM request documentation for procurements subject to the mandatory minimum requirements must include clauses (in both the conditions of tender and contract) that meet the IPP requirements. Model clauses that meet these requirements are included in AFP templates for ATM request documentation and in contract terms.

AFP officials can find further information and resources related to the IPP on the Hub, including links to policy fact sheets and remote area maps.

Part 2: AFP framework

15. Procurement stages

There are nine key stages to progressing an AFP procurement activity. Within each stage, there are a number of key activities, decisions or approvals to be completed.

These stages are:

- Plan the procurement.
- Obtain approval to approach the market.
- Approach the market.
- Evaluate market responses and identify the preferred supplier.
- Execute the contract (place the order).
- Register the contract (and raise the purchase order).
- Manage the contract and receive the goods and/or services.
- Pay invoice/s.
- Vary or extend the contract (contract variation) (where necessary).

The level of effort and rigour associated with a procurement process should be commensurate with scale, complexity, risk and value of the procurement activity.

16. Procurement methods

The CPRs prescribe using one of two available procurement methods:

- open tender
- limited tender.

The procurement method selected for each procurement activity is determined by the requirement to achieve VFM and comply with the CPRs.

16.1 IPP open tender

An open tender involves publishing an open ATM on AusTender and inviting submissions from all potential suppliers. This procurement method includes:

- multi-stage procurements, where the first stage of the process is an open tender
- requests for quotes from existing panel arrangements, where the deed of standing offer with suppliers listed on the panel was established through an open tender.

16.2 Limited tender

A limited tender is inviting one or more potential suppliers to make submissions when the process does not meet the rules for conducting an open tender.

Limited tenders where the estimated value exceeds the Division 2 thresholds ($80,000 GST-inclusive or more for non-construction procurements and $7.5 million GST-inclusive or more for construction procurements) must be conducted in accordance with provisions in the CPRs by meeting either:

- the conditions for using a limited tender procurement method above the relevant value threshold, as described in rule 10.3
- one of the exemptions allowing use of a limited tender method of procurement, as set out in Appendix A of the CPRs.

When conducting a procurement through a limited tender, the number of submissions (quotes, offers, proposals) sought from potential suppliers will depend on the:

- nature of the goods and services
- size and maturity of the market
- estimated value and risk associated with the procurement.

AFP officials must undertake a competitive process for all procurement activities unless there are circumstances and conditions that justify approaching a single potential supplier.

Whilst there may be occasions where it may be appropriate to seek a single response to ATM, this should be the exception rather than standard practice.

The circumstances and conditions for the number of potential suppliers to be approached must be soundly justified and documented in the spending proposal.

17. Procurement arrangements

17.1 Coordinated procurement arrangements (mandatory)

For particular goods and services, the Australian Government has determined that VFM is best achieved through whole-of-government coordinated procurement arrangements. These arrangements have been established through open tender procurement processes and must be used irrespective of the value of the procurement.

Unless specifically detailed as part of the coordinated procurement arrangement, exemptions from using these arrangements may only be granted jointly by the Minister for Home Affairs and the Minister for Finance where a special need for an alternative supply can be demonstrated.

The requirement to use coordinated procurement arrangements is mandated by the CPRs s. 4.11. More information on goods and services subject to mandatory

coordinated procurement arrangements is published on the Department of Finance website.

Details of coordinated procurement arrangements and their AFP contract managers are included in the AFP's list of panels (AFP Hub).

17.2 Cooperative procurement arrangements

Cooperative procurement involves joining with another corporate Commonwealth entity or non-corporate Commonwealth entity to procure goods or services through an open tender process or using another agency's existing panel arrangement. These arrangements may only be used where they represent VFMfor the AFP.

If the AFP wishes to join a cooperative procurement arrangement, the initial request documents and the subsequent contract must specify potential use by the AFP or other non-corporate Commonwealth entities. AFP officials must consult with NPC to join or access existing cooperative procurement arrangements and must use the template documents required by the cooperative procurement.

Details of cooperative procurement arrangements that the AFP has accessed are included in the AFP's list of panels (AFP Hub). Guidance on cooperative procurement is published on the Department of Finance website.

17.3 Procurement using panel arrangements

A procurement from a panel is considered to be a procurement using the same procurement method as that by which the panel was originally established.

Panel arrangements within the AFP are generally established through open tender processes. Once established, a panel can achieve VFM and streamline procurement processes by:

- providing a flexible, streamlined and efficient process for procuring goods or services on a regular basis
- allowing direct engagement of panel members for routine low-value procurements
- allowing large volumes of goods or more complex services to be procured efficiently without conducting a full open tender process.

Depending on the nature of a panel, potential suppliers (panellists) who are members of the panel may be engaged by either:

- conducting a competitive procurement process where a request for quote is issued to all or some panel members
- directly approaching a single panel member for a quote after evaluating, based on VFM, the specific goods or services and price structure contained within each panel member's deed of standing offer / head agreement.

In all cases, an approach to a panel is limited to the scope of the goods and/or services that panel was set up to provide. Only those panellists who were found suitable for the relevant panel 'category' may be invited to provide a quotation.

AFP officials are encouraged to invite all suppliers (panellists) that are on the panel under the relevant panel category to submit a quote. In instances where there is an excessive number of panellists, AFP officials are encouraged to conduct market research and select multiple panellists under the relevant panel category they believe could offer VFM. Approaching multiple panellists generally encourages market competition and competitive pricing.

AFP officials should contact the NPC panel manager when planning a procurement using a panel arrangement. The NPC panel manager will provide instructions on how to use the appropriate panel in accordance with the relevant deed of standing offer and can provide access to templates for request documentation and forms of contract.

Procurements under a panel arrangement must comply with Division 1 of the CPRs.

AFP officials must document in spending proposals the process used to select and approach a panel and justify how VFMwill be achieved. Spending proposals for procurements using panels with an estimated value of $80,000 (GST-inclusive) or more must be reviewed by NPC prior to approval by the relevant delegate.

Regardless of value, all spending proposals from panels for consultancy services must be reviewed by NPC prior to approval by the relevant delegate.

17.4 Other AFP procurement arrangements

If there is no mandatory coordinated procurement arrangement, AFP panel or external panel cooperative arrangement, the table below outlines the method of procurement which should be adopted by AFP officials to ensure compliance with the CPRs.

Estimated value (GST-inclusive)	Procurement method	How approval is provided and recorded
Ad hoc and low-risk purchases up to $500; where the goods/services are not covered by a contract or whole-of-government arrangement and are not for AFP assets, and payment will be made using an AFP corporate credit card	Limited tender (recommend one verbal or written quote where practical) Examples may include minor catering, parking charges, cab charges, operational vehicle car washing, or office supplies not covered by a contract or whole-of-government arrangement.	Business area must have AFP credit card acquittal completed by the appropriate PGPA delegate. All expenditure must be in accordance with the requirements contained in AFP National Guideline on using the AFP corporate credit card
Basic and up to $10,000	Limited tender	Business areas must

(GST inclusive); payment can be via AFP corporate credit card or invoice but must not be under a contractual arrangement or involve the purchase of AFP assets	(recommend one to three verbal or written quotes)	complete a basic spending proposal template (email or word format) and consider risks. If only one quote is sought, the reasons for not undertaking a competitive procurement process must be justified and documented. *Must not be used for procurements where a written contract will be executed. In these instances the relevant low-value spending proposal (PART A and PART B) template must be used.
Low value from $10,000 up to $79,999 (GST-inclusive)	Limited tender (two or more written quotes)	Business areas must complete the relevant low-value spending proposal template (PART A and PART B) and at a minimum an Initial Risk Profile Assessment template. If only one quote is sought, the reasons for not undertaking a competitive procurement process must be justified within the spending proposal. *Contract required for procurements valued at $10,000 (GST-inclusive) and above, or where required following a risk assessment.
High value from $80,000 (GST-inclusive) or more, or $7.5 million (GST-inclusive) for construction services	Open tender or limited tender in accordance with the conditions outlined in Division 2 of the CPRs	Business areas must complete the relevant high-value spending proposal (PART A and PART B) template and send to NPC for compliance review prior to obtaining relevant PGPA delegate approval.

17.5 Minimum procurement documentation

Irrespective of the estimated procurement value, the proposed procurement method must be documented. The level of information to be documented should be commensurate with the scale, scope and risk of the procurement to be undertaken. The documentation must be accurate and concise and cover the following:

- the requirement for the procurement
- the process that will be followed
- how VFM will be considered and achieved
- relevant approvals
- relevant decisions and the basis for those decisions.

