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Demystifying Australian Defence
Procurement: Insight into Law and Policy

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Demystifying Australian Defence Procurement: Insight into Law and Policy

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Introduction

When compared to the extensive research explaining and examining legal aspects of European and U.S. defence procurement, there is a dearth of information on Australian defence procurement and the regulation thereof. This short article therefore aims to provide insight into the overlay of Australian federal law and defence policy which governs how officials contract with suppliers on behalf of the Department of Defence (Defence). The article is written with the global community of suppliers in mind and, thus, focuses on themes most relevant to suppliers who wish to enter into arrangements for the procurement of goods and services with Defence as the customer.

Federal statute

The *Public Governance, Performance and Accountability Act 2013* (PGPA Act) is the principal statute governing management of Commonwealth (federal) resources. It confers power on Defence officials to enter into (and vary) contracts, on behalf of the Commonwealth and commit Commonwealth money.¹ The *Public Governance, Performance and Accountability Rule (2014)* (PGPA Rule) supports administration of the PGPA Act and particularizes requirements of accountable authorities.

The Secretary of Defence (the Secretary) is the accountable authority for Defence. Section 20A of the PGPA Act authorizes the Secretary to issue detailed operational guidance to Defence officials on financial management, including procurement. This guidance takes the form of Accountable Authority Instructions (AAIs). The AAIs detail instructions officials are expected to comply with when carrying out their duties under the PGPA Act and establish internal controls.²

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¹ *Public Governance, Performance and Accountability Act 2013* (Cth) (hereinafter referenced as 'PGPA Act') s 23.

² Australian Government, Department of Finance *Accountable Authority Instructions* (Webpage) <<https://www.finance.gov.au/government/managing-commonwealth-resources/managing-risk-internal-accountability/duties/risk-internal-controls/accountable-authority-instructions-aais-rmg-206>>.

AAI2: ‘Spending Defence Money-Procurement’ focuses on procurement and also provides general instructions in relation to approving commitments of Defence money, entering into, varying and managing arrangements and indemnities, guarantees and warranties. It is premised on the requirement that Defence money cannot be spent without approval. Not all approvers hold a delegation for all spending types; approvers have different dollar limits that may apply depending on the spending type.³ Approval of a spending commitment is the step where the ‘commitment approval delegate’⁴ is satisfied that the procurement was conducted in accordance with the *Commonwealth Procurement Rules* (CPRs).⁵ It is to the CPRs we now turn.

Commonwealth Procurement Rules

Section 105B(1) of the PGPA Act provides the Minister for Finance with authority to issue the Commonwealth Procurement Rules (CPRs), considered to be the ‘keystone’ of the Australian government’s procurement framework.⁶ The CPRs are a legislative instrument providing Commonwealth entities, such as the Department of Defence, with uniform rules which must be complied with when undertaking procurement related activities. Australia’s international obligations under free trade agreements have been incorporated into the CPRs.⁷

The CPRs comprise of Division 1 and 2. Division 1 sets out rules applying to *all* Defence procurements. Division 2 provides additional rules Defence officials must comply where a procurement for goods or services is at or above A\$80,000 or where a procurement for construction is at or above A\$7.5 million, unless an exemption applies.⁸

Rules which apply to all Defence procurements

Core principles of Division 1 underpinning Defence contracting include achieving best value for money,⁹ encouraging full and open competition¹⁰ and making proper use of public resources¹¹ which includes conducting government business with

³ Details are published in Defence Financial Delegations. These are not available publicly.

⁴ PGPA Act s 23(3).

⁵ Australian Government, Department of Finance, *Commonwealth Procurement Rules* (14 December 2020) (hereinafter referred to as ‘CPRs’).

⁶ Australian Government, Department of Finance, *Commonwealth Procurement Rules* (14 December 2020) 3.

⁷ CPRs s 9.

⁸ Exemptions are found in Appendix ‘A’ of the CPRs.

⁹ CPRs s 4. Note, price is not a sole determining factor when assessing value for money.

¹⁰ CPRs s 5.

¹¹ CPRs s 6.

integrity; acting ethically.¹² From a supplier's perspective it is helpful to have a comprehensive understanding about what these principles mean when preparing a tender submission (what aspects Defence officials will be considering when awarding a contract) and what processes are applied in Defence procurement-related decision making.

Value for money

Defence officials should consider whether a procurement will deliver the best 'value for money'.¹³ In making that decision, factors including stakeholder input; scale and scope of requirement; budget; opportunities under existing arrangements are important.¹⁴ Notably, it is a requirement that value for money is achieved – officials must be satisfied that the procurement achieves a value for money outcome.¹⁵ A critical characteristic suppliers ought to be mindful of is that price is not the sole consideration.¹⁶ Thus, a tender submission for the provision of goods or services at the cheapest price will not necessarily result in a contract award by Defence. The CPRs require Defence officials to consider non-financial factors such as quality of goods and services; fitness for purpose; a supplier's performance history; environmental sustainability of the proposed goods or services; and whole-of-life costs of the contract.¹⁷ For procurements valued above A\$4 million (or A\$7.5 million for construction services) Defence officials are also required to consider the economic benefit of the procurement to the Australian economy as part of the framework for determining value for money.¹⁸ Examples of how a supplier might contribute to the economic benefit of Australia include building, leasing or procuring infrastructure to benefit Australian communities; providing skills/training which benefit Australian workers; employing workers in Australia, including apprentices or trainees; using indigenous businesses; sharing knowledge and skills with small and medium enterprises (SMEs); developing innovation or practices which benefit Australian communities; providing an environmental benefit, such as using recycled materials or content; developing industrial capacities or building capabilities of Australian industry.¹⁹ When submissions are received from tenderers, Defence officials evaluate submissions based on the

¹² CPRs s 6.

