



Express law fast track information for clients

14 August 2006

Clarification of the Commonwealth Procurement Guidelines

The Department of Finance and Administration has released Finance Circular 2006/02, which clarifies certain elements of the *Commonwealth Procurement Guidelines* (CPGs).

Background

The circular is the product of a review of the current CPGs, which came into operation on 1 January 2005. The circular states that it is to be read 'in conjunction with the CPGs'. Like the CPGs, the circular applies to all departments and agencies subject to the Financial Management Accountability Act 1997 (FMA Act) and to relevant CAC Act bodies. (Relevant CAC Act bodies are those bodies listed in Schedule 1 of the Commonwealth Authorities and Companies Regulations 1997.)

The circular at a glance

Scope of procurement

The circular clarifies that the CPGs only apply to circumstances where there is a proposal to spend public money on the acquisition of property or services. This means that, amongst other things, the CPGs do not apply to investment activities and sales by tender.

The circular also provides that the CPGs have no application to the disposal of public property. Rather, the management of disposals falls within the responsibilities of an agency's Chief Executive under s 44 of the FMA Act (promoting efficient, effective and ethical use of Commonwealth resources).

Measures to protect security, health and national treasures

Paragraph 8.2 of the CPGs provides that Chief Executives are not prevented from applying measures to protect security, health and national treasures by anything in Division 2 (the Mandatory Procurement Procedures). The circular states that para 8.2 should now be treated as also having application to Division 1 of the CPGs (the Procurement Policy Framework).

Value for money

The circular promotes the following measures to support the obligation of an agency to achieve value for money:

- the use of written contracts to manage procurement risk
- regular review of contracts
- the inclusion of a clear end-date and/or termination provision in any contract.

Management of confidential information (FMA Act agencies only)

The circular highlights the need for agencies to consider on a case-by-case basis the inclusion in a contract of the model provisions to protect confidentiality maintained by Finance, and provides some guidelines on when such provisions should be used.

Time limits

The circular clarifies how the time limits for potential suppliers to prepare and lodge a submission in response to an approach to the market (paragraphs 8.32 and 8.33 of the CPGs) should be applied.

Conditions for direct sourcing

One of the conditions under which an agency may conduct a covered procurement using direct sourcing is where, in response to an approach to the market, 'no submissions were received' (sub-paragraph 8.65(a)(i) of the CPGs). The circular provides that this condition is intended to include circumstances where no submissions were received *which represented 'value for money'*.

AusTender

Paragraph 7.21 of the CPGs requires that, to the extent practicable, request documentation be available for download from AusTender. The circular clarifies that this requirement is not diminished by the operation of paragraph 8.21, which requires that, where practicable, request documentation be distributed electronically.

Other publications to read in conjunction with the CPGs

The following Finance Circulars should also be read in conjunction with the CPGs:

- Finance Circular 2005/12, which provides guidance on the definition of the procurement of construction services as used in the CPGs and the treatment of leases
- Finance Circular 2005/14, which defines *contracts for labour hire* and exempts them from the Mandatory Procurement Procedures in the CPGs.

Further, an agency's Chief Executive Instructions will contain agency-specific information about spending public money on the acquisition of property and services.

Where can Finance Circular 2006/02 be found?

The circular has been issued to all CFOs of FMA Act agencies and relevant CAC Act bodies. It is available, along with the other circulars noted above, [here on Finance's website](#).

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