18. Special procurement spend categories

18.1 Purchases on AFP corporate credit cards

AFP appointees may purchase ad hoc low-value goods and/or services valued up to $500 (GST-inclusive) without obtaining documented PGPA delegate pre-purchase approval provided that the purchase is not covered by a contract or whole-of-government arrangement.

Examples of appropriate AFP corporate credit card purchases could include minor transport costs (i.e. parking fees, tolls, cab charge, bus fares), minor office supplies not covered by the whole-of-government stationery panel, minor catering and operational vehicle car washing.

AFP appointees must ensure compliance with the current AFP National Guideline on using the AFP corporate credit card.

18.2 Procuring hospitality, travel and accommodation

Where a procurement activity involves the procurement of hospitality, travel and/or accommodation the relevant QBT Booking Tool, Fraedom travel requisition, AFP hospitality form and/or International Travel Approval Form may be completed in place of a spending proposal so long as the minimum procurement documentation requirements (refer to s. 17.5 above) can be satisfied.

Refer to AFP National Guideline on travel and living away from home.

18.3 Procuring consultancy services

Contracts for consultancy services must be reported in the AFP's annual report and are separately identified on AusTender.

As a result of the increased scrutiny, all spending proposals for consultancy services, regardless of value, must be reviewed by NPC prior to obtaining the relevant delegate approval.

AFP officials should understand the difference between services provided by a consultant and a contractor to ensure that consultancy contracts are correctly

identified when recording contract details in Insight!.

The Department of Finance provides guidance to AFP officials to help determine the difference between a contractor and a consultant.

18.4 Procuring of ICT-related goods and services

All ICT-related procurement activities for goods and services (including contractors) must be endorsed by the Technology and Innovation Design Authority Forum (DAF).

ICT-related procurement activities include but are not limited to:

- ICT hardware (including servers and stand-alone computers)
- software
- mobile telecommunications equipment (including laptops, phones and tablets) and services
- terrestrial (non-mobile) telecommunications goods, equipment and services
- multi-function devices and printers
- shredders that are standard and endorsed by the Security Construction and Equipment Committee
- ICT contractors (both ICT service-based contractors and contracted AFP appointees).

AFP officials must engage and seek endorsement from the Technology and Innovation DAF by contacting ICT Support and/or logging a job through the ICT Service Portal.

Where the DAF supports the procurement activity it will provide a technology acquisition (TA) number which must be referenced in the relevant spending proposal.

Any ICT-related procurement that is work-flowed to NPC without a DAF TA reference number will not be progressed.

18.5 Procuring of property leases and owned estate services

AFP Property Operations oversees the AFP's domestic and international property portfolio. This involves the centralised management of:

- lease renewals/options, new leases, rent reviews, and lease terminations and expiries
- lessee representation, management of subleases and lease documentation management
- purchase and disposal of freehold property for the AFP
- assistance to AFP-nominated valuers and other consultants
- review of statutory valuations, insurance valuations, documentation management, owner representation and review of notional rents.

AFP officials must engage Property Operations when planning to conduct procurements related to the acquisition or disposal of interests in land, including

property leases, licences to use land and owned estate services.

18.6 Procuring outside Australian territories

All procurements for goods and/or services (including construction) outside of an Australian territory for consumption outside of an Australian territory must be conducted in accordance with the rules and VFM requirements set out in Division 1 of the CPRs but are exempt from the rules at Division 2 (Appendix A, s.8 of the CPRs).

High-value spending proposals for such procurements should describe whether the use of this exemption is being relied upon.

AFP officials must consult with AFP Legal in the development of contracts for goods or services which will be established or delivered outside an Australian territory.

AFP officials should be aware that the relevant delegate's thresholds for procurements related to official development assistance may differ from delegation thresholds in Australian territories.

18.7 Procuring legal services

AFP officials (other than AFP officials in AFP Legal and Criminal Assets Litigation) must not conduct procurements for legal services or services from external lawyers. AFP officials must consult AFP Legal for legal services. AFP Legal will advise whether the legal services can be provided by AFP Legal resources or whether AFP Legal will procure external legal services on behalf of the requesting AFP official.

19. Spending proposals

Subject to the definition of a procurement as at s. 11, and any exceptions as defined in s. 18, all AFP procurement activities must be documented using the relevant current spending proposal template.

Procuring business areas must use the template spending proposals provided on the NPC Hub home page.

For procurements valued at $10,000 (GST-inclusive) or more the relevant Spending Proposal (PART A) Approval to Approach the Market must be completed and approved by the PGPA delegate before the procuring business approaches the market. Then, once the ATM has been completed, if a contract is to be entered, a Spending Proposal (PART B) – Approval to Commit and Enter must be completed.

For basic procurement activities, valued under $10,000 (GST-inclusive), PART A and PART B have been combined into the one template.

Where an executed contractual arrangement requires variation or extension, a Spending Proposal (PART C) – Approval to Vary or Extend must be completed.

Irrespective of value, the documentation must provide evidence of compliance with the CPRs and CFIs and must be retained within the business area in accordance with the record-keeping requirements detailed in s. 11 and s. 16.5 above.

19.1 Types of spending proposals

There are three types of spending proposals, based on value thresholds, to guide AFP officials through the procurement process and conduct the necessary consultations, endorsement and approval:

- High-value spending proposals (HVSP)
- Low-value spending proposals (LVSP)
- Basic spending proposals (BSP)

There are two versions of the high-value and low-value spending proposal templates, being standard (non-panel approaches) and panel approaches.

The level of information provided in the spending proposal should be commensurate with the scale, scope and relative risk of the proposed procurement.

High-value spending proposal

A high-value spending proposal (HVSP) must be completed for all procurements with an estimated value of $80,000 (GST-inclusive) or more.

AFP officials must complete a high-value spending proposal for all contract variations or optional term extensions where the estimated value of the revised contract (incorporating the initial contract value plus the proposed additional variation/extension) is $80,000 (GST-inclusive) or more.

HVSP must describe:

- specific requirements for the goods or services being procured
- whether the IPP mandatory set-aside is applicable
- whether the IPP minimum mandatory requirements are applicable
- estimated contract value
- contract start and end dates
- high-value procurement risk assessment and treatment plan (outlining the controls and treatments)
- proposed procurement method and proposed form of contract
- proposed evaluation method and criteria (including the prioritisation or weighting of evaluation criteria)
- procurement and evaluation timetable
- proposed contract owner, manager and administrator
- actual and potential conflicts of interest of AFP officials involved in the planning or conduct of the procurement
- proposed probity arrangements
- location of all documentation relevant to the proposed procurement.

In pursuit of better practice, AFP officials developing high-value spending proposals should also set out the:

- proposed tender evaluation plan
- proposed contract management resources and arrangements
- stakeholders to the procurement
- endorsement from Technology & Innovation (ICT-related procurements)
- endorsement from the Operational Safety and Security Working Group (restricted or controlled item procurements)
- proposed project manager
- probity plan which describes the process and controls to manage probity and conflicts of interest
- business continuity arrangements
- contingency plan or arrangements to address the risk that a VFM outcome cannot be achieved.

Low-value spending proposal

AFP officials must complete a low-value spending proposal (LVSP) for all procurements with an estimated value from $10,000 up to $79,999 (GST-inclusive).

LVSP must describe:

- specific requirements for the goods or services being procured
- estimated contract value
- contract start and end dates
- low-value procurement risk assessment
- proposed procurement method and form of contract
- proposed contract owner, manager and administrator
- actual and potential conflicts of interest of AFP officials involved in the planning or conduct of the procurement
- location of all documentation relevant to the proposed procurement.

In pursuit of better practice, AFP officials developing low-value spending proposals should also set out the:

- proposed tender evaluation method
- stakeholders to the procurement
- endorsement from Technology & Innovation (ICT-related procurements)
- endorsement from the Operational Safety and Security Working Group (restricted or controlled item procurements)
- proposed risk treatment plan (outlining the controls and treatments)
- proposed evaluation method and evaluation criteria
- procurement and evaluation timetable
- proposed contract management resources and arrangements
- process to manage probity and conflicts of interest, including a probity plan where the procurement risk is assessed as significant or higher.

