

## Appendix A: Glossary

Where available, the terms in this glossary have been reproduced from the Commonwealth Procurement Rules, associated legislation, and other documents published by the Australian Government Department of Finance.

**Accountable Authority:** section 12 of the PGPA Act specifies the accountable authority of a 'Commonwealth entity'. In the case of a Department of State, it is the Secretary of the Department. Prior to 1 July 2014, known as 'Chief Executive' under the FMA Act, and as 'Director, or Governing Board' under the CAC Act.

**Accountable Authority Instructions (AAIs):** accountable authorities can issue instructions as a mechanism to provide their officials with guidance regarding the key principles and requirements of the resource management framework, including for procurement activity. Under the FMA Act, known as the Chief Executive Instructions. See also Department of Finance (2015) RMG no. 206, [www.finance.gov.au/resource-management/index](http://www.finance.gov.au/resource-management/index).

**Annual Procurement Plan:** clauses 7.7 and 7.8 of the CPRs state that 'each relevant entity must maintain on AusTender a current procurement plan containing a short strategic procurement outlook. The annual procurement plan should include the subject matter of any significant planned procurement and the estimated publication date of the approach to market. Relevant entities should update their plans regularly throughout the year'.

**Approach to market (ATM):** any notice inviting potential suppliers to participate in a procurement which may include a request for tender, request for quote, request for expression of interest, request

for application for inclusion on a multi-use list, request for information or request for proposal. The abbreviation 'ATM' is used on AusTender and other procurement documents to reference an approach to market.

**Arrangement:** a contract, agreement, deed or understanding (section 23, PGPA Act).

**AusTender:** AusTender is the system used to enable relevant entities to meet their publishing obligations under the CPRs. It also enables relevant entities to monitor and review their AusTender-based procurements, including approaches to market, publication of contracts and multi-use lists, and amendments to contracts and multi-use lists. It is available at [www.tenders.gov.au](http://www.tenders.gov.au). See also CPR clauses 7.5 to 7.13.

**CAC Act:** *Commonwealth Authorities and Companies Act 1997*. The Act was replaced by the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) from 1 July 2014.

**Commonwealth Contracting Suite (CCS):** a template set of contracting documents that must generally be used by Non-Corporate Commonwealth Entities for procurements below \$200,000 (including GST). See Department of Finance (2015) RMG no. 420: [www.finance.gov.au/resource-management/index](http://www.finance.gov.au/resource-management/index).

**Commonwealth entity:** Chapter 2 of the PGPA Act defines various forms of Commonwealth entities, including a Department of State, a Parliamentary Department, a body corporate established under Commonwealth legislation, etc. See 'Non-Corporate Commonwealth Entity' and 'Corporate Commonwealth Entity'.

**Commonwealth Procurement Rules (CPRs):** The CPRs incorporate international obligations, government policy and good practice in procurement into a set of rules that apply to procurement by Australian Government entities. They are issued by the Minister for Finance under section 105B of the PGPA Act: [www.finance.gov.au/sites/default/files/2014%20Commonwealth%20Procurement%20Rules.pdf](http://www.finance.gov.au/sites/default/files/2014%20Commonwealth%20Procurement%20Rules.pdf). Achieving value for money is the core principle of the CPRs, which cover the whole process of procuring goods and services. From 1 July 2014, the CPRs replaced the Commonwealth Procurement Guidelines that had been established in 2005 under the FMA and CAC Acts.

**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.

**Corporate Commonwealth Entity (CCE):** as defined in section 8 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). Prior to 1 July 2014, known as a ‘Commonwealth authority’ under the CAC Act.

**Deliverable:** specific output, usually (and preferably) defined in the contract, or in a schedule to the contract.

**Evaluation criteria:** the criteria that are used to evaluate the compliance and/or relative ranking of submissions. Evaluation criteria must be clearly stated in the request documentation.

**Expression of Interest:** a response to an open approach to the market that requests submissions from businesses 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 select tender process.

**FMA Act:** *Financial Management and Accountability Act 1997*. The Act was supplemented by FMA Regulations (FMAR). The FMA Act was replaced by the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) from 1 July 2014.

**Issues log:** a record of issues that arise during a project (see Chapter 7).

**Limited tender:** involves a relevant entity approaching one or more potential suppliers to make submissions, when the process does not meet the rules for open tender or pre-qualified tender. Limited tenders are subject to additional rules under Division 2 of the CPRs.

**Liquidated damages:** an agreed pre-estimate of damages for a specific breach of contract, such as late performance.

**Listed entity:** defined in section 8 (The Dictionary) of the PGPA Act to cover non-corporate bodies, persons, groups of persons or organisations, etc. Prior to 1 July 2014, known as a ‘prescribed agency’ under the FMA Act and FMA Regulations.

