

# EXPLANATORY STATEMENT

Issued by the authority of the Minister for Finance

*Public Governance, Performance and Accountability Act 2013*

*Commonwealth Procurement Rules 1 July 2024*

## **Purpose:**

The Commonwealth Procurement Rules (CPRs) set out the rules that Commonwealth officials from non-corporate Commonwealth entities and certain prescribed corporate Commonwealth entities must follow when performing duties related to procurement. The CPRs are amended as required to give effect to government policy or improve their clarity. This update to the Commonwealth Procurement Rules is to reflect the Australian Government's commitment to improving the competitive capability of small and medium enterprises when participating in Commonwealth procurement, considering the economic benefits of a broader range of procurements, and improving integrity and transparency on government and suppliers. The Commonwealth Procurement Rules 1 July 2024 also respond to various audit findings, senate inquiry reports and government initiated independent reviews and policy objectives.

## **Background:**

The Commonwealth Procurement Rules incorporates the requirements of Australia's international trade obligations and government policy in procurement into a set of rules which apply to Commonwealth procurement. The Commonwealth Procurement Rules are written in plain English, reflecting their purpose in being a set of rules procuring officials can and must refer to when undertaking relevant procurements.

The Commonwealth Procurement Rules apply to procurements conducted by non-corporate Commonwealth entities and certain procurements conducted by prescribed corporate Commonwealth entities as listed in section 30 of the *Public Governance, Performance and Accountability Act 2013*.

Division 1 of the Commonwealth Procurement Rules, excluding paragraphs [4.7, 4.8, and 7.26], contain the rules applying to all procurements regardless of their value or whether an exemption applies. Division 2 of the Commonwealth Procurement Rules contains additional rules applying to procurements valued at or above the relevant procurement thresholds.

Unless included below, the previous requirements of the Commonwealth Procurement Rules continue to apply.

This update includes the following revisions which:

- enable Accountable Authorities to delegate the power to apply paragraph 2.6 measures and new footnote included to clarify that the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) continues to apply where paragraph 2.6 of the Commonwealth Procurement Rules has been applied. The footnote is in response to Recommendation 3 of Joint Committee of Public Accounts and Audit Report 498 Commitment Issues' – An Inquiry into Commonwealth procurement (JCPAA Report 498);

- amend the definition of procurement at paragraph 2.7, responding to Recommendation 1.a of JCPAA Report 498.
- clarify that the Commonwealth Procurement Rules apply to officials and the roles and responsibilities of ministers throughout the procurement process. This change responds to recommendation 12.a of the Independent Review of Services Australia and NDIA Procurement and Contracting;
- ensure consistency between the language around environmental sustainability and the revised Sustainable Procurement Guide;
- reduce the value threshold for procurements requiring consideration of the economic benefits of the procurement;
- increase the commitments for non-corporate Commonwealth entities sourcing goods and services from small and medium enterprises;
- include a new paragraph directing officials to prevent corrupt behaviour, and declares that paragraph as a relevant provision for the purposes of the *Government Procurement (Judicial Review) Act 2018*. This change responds to Recommendation 1 of the Australian National Audit Office's (ANAO) performance audit report into Procurement Complaints Handling;
- incorporates the Commonwealth Supplier Code of Conduct (Code). The Code outlines the Commonwealth's minimum expectations of suppliers and their subcontractors while under contract with the Commonwealth. The inclusion of the Code into all Commonwealth forms of contract is mandated through this update to the Commonwealth Procurement Rules. The Code is available on the Department of Finance website.
- clarifies the reporting thresholds at which contracts must be reported and reporting requirements for amendments to contracts. This change responds to Recommendation 6 of the ANAO performance audit report Management of the Australian War Memorial's Development Project;
- increases the threshold for Appendix A, Exemption 17, to allow relevant entities to directly engage small and medium enterprises for procurements valued up to \$500,000;
- includes minor changes to wording in relation to specifications, provision of information regarding an unsuccessful tender and information to be included in request documentation, to ensure Australia's international obligations are accurately reflected. These changes are in response to Recommendation 1 of the ANAO's performance audit report into Procurement Complaints Handling;
- amends the definitions of 'reporting threshold', and 'small and medium sized enterprises';
- includes new definitions for 'amendment' and 'reported contracts'.

The Commonwealth Procurement Rules are supported by guidance available at <http://www.finance.gov.au/procurement/>.

### Authority

The Commonwealth Procurement Rules are issued by the Minister for Finance under s105B(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). As per s105B(2) of the PGPA Act, the instrument is not subject to section 42 (disallowance)

of the *Legislation Act 2003*. This instrument commences on 1 July 2024 and repeals the previous Commonwealth Procurement Rules 13 June 2023 (F2023L00766).