Basic spending proposal

AFP officials must complete a basic spending proposal for all procurements with an estimated value of less than $10,000 (GST-inclusive) and a procurement risk rating of low or medium. (Risk ratings above medium require a higher-level spending proposal document to be completed.)

Basic spending proposals must describe the:

- specific requirements for the goods or services being procured
- business requirement or operational need for the procurement
- estimated procurement value
- payment method
- supplier(s) that will be approached to provide quotation.

In pursuit of better practice, AFP officials developing basic spending proposals should also consider:

- stakeholders to the procurement
- endorsement from Technology & Innovation (ICT-related procurements)
- endorsement from the Operational Safety and Security Working Group (restricted or controlled item procurements)
- proposed evaluation method and evaluation criteria.

20. Approaching the market and request documentation

An ATM is the issuance of request documentation or notice inviting potential suppliers to participate in a procurement process. When approaching the market, AFP officials must ensure that all potential suppliers are dealt with in an equitable and non-discriminatory manner.

Request documentation is issued to enable potential suppliers to understand and assess the AFP's requirements and to prepare submissions. Request documentation can include:

- **Request for Quote (RFQ)** is used to obtain submissions from potential suppliers when using a limited tender where the estimated value is less than $80,000 (GST-inclusive). A Request for Quote is also used for procurements with an estimated value of $80,000 (GST-inclusive) or more when the procurement process is using a panel arrangement.
- **Request for Tender (RFT)** is more detailed and used for complex high-value procurements, including open ATMs.
- **Request for Expression of Interest (REOI or EOI)** are used during an open ATM to establish a shortlist of suppliers from which a subsequent multi-stage procurement process may be conducted
- **Request for Information (RFI)** is used to collect information on the capabilities and capacity of potential suppliers to provide goods and services. A Request for

Information is used to understand market capabilities, to assess the capacity of potential suppliers or to refine requirements, specifications and commercial options. A Request for Information is not a procurement as it cannot result in an arrangement being formed.

Request documentation (including any changes and addenda) must be issued to all potential suppliers participating in a procurement process at the same time and in a manner that encourages competition and makes efficient, effective, economical and ethical use of Commonwealth resources.

Request documentation must include the following information:

- sufficient details and description of the procurement including:
  - scope
  - quantity of the goods or services to be procured or the estimated quantity (where the specific quantity is unknown)
  - any other requirements that need to be fulfilled, including:
    - technical specifications (expressed as functional and performance requirements where possible)
    - applicable standards
    - conformity and certification
    - plans, drawings or instructional material
    - business continuity requirements
- conditions for participation, including guarantees, information or documents that potential suppliers are required to submit
- minimum content and format requirements
- evaluation criteria and, if applicable to the procurement, the relative importance of those criteria
- dates for delivery of the goods or services
- any other relevant terms or conditions relevant to the procurement.

When conducting an open tender for the first stage of a multi-stage procurement, the initial request documentation must include criteria for every stage of the process and must describe any limitations on the number of potential suppliers invited to participate in any of the subsequent stages.

All procurement processes must have a common deadline for potential suppliers to lodge submissions with the AFP.

20.1 Open approaches to market

AusTender facilitates the distribution of open tenders to all potential suppliers at the same time and in a manner that is transparent and accountable. During the conduct of an open tender process, any changes, addenda or advice must be made available to all potential suppliers via a notice on AusTender.

All open ATMs must be advertised on AusTender for a minimum of 25 calendar days. However, under any of the following circumstances this time limit may be reduced to less than 10 days:

- where details of the procurement have been published on AusTender in the AFP's procurement plan for a minimum of 40 days and not more than 12 months
- where the procurement relates to commercial goods or services of a type that are offered for sale to non-government buyers for non-government purposes
- for a second or subsequent ATM for procurements of a recurring nature
- where a genuine state of urgency renders the normal time limit impractical.

A longer period in the market may be required if there are public holidays intervening or the complexity of the procurement means a period of 25 days is insufficient for potential suppliers to lodge a submission.

20.2 Request documentation in the Commonwealth Contracting Suite

The Commonwealth Contracting Suite (CCS) is an online system which uses 'smart forms' to automate the production of request documentation and contract documentation. The CCS aims to minimise the cost and burden to businesses through the standardisation of Australian Government tender and contractual terms and conditions.

The CCS comprises two mandatory templates:

- the ATM template (comprising the glossary, terms and supplier response forms)
- the Commonwealth Contract template.

Exemptions from using the mandatory CCS ATM template and Commonwealth Contract template are only applicable when:

- no formal ATM and/or contract is required
- it is industry practice to use the supplier's terms and conditions and any resulting risks are acceptable to the relevant delegate and then subsequently managed
- using mandatory (whole-of-government) coordinated procurement arrangements
- buying construction work, specialist scientific equipment or specialist military goods or services
- using an existing panel arrangement
- buying ICT goods or services
- entering a financial arrangement that is not a procurement (e.g. grant, disposal or an investment)
- procuring and delivering goods or services outside an Australian territory
- a formal risk assessment indicates that a bespoke contract is required to manage specific risks (e.g. discreet or covert procurements).

AFP officials must use the CCS ATM template and Commonwealth Contract template to seek submissions for all high-value procurements with an estimated value of between

$80,000 and $200,000 (GST-inclusive) except where an exemption applies.

Business areas should consult with NPC to confirm whether an exemption to use of the CCS template suite can apply.

Unless an exemption is applicable, AFP officials must use the CCS ATM template to seek submissions for:

- low-value limited tender procurement methods (Request for Quote) where the estimated value is from $10,000 up to $79,999 (GST-inclusive)
- the procurement risk rating has been assessed as low or medium.

Where the procurement risk rating is assessed above medium, consultation with NPC and/or AFP Legal is recommended to determine the most appropriate form of contract.

The CCS is available via the Department of Finance website after completion of an online registration process.

Using the CCS ATM template does not replace the need for financial approval to conduct a procurement. The relevant delegate must still approve the procurement using a relevant spending proposal.

20.3 Request documentation for procurement using panel arrangements

Panels are groups of potential suppliers who are already contracted under deeds of standing offer to supply pre-identified goods or services. There are three different types of panels which AFP officials can use:

- coordinated procurement panels, which are whole-of-government arrangements that are mandated to be used by the AFP and other non-corporate Commonwealth entities
- AFP panels, which are arrangements that have been established and are operated by the AFP to meet the specific business and operational requirements of the AFP though other government organisations may be able to access and use them as required (when this is permitted in the relevant panel documents)
- cooperative procurement panels, which are panels that have been established and are operated by other Australian Government organisations which the AFP can access and use as required.

Each panel will generally have a predetermined set of templates which must be used for request documentation and resultant contracts (work orders).

It is important that AFP officials select and use the correct templates for request documentation and contracts because the form and content of these templates are aligned with the specific terms and conditions agreed with potential suppliers in their deeds of standing offer. Furthermore, resultant contracts may not be valid and enforceable if the correct templates are not used.

NPC maintains a suite of the panel-specific request documentation and contracts to be used for mandatory coordinated procurement panels, AFP panels and most cooperative panels.

NPC should be consulted for access to the request documentation required for procurements undertaken via a panel arrangement. More information on panel arrangements is in s. 18 above.

20.4 Request documentation for open approaches to market

For procurements with an estimated value of $80,000 (GST-inclusive) or more that do not require the mandatory use of the CCS templates, NPC should be consulted on the most appropriate procurement method and request documentation.

NPC maintains a suite of detailed request documentation templates which can be tailored to meet the specific requirements and risk profile of AFP procurement processes.

21. Forms of contract

All procurements with an estimated value of $10,000 (GST-inclusive) and above must be evidenced in writing in the form of a contract between the AFP and the supplier (unless an exemption applies).

Contracts protect the interests of the AFP by establishing clear terms and conditions relating to the particular goods or services. Contracts may include information and clauses about the following matters:

- purpose, services, timing and standards of goods or services to be provided
- financial matters, including pricing, method of payment, reimbursement of expenses or tax/invoice issues
- risk management issues including insurance and indemnities
- AFP security requirements
- any necessary business continuity arrangements
- ownership and licences, including intellectual property rights
- privacy and confidentiality clauses
- communication management, including delivering of notices and dispute management clauses.

The contract must be issued to, and executed by, the AFP and supplier prior to the delivery of any goods or services.

When planning a procurement, AFP officials must determine the most appropriate form of contract to protect the interests of the AFP depending on the:

- nature of the goods and services being procured
- the value and risk associated with the procurement.