**Memorandum of Understanding (MOU):** formal agreement between two or more Non-Corporate Commonwealth Entities. An enforceable contract is not possible because the entities are both part of the same legal entity (the Australian Government), and the government cannot contract with itself.

**Milestone:** reference point specified in contract. Where a milestone represents a point of payment, it is important to ensure that the point is specified in terms of a clearly identifiable and measurable output by the consultant. Some contracts specify milestones as points of formal review of progress on which an extension or continuation of the contract might be based.

**Minimum content and format requirements:** criteria that a tenderer's submission is required to meet when responding to an approach to market in order to be eligible for further consideration in a procurement process.

**Multi-use list:** a list, intended for use in more than one procurement process, of pre-registered suppliers who have satisfied the conditions for participation on the list. Each approach to a multi-use list is considered to be a new procurement, but the process establishing a multi-use list is not in itself a procurement.

**Murray Motion:** On 20 June 2001, the Senate agreed to an order requiring ministers to table a letter, stating that PGPA Act entities falling under their responsibility have placed on the internet a list of contracts of \$100,000 (GST inclusive) or more which are current or entered into during the previous 12 months. The Senate Order letters must be tabled within two months of the end of the reporting period to which the listing(s) relate. From 1 July 2015, reports are generated by the Department of Finance and published on the AusTender website on behalf of entities and can be accessed by the Senate Order button.

**Nominated personnel:** usually those identified in a contract as carrying out the actual work during the project, or as contact officers.

**Non-corporate Commonwealth Entity (NCCE):** defined in section 8 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). Prior to 1 July 2014, known as an agency or FMA agency under the FMA Act.

**Official:** defined in section 8 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). Prior to 1 July 2014, known as ‘officer, staff or employee’ under the FMA Act and FMA Regulations, and as ‘officer, senior manager’ under the CAC Act.

**Open approach to market:** any notice inviting all potential suppliers to participate in a procurement which may include a request for tender, request for quote, request for expression of interest, request for application for inclusion on a multi-use list, request for information and request for proposal.

**Open book approach:** in a collaborative arrangement, the risk of disagreement over fees and expenses can be reduced if the consultant permits the client full and open access to information on the consultant’s costs throughout the project.

**Open tender:** involves publishing an open approach to market and inviting submissions.

**Option:** a legal right within a contract or deed of standing offer (panel) arrangement to unilaterally extend the term of the contract or panel by a specified period. An option must be exercised in accordance with the terms of the contract or deed of standing offer (for example, by notifying the other party of the intention to exercise the option). The exercise of an option is not a variation or an agreement to extend the contract or deed of standing offer. Exercising an option in a contract is not a procurement in itself. However, value for money considerations still apply. Entities should consider all relevant alternatives including approaching the market (see also ‘Variation’).

**Panel:** panel arrangements or contracts involve an agency pre-selecting a number of consultants. The selected consultants can be drawn on at any time to provide services at a price agreed when bidding for a place on the panel, without the need to go again to tender. Both the agency and the panel consultants gain from this arrangement because there is no need to go through a tender process each time that work is required. Because of the cost savings to them, consultants may quote a lower fee when bidding to be part of a panel arrangement.

**Partnering:** a cooperative approach to the employment of consultants. It may involve the use of a ‘relationship agreement’.

**Period contract:** an agreement to provide goods or services on particular terms over a period of time. A panel period contract means that standing offer arrangements have been entered into with more than one contractor or consultant for the provision of goods and services of the same type and nature.

**Potential supplier:** an entity or person who may respond to an approach to market.

**Pre-qualified tender:** involves publishing an approach to market inviting submissions from all potential suppliers on:

- a. a shortlist of potential suppliers that responded to an initial open approach to market on AusTender;
- b. a list of potential suppliers selected from a multi-use list established through an open approach to market; or
- c. a list of all potential suppliers that have been granted a specific licence or comply with a legal requirement, when the licence or compliance with the legal requirement is essential to the conduct of the procurement.

**Process contract:** a statement in the nature of a Request for Tender may itself constitute an offer which, upon acceptance, becomes a binding and enforceable contract, a so-called process contract. In other words, an agency that issues request documentation may be bound to follow the procedures and selection criteria specified in it. The courts may consider that the process contract contains an implied term that the agency will conduct its evaluation fairly and in a manner that ensures equal opportunity for all bidders.

**Procurement:** clauses 2.7 and 2.8 of the CPRs state that ‘procurement encompasses the whole process of procuring 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, the awarding of a contract, the delivery of and payment for the goods and services and, where relevant, the ongoing management of the contract and consideration of disposal of goods. 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 threshold:** the monetary procurement thresholds specified in clause 9.7 of the Commonwealth Procurement Rules require observance of the additional procurement rules contained in Division 2 of the CPRs. The thresholds are as follows:

- a. for Non-Corporate Commonwealth Entities, other than for procurements of construction services, the procurement threshold is \$80,000;
- b. for prescribed Corporate Commonwealth Entities, other than for procurements of construction services, the procurement threshold is \$400,000; or
- c. for procurements of construction services by relevant entities, the procurement threshold is \$7.5 million.