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

## **Commencement**

The Commonwealth Procurement Rules 1 July 2024 commences on 1 July 2024.

## **Consultation**

The Chief Procurement Officials Roundtable, comprising the Departments of Agriculture, Fisheries and Forestry, Employment and Workplace Relations, Defence, Health, Home Affairs, and the CSIRO, the Digital Transformation Agency, and the Murray Darling Basin Authority were consulted on the amendments.

The following entities were consulted on specific amendments:

- the Department of Climate Change, Energy, the Environment and Water on changes to the section ‘achieving value for money’;
- the Department of Defence on paragraph 2.6;
- the Office of International Law in the Attorney-General’s Department regarding the *Government Procurement (Judicial Review) Act 2018* paragraphs; and
- the Australian Government Solicitor on paragraph 2.6, the small and medium enterprise definition, inclusion of the Code, and ministerial involvement in procurement.

The Department of Foreign Affairs and Trade was consulted to ensure the changes align with our international government procurement obligations.

Public consultation with, Commonwealth entities and industry has been undertaken in the development of the Commonwealth Supplier Code of Conduct.

The Minister for Finance approved the Commonwealth Procurement Rules 1 July 2024.

Updates on the changes will be provided through the Commonwealth Procurement and Contract Management Community of Practice, correspondence to Chief Financial Officers and updated guidance on the Department of Finance website to communicate the changes and assist entities.

## **Details of the Commonwealth Procurement Rules 1 July 2024**

### **Section 1 - Foreword**

This section provides information from the Finance Minister and states that the *Commonwealth Procurement Rules 1 July 2024* (CPRs) is made under the section 105B(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and provides that the CPRs instrument commences on 1 July 2024.

### **Section 2—Procurement Framework**

This section provides information on the procurement framework and the Commonwealth entities it applies to. This section also includes information on what is considered to be procurement for the purpose of the CPRs and additional policy, guidance and information that must be considered or complied with when procurement for the purposes of the CPRs is undertaken. A reference to Australia's international obligations is included in this section.

### **Section 3—How to use the Commonwealth Procurement Rules**

This section explains which entities are covered by the CPRs and advises how officials within those entities must comply with the CPRs. It also sets out the government's policy regarding ministerial involvement in procurement and the impact of applying an Appendix A exemption on the rules that then apply to that procurement process.

## **Division 1: Rules for all procurements**

### **Section 4— Value for Money**

This section sets out the factors that comprise consideration of value for money, and the potential additional consideration of the broader benefits to the Australian Economy, depending on the estimated value of the procurement. This section also explains the requirement to apply procurement-connected policies, coordinated procurement and cooperative procurement where appropriate. Information on contract end dates and third-party procurement is also included.

### **Section 5— Encouraging competition**

This section establishes that the CPRs are non-discriminatory. This section also sets out the consideration an official should give regarding the potential impact on small and medium enterprises (SMEs) when establishing a procurement process and undertaking value for money considerations. This section also includes the Australian Government's commitments to contract with SMEs.

## **Section 6— Efficient, effective, economical and ethical procurement**

This section sets out the Australian Government's requirement that procurements involve the proper use of public resources. It details the requirements on Commonwealth officials to act ethically throughout a procurement processes, as well as setting out the requirement to include the Supplier Code of Conduct in Commonwealth procurement contracts. It also sets out requirements for the management of procurement complaints by entities and the application of the *Government Procurement (Judicial Review) Act 2018*.

## **Section 7— Accountability and transparency**

This section explains the Australian Government's commitment to ensuring accountability and transparency in procurement, including record keeping, providing information to the Parliament and public, treatment of confidential information and AusTender reporting.

## **Section 8— Procurement Risk**

This section reinforces the existing PGPA Act requirements for entities to manage risk and provides additional requirements and principles related to procurement,

## **Section/Item 9— Procurement Method**

This section sets out the requirement to estimate the value of a procurement, and the approach or method that must be applied in relation to the value of the procurement depending on the type of procurement being undertaken and entity type. Information regarding the use of standing offers is included in this section.

## **Division 2: Additional rules for procurements at or above the relevant procurement threshold**

### **Section 10— Additional Rules**

This section sets out the additional rules for procurements that meet the thresholds set out in Section 9. These rules including the conditions required for a limited tender to be undertaken, the documentation required for approaches to market including the use of specifications, ability to modify evaluation criteria or specifications, conditions for participation, minimum timeframes for procurement processes, management and acceptance of submissions (tenders) and the awarding of contracts.

## **Appendix A: Exemptions**

This section sets out that certain procurements which meet the criteria for one of the exemptions listed in this appendix are exempt from Division 2 of the CPRs, and from paragraphs 4.7, 4.8 and 7.26 of Division 1, where the exemption is applied.

## **Appendix B: Definitions**

This section sets out defined terms used with the CPRs.