AFP officials should consult NPC if assistance is required to determine an appropriate form of contract.

A contract for AFP procurements can be formed using any of the following:

- CCS Commonwealth contract
- official order or work order
- digital sourcing contract (DTA's model contract)
- AFP supply agreement, services agreement or deed of standing offer
- supplier-provided agreement (including online purchasing and order forms)
- AFP purchase order.

When negotiating any form of contract with a supplier, AFP officials should be mindful of any attempt by the supplier to apply or incorporate supplier terms into the contract, including contracts based on Commonwealth or AFP templates. Common examples of supplier terms include end user licence agreements (EULAs) – e.g. 'EULAs' for software), standard support terms (e.g. when purchasing support and maintenance packages) and standard warranty terms.

Supplier terms can be incorporated into contracts in many ways, including by:

- referencing a URL or other document containing the supplier terms somewhere in the contract
- requiring officials to click on some form of 'I agree' button via the internet before being able to access goods or services
- the supplier providing some other form of document or notice, stating that by use of the goods or services, the official accepts the supplier terms.

In many cases, the AFP can accept supplier terms so long as they are appropriate for the procurement. However, there are times when supplier terms cannot be accepted.

Examples of when supplier terms cannot be accepted include:

- where doing so would require the AFP to act inconsistently with its obligations under legislation
- where the terms are inconsistent with, or undermine, the terms, rights and obligations of the main contract being negotiated
- where certain processes must be followed before the supplier terms can be accepted (e.g. where the supplier terms contain a contingent liability – refer to s. 20.4 of the CFIs).

AFP officials must review and consider the implications of accepting any supplier terms. In considering the inclusion of supplier terms, AFP officials should ensure those proposed are:

- clearly identified, defined and articulated in full within the contract (e.g. within a schedule or attachment) – AFP officials should not agree to the inclusion of

supplier terms by inclusion of a URL (as this can enable the supplier to change the supplier terms at any time)
- consistent with the main contract being negotiated and do not undermine or override the rights and obligations negotiated in the main contract
- appropriate and reasonable without transferring an inappropriate or unreasonable amount of risk to the AFP
- appropriate to enable the AFP to fulfil its objectives in conducting the procurement.

When procuring software, officials should request and obtain copies of any EULAs or other supplier terms that a supplier would want to apply to the procurement as early as practicable in the procurement process.

AFP officials should seek assistance from AFP Legal in considering supplier terms. AFP officials should appropriately assess and document the risks of using supplier terms in their procurement risk assessment.

21.1 CCS Commonwealth contract

See s. 20.2

21.2 Official orders or work orders

A procurement panel arrangement is established using a deed of standing offer or head agreement with a range of potential suppliers to supply pre-identified goods or services. Each potential supplier on the panel has signed a deed of standing offer or head agreement which specifies:

- the terms and conditions that apply when goods and services are procured from the panel
- how goods and services will be procured from the panel (by issue of a separate contract usually in the form of an official order)
- the scope of the goods or services available from the panel
- indicative rates or set prices for the goods or services
- the term during which the panel will operate.

Official orders (also known as work orders) are the instruments under a panel deed (or a deed of standing offer or head agreement with a supplier) which, upon execution, form a contract. Official orders reflect the terms and conditions of the relevant deed or head agreement and must specify:

- the goods and services being procured
- the time frame for delivery of the goods and services
- the fees
- any other special conditions relating to the individual procurement
- any departures from the terms and conditions set out in the deed of standing offer.

In drafting official orders, AFP officials should consider the terms of the relevant deed and ensure terms proposed in the draft official order are consistent and appropriate.

21.3 Digital sourcing contracts

Digital sourcing contracts available from, and managed by, the Digital Transformation Agency (DTA) are designed to cater for simple to semi-complex ICT procurement activities including:

- hardware acquisition and maintenance
- licence and support — commercial off-the-shelf software
- licence (not covering support) — commercial off-the-shelf software
- ICT consultancy services
- ICT services (related consultancy services, system integration, software development and managed services).

21.4 AFP supply agreement, services agreement or deed of standing offer

An AFP supply agreement or services agreement should be used for procurements which cannot use the CCS Commonwealth contract template, an official order from an existing panel or the digital sourcing contracts. When establishing an AFP panel arrangement, an AFP deed of standing offer must be used.

AFP officials conducting procurements which require an AFP-specific form of contract must consult with AFP Legal.

21.5 AFP purchase orders

For basic procurements valued from $5,000 (GST-inclusive) but less than $10,000 (GST-inclusive) where no formal contract is required, the issuance of an AFP purchase order number to the supplier is required as a minimum.

A basic procurement is typically characterised as the purchase of off-the-shelf non-asset goods that are not difficult to replace, where there is no potential for AFP reputational damage through poor service by the supplier and where goods are supplied at a fixed price.

Procurements for services are generally not considered low-risk. The risk assessment forming part of the spending proposal must be used to determine the risk profile of the procurement.

21.6 Supplier contracts

For low-risk procurements which are exempt from mandatory use of the CCS Commonwealth contract and where it is standard industry practice, it may be appropriate to use the supplier's form of contract terms and conditions (i.e. supplier terms).

When considering use of a supplier's form of contract, AFP officials should seek advice from AFP Legal and make it clear in the relevant spending proposal that the assessed risks of using a supplier contract are understood, acceptable to the relevant delegate and subsequently managed.

Refer to s. 13.2 'Online ordering', s. 13.3 'Online brokers and private sellers', s. 20 'Approaching the market and request documentation' and s. 21 'Forms of contracts'.

22. Conflict of interest and probity

22.1 Conflicts of interest

AFP officials involved in procurement must act ethically and avoid conflicts of interest, including any perceived or actual conflicts of interest. A conflict of interest may arise where a person has a private or personal interest in a situation that may be perceived to influence the performance of their AFP official duties in an objective manner.

Even where there is no evidence of improper action, the mere perception or future possibility of impropriety may be sufficient to undermine confidence in a person's ability to act properly.

The perception of impropriety created by the conflict of interest may be an issue, particularly when:

- a payment relates to a member of the AFP official's family or a business entity with which the official, or a member of the AFP official's family, is directly associated
- the AFP official proposing the expenditure is the partner or family member of the approving AFP official.

AFP officials involved in a procurement process, including contractors, business advisers and probity advisers, must make a written declaration of any potential, actual or perceived conflicts of interests prior to taking part in the process and must update those declarations if any potential, actual or perceived conflict of interest arises during the process.

Conflict of interest issues must be addressed during completion of spending proposals and tender evaluation plans. AFP officials should also be mindful of the potential for conflict of interest issues to arise at any stage of a procurement process and must address them as they arise. Evaluation plans should incorporate the use of periodic reviews and updates to these conflict of interest declarations.

22.2 Probity in procurement

Probity is evidence of ethical behaviour. It provides a level of assurance to delegates, potential suppliers and the Australian Government that a procurement was conducted in a manner that is fair, equitable and defensible.

AFP officials should plan and then implement probity-related arrangements and controls which are sensible, proportionate and relevant to the scope of the procurement and address the assessed risk profile. The Department of Finance provides comprehensive guidance on ethics and probity in procurement.

AFP officials must consult with AFP Legal - in determining whether a formal probity plan and/or the engagement of an independent probity advisor is required - when:

- the procurement method is an open tender and the estimated value is $1.0 million (GST-inclusive) or more
  or
- the procurement method is a limited tender and the estimated value is $200,000 (GST-inclusive) or more
  or
- regardless of value, where the procurement risk is assessed as being significant or higher.

Where applicable, AFP officials should attach the probity plan to the relevant spending proposal to give the relevant delegate assurance that probity-related matters have been adequately considered and addressed.

23. Risk management, insurance and privacy

The Australian Government's policy is to accept risks only when the expected benefits, financial or otherwise, are sufficient to outweigh the level and cost of the risk. AFP officials should generally not accept risks which a supplier is better placed to manage.

Throughout a procurement process, AFP officials must remain aware of risks and their potential impacts.

23.1 Risk assessment

Prior to undertaking any procurement activity, AFP officials must consider operational and business risks related to the proposed procurement activity.

Risks identified must be appropriately documented in a form compliant with the AFP Risk Management Framework and National Guideline on risk management.

Spending proposal templates give direction to AFP officials as to the procurement risk documentation required commensurate with the scale, complexity and value of the procurement activity.