¹³ CPRs s 4.2.

¹⁴ CPRs s 4.2 (a)-(f).

¹⁵ CPRs s 4.4.

¹⁶ CPRs s 4.5.

¹⁷ CPRs s 4.5

¹⁸ CPRs ss 4.7- 4.8.

¹⁹ Note, the requirement to consider economic benefit operates within a context of Australia's trade agreements, which ensure that all potential suppliers are treated equitably; that discrimination against suppliers based on their location, size, ownership does not occur as per section 5.1 CPRs.

‘evaluation criteria’²⁰ and methodology set out in the ‘request documentation’.²¹ The evaluation of submissions is the most critical aspect of determining value for money. Suppliers should be mindful that any weightings used in a Defence tender evaluation in relation to a value for money criteria may not discriminate against suppliers.

Encouraging competition

Another key value underpinning the CPRs is encouraging competition. Paramount to fair and open competition is the requirement for non-discrimination and the use of competitive processes for procurement-related activity.²² As such, Defence officials must ensure that all potential suppliers are treated equitably and that no bias is shown towards a potential supplier based on size, location, origin of their goods and services.²³ Notably, 10 per cent of procurements (by value) are to be sourced from Small and Medium Enterprises (SMEs).²⁴ This rule encourages smaller sized suppliers to compete for Defence contracts, creating opportunities for those who may not be ‘traditional’ Defence suppliers. It may also be useful for suppliers to observe that the Australian Government recognises the importance of paying on time as a means of driving competition among suppliers. For a contract up to the value of A\$1 million, Defence must make all payments to a supplier within the maximum payment terms (following receipt of a correctly rendered invoice and delivery of goods or services).²⁵ This makes Defence an attractive customer of good and services in the global market.

Efficient, effective, economical and ethical procurement

It is a requirement that Defence officials use and manage public resources ‘properly’, being in an efficient (achieve maximum value),²⁶ effective (extent to which outcome achieved),²⁷ economical (minimising costs)²⁸ and ethical manner.²⁹ From a supplier’s perspective it is useful to better understand what ethical conduct

²⁰ These set out the key aspects for a fair and equitable assessment of tender submission for the particular procurement.

²¹ Request document will usually include a description of the requirement(s) (statement of work); evaluation criteria and methodology; other rules particular to the procurement, such as lodgment of submissions and (possibly) a draft contract.

²² CPRs s 5.1.

²³ CPRs ss 5.3 - 5.4.

²⁴ CPRs s 5.6.

²⁵ CPRs s 5.8.

²⁶ CPRs s 6.2.

²⁷ CPRs s 6.3.

²⁸ CPRs s 6.4.

²⁹ CPRs s 6.

involves. The essence of ethical behaviour is acting honestly and with integrity. Probity is evidence of ethical behaviour, thus, a Defence official must act with integrity and honesty in regard to every part of the procurement process in line with scope, scale and risk of each procurement.³⁰ This includes managing actual or potential conflicts of interests; dealing with potential suppliers and existing suppliers equitably (and not accepting ‘kickbacks’), and carefully considering spending public money.³¹ Consequences can be imposed on officials who are found to have acted unethically.³² Overall, this rule ought to inspire confidence among potential and existing suppliers who are looking to contract with (or who already have a contract) Defence.

Contract terms

The CPRs also emphasise that any contract awards under A\$200,000 must use a contract template from the Commonwealth Contracting Suite.³³ For procurements valued at or above A\$200,000 and below A\$1 million, the CCS may be used. If unsuitable, or the contract is valued at or above A\$1 million, an endorsed Defence contracting template such as the ASDEFCON Suite of Tendering and Contracting Templates must be used.³⁴ Use of templates increases the overall efficacy of contracting, their design having been carefully crafted to comply with values underpinning the CPRs. Standard terms are included in all templates and suppliers should ensure they understand their meaning before entering into an arrangement with Defence. Note also, parties may agree to add, remove, or vary terms to best accommodate the needs of parties in relation to a particular procurement. Terms used in the above-named contract suite are available publicly.

Judicial review of procurement-related complaints

Reference to judicial review is included in Section 6 of the CPRs given that potential suppliers/existing suppliers whose interests have been affected have a legislative basis for procurement complaints. The Government Procurement (Judicial Review) Act 2019 (JR Act) recently came into force and enhances the integrity of the Australian Defence procurement complaints system, providing

³⁰ General duties of officials are set out in PGPA Act ss 25-29.