**Project charter:** essentially, a plan for managing the project. It should include information like the terms of reference for the project, methodologies and a risk analysis for each component of the project, a budget, a schedule of project meetings, milestones and payments against them, a protocol on collaborative behaviour, details of specific client and consultant responsibilities, and any other relevant information about the project. The charter then becomes the basic reference document for both parties, and should form the basis for managing the contract.

**Project management plan:** see project charter.

***Public Governance, Performance and Accountability Act 2013 (PGPA Act):*** the key legislation that covers Australian Government resource management requirements. It provides a coherent framework encompassing the use of appropriations, commitment of money, banking arrangements, and the imposition of requirements regarding standards of governance, performance and accountability for 'Commonwealth entities'. The Act is administered by the Finance Minister, who may make rules and other legislative instruments under the Act. These instruments can be disallowed by parliament. The PGPA Act replaced the *Financial Management and Accountability Act 1997* and the *Commonwealth Authorities and Companies Act 1997*, which were repealed on 30 June 2014. An independent review of the PGPA Act will be conducted after July 2017 in accordance with section 112, and the Finance Minister will table the review in parliament.

**Public Governance, Performance and Accountability Rule 2014 (PGPAR):** the PGPAR is made under the PGPA Act. Prior to 1 July 2014, its equivalent was known as the 'FMA Regulations' which were formed under the FMA Act.

**Relevant entity:** the Commonwealth Procurement Rules (clause 2.2) refer to Non-Corporate Commonwealth Entities plus Corporate Commonwealth Entities listed in section 30 of the *Public Governance, Performance and Accountability Rule 2014* collectively as 'relevant entities'.

**Relevant money:** is money that a Commonwealth entity holds as cash or in bank accounts. It becomes committed when an entity undertakes an activity that results in an obligation to pay relevant money (RMG no. 400). Known as 'public money' prior to 1 July 2014 under the FMA Act, and as 'money held in own account' under the CAC Act.

**Reporting requirements** for procurements are outlined in Chapter 7 of the CPRs.

**Request documentation:** documentation provided to potential suppliers to enable them to understand and assess the requirements of the procuring relevant entity and to prepare appropriate and responsive submissions. This general term includes documentation for expressions of interest, multi-use lists, open tender, pre-qualified tender and limited tender.

**Request for Expression of Interest (REI):** see Expression of Interest.

**Request for Proposal (RFP):** usually sought following evaluation of responses to an REI, as a means of identifying innovative solutions. Parties are asked to provide a preliminary or a full tender proposal.

**Request for Tender (RFT):** a formal request that may be publicly advertised to obtain offers from potential suppliers of goods and services. An RFT normally contains a Statement of Requirement.

**Sign-off:** a client's acceptance of an intermediate or final output. Further work requested after formal 'sign-off' should be the subject of a variation or extension to the contract.

**Small and Medium Enterprises (SMEs):** an Australian or New Zealand firm with fewer than 200 full-time equivalent employees.

**Specification:** a description of the features of the goods and services to be procured.

**Standing offer:** an arrangement setting out the terms and conditions, including a basis for pricing, under which a supplier agrees to supply specified goods and services to a relevant entity for a specified period. It is sometimes called a panel where more than one supplier is involved. Because a procurement process has already been conducted to establish a standing offer (or panel), specific procurements can then be undertaken with any supplier on the panel.

**Statement of Requirement (SOR):** description of an activity or client needs in terms of outputs and constraints such as timeframes (see RFT).

**Submission:** any formally submitted response from a potential supplier to an approach to market. Submissions may include tenders, responses to expressions of interest, applications for inclusion on a multi-use list or responses to a request for quote.

**Supplier:** an entity or person who has entered into a contract with the Commonwealth.

**Tender specification:** document that provides information on the outputs and outcomes required from a consultant, including relevant quality standards.

**Tenderer:** an entity or person who has responded with a submission to an approach to market.

**Threshold:** see 'Procurement Threshold' above.

**Value for Money:** the core principle underpinning Australian Government procurement (see Chapter 4 of the Commonwealth Procurement Rules).

**Variation:** A variation to extend a contract or deed of standing offer beyond the terms of the original contract (rather than exercising an extension option within the terms of a contract), constitutes a new procurement that must be conducted in accordance with the CPRs. Variations to include new extension options generally increase the scope of the contract or panel arrangement and are therefore not

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allowed. Changes in terms and conditions should be recorded formally in a variation to the contract, in order to avoid later disputes and to ensure accountability (see also 'Option').

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