Risk documentation must be reviewed and amended throughout a procurement life cycle.

It is the responsibility of the contract owner and the contract manager to actively monitor and manage risk throughout the life cycle of the procurement activity.

23.2 Insurance

For procurements with an estimated value of $80,000 (GST-inclusive) or more, the AFP generally requires suppliers to carry the following levels of insurance cover:

- public liability insurance (at least $10,000,000) for all procurements
- product liability insurance (at least $10,000,000) where equipment or products are provided to the AFP
- professional indemnity insurance (at least $5,000,000) where professional services including consultancy services are provided to the AFP
- workers compensation as required by law.

Where levels of cover or AFP requirements for a particular type of insurance are challenged by potential suppliers, AFP officials should consult NPC in the first instance and AFP Legal for more complex procurements.

Levels of insurance required for procurements with an estimated value of less than $80,000 (GST-inclusive) should be considered based on risk and checked as part of the procurement process. It is expected that suppliers maintain insurance at levels that a prudent supplier would normally maintain or are required to hold by law.

23.3 Privacy

The Privacy (Australian Government Agencies — Governance) APP Code 2017 (Privacy Code) requires agencies to complete a written privacy impact assessment (PIA) for all 'high privacy risk' projects or initiatives that involve a new or changed approach to, or process for, handling personal information. Further, Australian Privacy Principle (APP) 1.2 requires agencies to take reasonable steps to implement practices, procedures or systems that will ensure that the agency complies with the APP.

In planning any procurement activity involving access to, or collection or storage of, personal information, the procuring business area must complete a threshold assessment. Depending on the outcome of the threshold assessment, the procuring business area may need to conduct a PIA.

A PIA is not necessary for new projects or initiatives where no change is proposed to existing information-handling practices where those practices and controls have been previously assessed as appropriate. Instead, undertaking a threshold assessment will assist to determine whether a PIA is necessary for a new project.

The AFP privacy officer (privacy@afp.gov.au) is available to provide guidance on how to complete a threshold assessment or whether a PIA is required, along with all other privacy-related matters.

For further information on privacy impact threshold assessments and privacy impact assessments, refer to the AFP National Guideline on privacy.

24. Financial viability and organisational capacity assessments

AFP officials should consider the need to evaluate the financial viability or organisational capacity of potential suppliers to assess the risk that, over the life of a proposed contract, a potential supplier may not be able to:

- deliver the goods and services which are specified in the contract
- fulfil guarantees or warranties provided for in the contract.

The requirement for a financial viability and organisational assessment should be considered when planning a procurement process and must be undertaken prior to entering into a contract for all high-value or significant risk procurements which:

- are critical to the operations of the AFP
- involve significant payments in advance of provision of goods or services (prepayments).

Where a procurement project or a potential supplier poses a significant risk to the AFP's operations, AFP officials should consider incorporating additional measures into contracts which serve to protect the interests of the AFP. Such measures may include:

- financial undertakings
- performance guarantees
- quality undertakings and warranties relating to the quality of the goods or services
- liquidated damages clauses.

AFP officials must seek advice from AFP Legal if additional contractual measures are required to manage a high-risk contract or supplier.

NPC can assist with the ordering of financial viability assessments on potential suppliers.

The Department of Finance's guidance on Assessing financial viability provides further information on managing risk and conducting financial viability assessments.

25. Security and business continuity

Where external services are required, AFP officials must:

- consider the risks associated with external suppliers having access to AFP facilities, personnel, assets and official information (particularly if the provider has access to, or interests with, an entity of interest to law enforcement or a foreign-owned enterprise).
- put in place proportionate protective security measures by identifying and documenting:
    - specific security risks to its people, information and assets
    - mitigations for identified risks.

Prior to procuring any goods or external services, AFP officials must:

- ensure they adhere to Protective Security Policy Framework (PSPF): Gov-6: Security governance for contracted goods and service providers
- complete a risk assessment in accordance with s. 22.1 of this guideline to identify, assess and treat any security risks associated with the goods or services required.

Risk assessments must be undertaken in accordance with the AFP National Guideline on risk management.

25.1 Security and approaches to the market

Open approaches to market must include, through consultation with AFP Security, security and integrity provisions relevant to the goods or services being procured and must clearly indicate clauses that are mandatory to meet the minimum standards and those that are optional or desirable.

Request documentation (e.g. request for tender) should indicate whether a potential supplier's key personnel (including the bid manager and company directors, area managers or partners, as applicable) will be required to undergo an Organisational Suitability Assessment (OSA) and security assessment to determine whether the personnel and supplier are suitable to provide goods or services to the AFP.

The security assessment, suitability assessment and integrity assessment, which address behaviour such as honesty, trustworthiness, maturity, tolerance and loyalty, will be conducted by AFP Security. The outcome of such assessments must form part of the associated request documentation and tender evaluation.

The Australian Government has determined minimum standards and procedures that must be applied to functions involving the:

- procurement of goods and services, as per PSPF: Gov-6: Security governance for contracted goods and service providers
- generation, handling, storage, transfer or transmission and disposal of official information – request documentation prepared by AFP officials must refer to these minimum standards which are outlined in the PSPF.

25.2 Security obligations in contracts

AFP officials must ensure security requirements and legal obligations are considered and recorded in the initial stages of every contract.

Contracts must include relevant security terms and conditions for the supplier to:

- apply appropriate information and the physical and personnel security requirements of the PSPF
- manage identified security risks relevant to the procurement

- implement governance arrangements to manage ongoing protective security requirements, including to notify the AFP of any actual or suspected security incidents and follow reasonable direction from the AFP arising from incident investigations.

Where a contract requires the supplier to access official information, additional matters must be addressed in the evaluation criteria which include the potential supplier:

- completing a conflict of interest declaration to disclose any perceived or actual conflict of interest that would impact on security in the performance of functions or services on behalf of the Australian Government
- ensuring their employees who require access to sensitive facilities, sensitive practices or procedures or official information are security-cleared to the appropriate level and comply with the security of the AFP and all applicable AFP reporting requirements as per the:
  - AFP Commissioner's Order on security (CO9)
  - AFP National Guideline on personnel security
- having suitable premises and facilities for the storage and handling of official information up to and including the nominated classification level
- having systems that are able to meet designated information security standards for the electronic processing, storage, transmission and disposal of official information
- providing details of any police investigation into its company and any association with anyone who is or has been involved in criminal activity
- providing details of company directors
- ensuring their key personnel involved in the delivery of services to the AFP who require access to AFP personnel, premises and information undergo a security, professional conduct and integrity assessment, and briefings.

25.3 Security and contractor's personnel

AFP officials are responsible for ensuring the:

- supplier and contractor personnel comply with relevant PSPF requirements
- security procedures and practices undertaken by the supplier and contractor personnel are equivalent to, or exceed the requirements of, the PSPF or AFP Governance Framework.

When planning and conducting procurements, AFP officials must ensure that security procedures and practices required to be performed by suppliers are:

- appropriate and aligned to the procurement business requirement
- articulated in the ATM request documentation
- specified in the form of contract.

If the contract requires that the supplier be provided with access to official information, this access must occur in an appropriate security environment. The minimum security

measures are those detailed in the PSPF and the AFP Security Governance Instrument Framework, specifically:

- AFP Commissioner's Order on security (CO9)
- AFP National Guideline on personnel security
- AFP National Guideline on information security.

All contractor personnel requiring access to AFP systems must successfully clear the Organisational Suitability Assessment (OSA) process and obtain a security clearance appropriate to the highest classification of information stored on, or accessible through, the system they require access to (refer to AFP National Guideline on information security).

As a minimum all contractor personnel must obtain an AFP NV1 security clearance (Secret), unless the conditions outlined below can be met, in which case they may obtain an AFP Baseline security clearance (Protected).

An AFP Baseline clearance (Protected) must only be specified as the minimum requirement when the following conditions can be met:

- an individual already has a baseline clearance issued by the Australian Government Security Vetting Agency and the:
  - business area is willing to bear the burden of escorting
  - services being provided are for a short term
  - services require limited access to AFP core systems only
  - business area quantifies and documents the administrative burden and risk in the procurement risk assessment
  - business area can justify the management of this approach still provides (VFM).

Where contractor personnel require access to AFP sites, the AFP official responsible for the contract or contractor personnel, must follow the security processes outlined in the AFP National Guideline on physical security.

25.4 Confidentiality undertakings in procurement processes

Where the AFP is required to release official information to potential suppliers as part of a procurement process, confidentiality undertakings (e.g. deeds of confidentiality) must be obtained from the potential suppliers before such information is released.

Where official information is required to be provided to potential suppliers, tenderers or suppliers, consideration must be given to structuring the procurement process in a manner that also allows for security and suitability, professional conduct and integrity assessments to be conducted and confidentiality undertakings to be obtained prior to the release of any official information.

Any release of official information must be done in accordance with a risk assessment management plan and the AFP National Guideline on information management.

These requirements may involve splitting the procurement process into a multi-stage procurement that includes:

- releasing a request for expressions of interest containing minimal information
- conducting security and integrity assessments on tenderers who lodge submissions in response to the expressions of interest
- obtaining confidentiality undertakings from successful tenderers
- releasing any official information as part of a formal request for quote or request for tender once these security requirements have been met.

25.5 Contract management and security

Any requirement for a supplier to have in place appropriate security procedures must be documented in the procurement risk assessment. These requirements, including frequency of monitoring and reporting, must then be included in the ATM and executed contract.

AFP officials must ensure there are terms in the contract that allow the AFP to terminate the contract for security or integrity incidents or the inability of a supplier to remedy those incidents under the terms of the contract.

The AFP contract manager, in consultation with Security, must monitor the supplier's security procedures. A clause should also be included in the contract providing the AFP with access to the supplier's premises, records and equipment in the event the AFP contract manager wishes to conduct spot checks to ensure the supplier's security procedures are effective and compliant.

Any security incident involving a supplier must be reported to Security-Reporting-and-Referrals in accordance with the requirements of the AFP National Guideline on personnel security and other related security governance.

AFP officials involved in assessing the security requirements for contracts (especially in relation to a supplier's ICT systems and their capacity to comply with information, personnel and physical security standards) must seek advice from Security via Security-Reporting-and-Referrals in the earliest stages of the procurement process and describe the response to this advice in the relevant spending proposal.

25.6 Business continuity

As an operational policing agency, the AFP is required to ensure that its critical business activities are maintained in the event of a disruption. This includes those business activities delivered under contractual arrangements from third-party service providers.

At a minimum, procuring business areas must ensure the service provider has in place appropriate business continuity arrangements to ensure uninterrupted continuation of service delivery to the AFP (particularly for services contracts where the services delivered directly or indirectly impact the AFP's ability to deliver critical business activities).

Procuring business areas must consider the inclusion of necessary business continuity provisions within services contracts where the proposed contract's category (complexity) is rated as 'Complex' or 'Strategic'. Refer to Factsheet – AFP Contract Management for definitions on AFP contract categories.

All engagements with service providers must be undertaken in accordance with the AFP National Guideline on business continuity management.

26. Engaging sole traders and individuals

The AFP must, under the *Superannuation (Productivity Benefit) Act 1988* (Cth) and the *Superannuation Guarantee (Administration) Act 1992* (Cth) provide superannuation contributions for certain contractors and consultants engaged by the AFP. This obligation applies for contractors working as individuals or sole traders where the contract is 'wholly or principally for their personal labour' but not where a contract is with an intermediary such as a company or a partnership.

AFP officials intending to engage contractors or consultants on the understanding that they will provide personal labour in the same sense as an employee of the AFP should therefore be aware that a superannuation liability in favour of the contractor or consultant could be invoked.

AFP officials intending to engage consultants or contractors must take appropriate steps to avoid incurring a superannuation liability. If contracts are to be entered into with individuals for labour hire, the proposed contracts should be examined by AFP Legal to determine whether a superannuation liability will exist. If it does, arrangements must be made for the superannuation payments to be made every time the individual's invoice is paid.

If AFP Legal determines that a superannuation or fringe benefits tax liability exists or could be created, AFP officials should also contact the National Tax Team for further information regarding how payments should be processed.

27. AFP Annual Procurement Plan

The AFP is required to plan forthcoming procurements and must publish on AusTender a procurement plan to draw businesses' early attention to potential procurement opportunities. The published plan includes:

- a strategic procurement outlook
- the subject matter of any planned procurement
- the estimated date of the planned approach to the market.

Publishing opportunities enable the AFP to reduce the time requirements for lodgement of tender responses from the prescribed 25 calendar days down to 10 calendar days. AFP officials must seek advice from NPC if intending to take advantage of the reduced time limit.

All business area managers should ensure that the subject matter of any planned procurement and the estimated date of the publication of the approach to the market is provided to NPC as soon as they become aware of the procurement.

28. Contract registration and reporting

The AFP must ensure accountability and transparency in its procurement activities.

To support compliance with CPRs s. 7 'Accountability and transparency' AFP officials must, irrespective of value, register all contracts on Insight! within seven business days from the date of execution or amendment.

This is to allow sufficient time for NPC to review the documentation and report the contract on AusTender within 42 days, if required.

Contracts and related documents that must be registered in Insight! include:

- all executed contracts and corporate Commonwealth entity or non-corporate Commonwealth entity agreements (regardless of value) including:
  - CCS Commonwealth contracts
  - leases
  - licences (including software licences)
  - service agreements
  - letters of agreement
  - memorandums of understanding
  - maintenance and funding agreements
- contracts for consultancy services
- variations to existing contracts
- deeds of standing offer
- official orders issued in accordance with a deed of standing offer or other arrangement (reported on AusTender as a separate contract but linked to the overarching deed and standing offer or other arrangement number when reported)
- supplier agreements (supplier terms and conditions).

Contract variations to contractual arrangements previously registered in *Insight!* must also be amended in *Insight!* within seven business days. This includes reductions or terminations of contractual arrangements.

28.1 AusTender reporting

The AFP is required to publish on AusTender details of all procurement contracts and corporate Commonwealth entity or non-corporate Commonwealth entity agreements where the commitment value is $10,000 (GST-inclusive) or more. Deeds of standing offer are also published on AusTender.

Business areas should be aware that purchase orders valued at $10,000 (GST-inclusive) or more that are not linked to a formal contract are automatically reported on AusTender via the SAP Gazettal Screens in Insight!.

Contract details reported on AusTender include:

- the supplier's name, address and ABN
- the total contract value (GST-inclusive)
- the contract term
- a description of the goods and services to be supplied, including the relevant United Nations Standard Products and Services Code
- the procurement method used to establish the contract
- details of confidentiality clauses in the contract
- whether the contract is for consultancy services and reasons for engaging the consultant.

The contract value reported is the total value committed at the time of the contract being executed and is inclusive of GST. The published contract value excludes any options, extensions, renewals or other mechanisms in the contract that may be executed at a later date. These options, extensions etc. must be reported as variations against the original contract at the time the option is executed or taken up.

28.2 Senate order on entity contracts

Senate Order (also known as the Murray Motion) on Entity Contracts requires an internet listing twice a year that identifies contracts entered into during the preceding calendar or financial year valued at $100,000 (GST-inclusive) or more, along with details relating to each of those contracts.

NPC uses the information provided on AusTender to satisfy the requirement of the Senate Order as it relates to procurement contracts. Details of the full Senate Order reporting obligations are contained in the Department of Finance's Financial Resource Management Guidance No. 403: Meeting the Senate Order on Entity Contracts.

28.3 Contracts exempt from AusTender reporting

The AFP has a number of contractual arrangements which are sensitive. If details of these contracts were to be publically reported on AusTender, harm would likely be caused by their disclosure.

The Commissioner, or the relevant delegate, may authorise for a contract not to be publically reported on AusTender for one or more of the following reasons:

- ensuring enforcement of the law and protection of public safety
- protection of national security
- protection of personal information.

The authorisation to not publically report a contract on AusTender must be documented by completing the Exemption from AusTender Reporting/Publication template available on the NPC's Hub home page.

NPC maintains a list of contracts where an exemption from reporting on AusTender has been authorised. This list may include purchase orders not issued in accordance with a formal contract. AFP officials must provide details of all proposed purchase orders that are to be exempt from reporting to NPC prior to raising a shopping cart in *Insight!*.

The number of exempt contracts entered into by the AFP must be reported in the AFP annual report.

28.4 Further information

The Department of Finance has published on its website guidance on the reporting of contracts which can be accessed via the following links:

- Reporting requirements for contracts and entity agreements
- Additional reporting on consultancies
- Additional reporting on confidentiality.

29. Contract variations

Procedures for initiating and processing variations should be clearly described in the contract. AFP officials must ensure variations are efficiently managed, including explicit authorisation procedures and reporting systems.

Contract variations may include provisions that:

- increase, decrease or omit part of the contracted goods or services
- change the value, scope or design in the course of manufacture, supply or service delivery
- change the character or quality of the goods or services
- amend contract terms and conditions
- order 'additional services' where provided for in a contract.

AFP officials must not execute or agree to a contract variation without both:

- approval of a spending proposal (note: the relevant delegate must have sufficient delegation to cover the entire value of the contract and not just the value of the proposed variation)
- formalisation of the variation by issue of an appropriate instrument that has been signed by a relevant delegate.

NPC must be consulted during the development of a spending proposal for any contract variation that:

- relates to a contract valued at $80,000 (GST-inclusive) or more
- increases the total contract value to $80,000 (GST-inclusive) or more
- relates to provision of consultancy services
- relates to a reduction or termination.

AFP Legal must be consulted for assistance with drafting all high-value contract variations or where the risk rating of the proposed variation is assessed as being significant or greater.

A variation may only be allowed if the scope and relative cost of the variation remain within the limits of the original procurement.

Unauthorised or informal changes to a contract can have the same effect as a formal variation. It is possible to vary a contract verbally, or by conduct, even where the contract has an express provision that variations must be in writing. These changes may fundamentally alter the scope of the contract and must be documented and authorised accordingly.

Contract managers should ensure that clients in other parts of the AFP are not communicating directly with the contractors and committing the AFP to unapproved contract variations.

30. Contract extensions

An option to extend a contract term can only be exercised prior to the expiry of the initial term and only if that contract contains provisions/options that allow such extensions.

Prior to exercising any option to extend a contract, AFP officials must review the contract with regard to the supplier's performance and the market rate against the contract's rate and assess whether exercising the option of extension will continue to provide VFM to the AFP.

Expired contracts cannot be amended or extended. This includes official orders (or work orders) under expired deeds.

AFP officials must not enter into contracts with automatic or perpetual extension options without consideration of risks and consultation with AFP Legal. Contracts that allow for month-to-month extensions should also be avoided. Consideration of a possible extension should commence in sufficient time to allow the alternatives to be considered and possibly exercised. Sufficient time must be allowed to prepare for an ATM and selection of an alternative supplier before the current contract term expires.

The contract owner and manager is responsible for assessing whether to exercise a contract option or to re-approach the market. Where the procurement is high-value, a

lead-time of twelve months should be allowed to conduct the request for tender process. Reduced lead times may be appropriate for contracts under the CPRs Division 2 threshold, where transition in/out times are shorter or where the contract is not rated as 'strategic' or 'complex' in nature.

A contract extension must not be executed without:

- approval from the relevant delegate of a compliant spending proposal (note: the relevant delegate must have sufficient delegation to cover the entire value of the contract including the value of all proposed options)
- development of a spending proposal in consultation with NPC for any contract extension with an estimated value of $80,000 (GST-inclusive) or more
- formalisation by issue of a letter between the parties that has been signed by the relevant delegate.

31. Procuring additional goods and services under an existing contract

Some AFP contracts have provision for the supply of goods or services additional to those specified and agreed to in the original contract terms.

Purchasing additional goods or services using this mechanism, where the goods or services being sought exceed the scope and price of the original spending proposal and ATM, should be considered and treated as a new procurement.

This can be a complex area of procurement. NPC must be consulted in relation to the procurement of additional goods or services.

32. Procurement-related complaints management

Guidance on how to submit a procurement-related complaint into the AFP is available under the 'Feedback and complaints' section on the AFP's website.

In addition, the *Government Procurement (Judicial Review) Act 2018* establishes an independent complaint mechanism for government procurement activities and gives greater rights to suppliers whose interests are affected by an alleged breach of the CPRs ('affected supplier').

The Act impacts covered procurements (i.e. those procurements subject to Division 2 of the CPRs) under which an affected supplier can submit a procurement-related complaint to the AFP. Where a complaint under the Act is received, the AFP must suspend the procurement activity while it investigates and resolves the matter (unless a public interest certificate (PIC) is in place).

PICs may be issued for covered procurements where it is not in the public's interest for the procurement activity to be suspended. The PIC enables the procurement activity to continue to progress concurrent to the complaint being investigated. All issued PICs are published under the Feedback and complaints section on the AFP's website.

NPC recommends procuring business areas consider the need for a PIC prior to ATM (however, a PIC can be issued at any time during a procurement). The decision to issue a PIC must be documented within the procurement Risk Assessment and Treatment Plan (RATP).

If a complaint cannot be resolved between the AFP and an affected supplier, the affected supplier can bring a claim before the Federal Circuit Court of Australia or the Federal Court of Australia, which may grant an injunction (even where a PIC is in place). Affected suppliers may also seek compensation for the reasonable costs of preparing their tender and in making and trying to resolve a complaint.

It is the responsibility of the procuring business area (AFP official progressing the procurement activity) to maintain official records (in AFP official files). Failure to maintain appropriate records may impact the AFP's ability to defend itself against a procurement-related complaint or claim under the Act.

Compliance with the CPRs (including CPRs s. 7.2: 'Officials must maintain for each *procurement* a level of documentation commensurate with the scale, scope and risk of the *procurement*') is essential.

33. Further advice

Further advice on procurement and contract management related matters is available on the National Procurement and Contracts hub page or by emailing the NPC general mailbox.

34. References

Legislation

- *Australian Federal Police Act 1979* (Cth)
- *Freedom of Information Act 1982* (Cth)
- *Government Procurement (Judicial Review) Act 2018* (Cth)
- *Public Governance, Performance and Accountability Act 2013* (Cth)
- *Public Governance, Performance and Accountability Rule 2014* (Cth)
- *Public Works Committee Act 1969* (Cth)
- *Superannuation Guarantee (Administration) Act 1992* (Cth)
- *Superannuation (Productivity Benefit) Act 1988* (Cth)

AFP governance instruments

- AFP Commissioner's Order on security (CO9)
- Commissioner's Financial Instructions (CFIs)
- AFP National Guideline on information management
- AFP National Guideline on personnel security
- AFP National Guideline on privacy
- AFP National Guideline on risk management
- AFP National Guideline on software management and copyright

Other

- Protective Security Policy Framework
- National Procurement and Contracts (NPC) Hub home page
- Commonwealth Procurement Rules (CPRs)
- Australian Government Contract Management Guide (April 2019)
- Schedule of Procurement Connected Policies (Department of Finance)
- Indigenous Procurement Policy
- Digital Sourcing Framework – Digital Transformation Agency
- Sustainable Procurement Guide – Department of Environment (2018)
- RMG 403: Meeting the Senate Order on Entity Contracts
- RMG 417: Supplier Pay On-Time or Pay Interest Policy
- RMG 420 Mandatory use of the Commonwealth Contracting Suite for procurement under $200,000
- RMG 422 Handling complaints under the *Government Procurement (Judicial Review) Act 2018*

35. Shortened forms

AFP	Australian Federal Police
APP	Australian Privacy Principle
ATM	approach to market
CCS	Commonwealth Contracting Suite
CFIs	Commissioner's Financial Instructions
CPRs	Commonwealth Procurement Rules
DAF	Design Authority Forum
DTA	Digital Transformation Agency
ICT	information and communications technology
IPP	Indigenous Procurement Policy
NPC	National Procurement and Contracts
OSA	Organisational Suitability Assessment
PGPA	Public Governance, Performance and Accountability
PIA	Privacy Impact Assessment
PIC	Public Interest Certificate
PSPF	Protective Security Policy Framework
RATP	Risk Assessment and Treatment Plan
RFI	Request for Information
RFQ	Request for Quote

RFT	Request for Tender
RMG	Resource Management Guide
TA	Technology Acquisition
TAF	Travel Approval Form
T&I	Technology and Innovation
VFM	value for money
WoG	Whole of Government

36. Definitions

AFP appointee	means a Deputy Commissioner, an AFP employee, special member or special protective service officer and includes a person: ▪ engaged overseas under s. 69A of the Australian Federal Police Act 1979 (Cth) (the AFP Act) ▪ seconded to the AFP under s. 69D of the AFP Act ▪ engaged under s. 35 of the AFP Act as a consultant or contractor to perform services for the AFP and who has been determined under s.35(2) of the AFP Act to be an appointee.
AFP official	an AFP appointee
approach to market	any request documentation or notice inviting potential suppliers to participate in a procurement ▪ It may include a request for tender, request for quote, request for expression of interest or a request for information.
arrangement	includes a contract, agreement, deed or understanding
AusTender	the Australian Government's procurement publishing and reporting website (www.tenders.gov.au) used for publication of procurement information including business opportunities, annual procurement plans and contracts awarded
commercial activities	activities which encompass procurement, contracting, outsourcing, intellectual property issues, insurance and revenue-generating opportunities and functions.
Commonwealth contract	a contract used for procurements with an estimated value of $200,000 (GST-inclusive) or less ▪ It is a mandatory component of the Commonwealth Contracting Suite, unless an exemption applies, and is generated by using the Commonwealth Contracting Suite decision tree.

Commonwealth Contracting Suite	the suite of template procurement and contracting documents created by the Department of Finance to streamline procurement processes ▪ The suite includes mandatory components and optional components. Refer to RMG No. 420: Mandatory use of the Commonwealth Contracting Suite for procurement under $200,000.
Commonwealth entity	either a corporate Commonwealth entity, which is a Commonwealth entity that is a body corporate, or a non-corporate Commonwealth entity, which is a Commonwealth entity that is not a body corporate ▪ The AFP is a non-corporate Commonwealth entity.
Commonwealth Procurement Rules (CPRs)	rules issued by the Finance Minister under s. 105B(1) of the PGPA Act ▪ AFP officials must comply with the CPRs when performing duties related to procurement.
conditions for participation	the minimum and mandatory conditions that potential suppliers must demonstrate compliance with to participate in a procurement process or for submissions to be considered
consultant	an individual or entity engaged to provide consultancy services involving the development of an intellectual output that assists the AFP to make decisions, such as research, findings, the expression of an original concept, advice and/or recommendations
construction services	procurements related to the construction of buildings and all procurements covered by the *Public Works Committee Act 1969* (Cth)
contingent liability	an indemnity, guarantee, warranty or letter of comfort that may give rise to a liability on the occurrence of a particular future event that is outside of the control of the AFP
contract	an arrangement, as defined by s. 23(2) of the PGPA Act, for the procurement of goods and services under which relevant money is payable or may become payable ▪ Note: this includes standing offers and panels.
contract management system	the AFP's system for reporting and managing contracts within *Insight!* where AFP officials can register and manage the variation of contracts they are managing
contract manager	the AFP official who is managing an existing contract or managing the contract(s) formed as an outcome of a procurement
contractor	an individual or entity contracted to provide goods or services under direction, pursuant to contract terms and conditions and/or in accordance

	with AFP specifications as to how the work is to be performed and/or the form of the goods or service to be produced • For the purpose of this guideline, 'contractor' has the same meaning as 'supplier.'
coordinated procurement	the mandatory whole-of-government arrangements for the supply of goods or services that must be used unless a specific exemption has been granted jointly by (for the AFP) the Minister for Home Affairs and the Finance Minister.
cooperative procurement	a procurement activity which involves more than one entity acting as the buyer • The AFP can procure cooperatively by approaching the market in conjunction with one or more other Commonwealth agencies or by accessing an existing panel or contract which belongs to another Commonwealth agency (also referred to as 'piggybacking').
deed of standing offer	an arrangement setting out the terms and conditions, including a basis for pricing, under which a supplier or members of a panel agree to supply specified goods and services for a specified period, as set out in an official order
expression of interest	a response to an open approach to market requesting submissions from potential suppliers interested in participating in a procurement • The list of potential suppliers who have submitted expressions of interest may be used as the basis for conducting a subsequent request for tender as part of a multi-stage procurement process.
goods	every type of right, interest or thing legally capable of being owned • This includes, but is not restricted to, physical goods, real property and intangibles such as intellectual property, contract options and goodwill.
high-value spending proposal	an approval instrument described for procurements with an estimated value of $80,000 (GST-inclusive) or more
indemnity	a legally binding promise whereby a party undertakes to accept the risk of loss or damage another party may suffer
Indigenous enterprise	any business where 50 per cent or more of that business is Indigenous-owned
limited tender	approaching one or more potential suppliers to make submissions where

	the process does not meet the rules for open tender
low-value spending proposal	an approval instrument for procurements with an estimated value from $10,000 up to $79,999 (GST-inclusive).
minimum content and format requirements	the criteria which a tenderer's submission is required to meet, when responding to an approach to market, to be eligible for further consideration in the procurement process.
multi-stage procurement	an initial approach to market followed by one or more subsequent approaches to market (e.g. inviting expressions of interest followed by a request for tender)
official development assistance	funding administered with the promotion of the economic development and welfare of developing countries as its main objective ▪ This mostly relates to funded projects and mission activities.
official information	information generated by an Australian Government agency for an official purpose, including unclassified information, sensitive information and security-classified information
official order	a contract for the supply of goods or services issued to a supplier in accordance with the terms of a deed of standing offer or other form of overarching contract – also referred to as a work order or an order for services
online purchasing system	the AFP online tool available via *Insight!* that is used to create a purchase order
open approach to market	any notice, published on AusTender, inviting all potential suppliers to participate in a procurement which may include a request for tender, request for quote, request for expression of interest and request for information
open tender	an approach to market, published on AusTender, inviting all potential suppliers to lodge a submission
order for services	a contract for the supply of goods or services issued to a supplier in accordance with the terms of a deed of standing offer or other form of overarching contract – also referred to as a work order or an official order
panel	a group of suppliers engaged under deeds of standing offer to supply identified goods or services ▪ Panels are usually established through a single procurement process and official orders are typically raised for each separate procurement from the panel.
PGPA Rule	means the *Public Governance, Performance and Accountability Rule 2014*

	(Cth).
potential supplier	an entity or person who may respond to an approach to market
probity	the evidence of ethical behaviour including complete and confirmed integrity, uprightness and honesty in all stages of the procurement life cycle
procurement	the whole life cycle and process of acquiring goods or services encompassing: ▪ identification of a need ▪ risk assessment ▪ seeking and evaluating alternative submissions ▪ awarding the contract ▪ delivery of, and payment for, goods or services ▪ ongoing management of the contract where relevant, including consideration of contract options and disengagement of a supplier at the end of the contract ▪ consideration of disposal of goods at the end of their useful life where relevant
procurement threshold	a value above which a procurement, unless specifically exempt, is subject to the additional rules in Division 2 of the CPRs (see s. 10 of this guideline for further information)
purchase order	a written contract for procurement of goods or services with an assessed risk profile of low ▪ Purchase orders include standard terms and conditions regardless of the goods or services being purchased.
relevant delegate	the AFP official identified in Annexure B to the Commissioner's Financial Instructions – Schedules of Authorisations and Delegations (or any other relevant statutory delegation instrument) to hold the powers and responsibilities as delegated by the Commissioner
request documentation	the documentation provided to potential suppliers to enable them to understand and assess AFP requirements and to prepare appropriate and responsive submissions
request for tender	a published notice inviting suppliers who satisfy the conditions for participation to submit a tender in accordance with the requirements of the request documents
response to approach to market	a submission made by a potential supplier making an offer to provide goods or services in response to an approach to market
Security Construction	a standing interdepartmental committee responsible for the evaluation of security equipment for use by Australian government departments and agencies

and Equipment Committee	
spending proposal	the AFP financial instrument that describes the key elements of a proposed procurement, used to inform the relevant delegate and to obtain s. 23 PGPA Act approval for a proposed procurement activity
submission	any formally submitted response from a potential supplier, lodged in accordance with the process described in an approach to market. Submissions may include: ■ offers ■ quotes ■ tenders ■ expressions of interest ■ information.
supplier	an entity or a person who has entered into a contract with the AFP ■ For the purposes of this guideline supplier has the same meaning as 'contractor'.
tenderer	an entity or person who has responded with a submission to an approach to market
value	the total estimated value of the goods or services (GST-inclusive) being procured, as determined in accordance with rule 9 in Division 1 of the CPRs ■ The estimated value of the goods or services being procured will determine whether a particular procurement is subject to the additional rules in Division 2.
value for money	a comparative analysis of all relevant costs and benefits (or technical merit) of each proposal throughout the whole procurement cycle (with consideration also given to whole-of-life costing or total cost of ownership)
work order	See the definitions of *official order* or *order for services*.