³¹ CPRs s 6.6.

³² PGPA Act s 30.

³³ CPRs s 6.10. See also, Australian Government, Department of Finance, Commonwealth Contracting Suite (Webpage, 11 October 2021) <<https://www.finance.gov.au/government/procurement/commonwealth-contracting-suite-ccs>>.

³⁴ Australian Government, Department of Defence, ASDEFCON Suite of Tendering and Contracting Templates (Webpage) <<https://www.defence.gov.au/business-industry/procurement/contracting-templates/asdefcon-suite>>.

greater impartiality and independence for procurement complaints. Complaints subject to review under the JR Act are specified in the CPRs and include all procurements to which Division 2 CPRs applies and the majority of Division 1 rules.³⁵ Where a complaint is not resolved, the complainant may instigate proceedings in either the Federal Circuit Court or the Federal Court of Australia. The remedies available include the issuing of an injunction³⁶ and/or the award of compensation.³⁷ Complaints which do not fall within the scope of JR Act review, are treated as 'general' complaints. These will be investigated by Defence (at the agency level). Where a resolution cannot be found, a general complaint may be heard in the Federal Court under general administrative law.³⁸ Given that reform to the procurement complaints mechanism is recent, potential, or existing suppliers would be prudent to gain a sound understanding of the options for complaints resolution before or at the time of contract award.³⁹

Accountability and transparency

Numerous obligations imposed by way of the CPRs hold Defence officials responsible for their procurement-related actions and decisions. Ensuring transparency of processes which inform decision-making is therefore a paramount aspect governing Defence procurement. Appropriate documentation supporting each part of a procurement life-cycle (in line with scope, scale and risk of the arrangement) must be maintained.⁴⁰ For example, suppliers can expect Defence officials to require evidence of a written contract, a purchase order, an invoice or receipt.⁴¹ In regards to tender evaluation, suppliers can expect the evaluation committee to be exact in recording the evaluation and the reasons underlying its decisions for contract award or no award and include these reasons in a report. Details tenders can anticipate will form part of the evaluation report include: a summary of the evaluation process; a summary of the assessment of each submission; reasons for the exclusion of a submission from further consideration; recommendations concerning the preferred tenderer(s) based on value for money; and details of any issues which need resolution during subsequent contract negotiations.

³⁵ Government Procurement (Judicial Review) Act 2019 (Cth) (hereinafter referred to as the 'JR Act') s 5 and CPRs s 6.9. CPRs subject to review under the JR Act include ss 4.18, 5.4, 7.2, 7.10, 7.13-7.18, 7.20, 9.3-9 under Division 1 and all Division 2 rules.

³⁶ JR Act s 9.

³⁷ JR Act s 16.

³⁸ This being distinct from a statutory right of action as per the JR Act.

³⁹ For a detailed description of the Australian procurement complaints system see Langos and Furin, 'Update on Procurement Complaint Reforms in Australia and the United States', (2022) XX Swedish Procurement Journal XX (to be included if Langos and Furin article is accepted to the Journal).

⁴⁰ CPRs s 7.2.

⁴¹ CPRs s 7.4.

Austender

A critical aspect of a transparent procurement process is publication of relevant procurement-related information. 'Austender' is the Australian Government's online procurement information system.⁴² Potential and existing suppliers can: access 'request documentation' inclusive of evaluation criteria; monitor and review approaches to market, view publication of contracts (and contract amendments) within 42 days of entering into (or awarding) a contract based on thresholds.⁴³ It is useful for tenderers to note that upon a rejection of a submission or contract award, officials must inform tenderers of the decision.⁴⁴

Notably, debriefings must also be made available to unsuccessful/successful tenderers. A written or verbal debrief should provide an unsuccessful tenderer with an explanation of why the submission was unsuccessful; provide remarks on areas of weakness or non-compliance with the offer; make suggestions as to how future submissions can be improved.

Subcontractors listed

Another aspect relating to transparency included in the CPRs relates to the identification of subcontractors. Suppliers need to be aware that they must make available on request by a Defence official the name of any subcontractor engaged in the relevant arrangement.⁴⁵ There is an obligation imposed on suppliers who are awarded a Defence contract that they inform any subcontractors that their participation may be disclosed publicly.⁴⁶

Confidential information

Transparency of certain information is curbed by Australia's privacy laws.⁴⁷ Suppliers ought to be aware that legal protections exist to protect confidential information.⁴⁸ In regard to tender submissions, these must be treated a confidential before and after contract award.⁴⁹ However, once a contract is awarded, the default position is that the terms of a contract are not confidential.⁵⁰ Suppliers ought to pay close attention to this rule to ensure they reach an agreement with Defence in regard to particular terms requiring non-disclosure (on specific grounds) prior to contract award.

⁴² Australian Government, Austender (Webpage) <<https://www.tenders.gov.au/>>.

⁴³ CPRs ss 7.11, 7.12, 7.18-7.20.

⁴⁴ CPRs s 7.17.

⁴⁵ CPRs s 7.21a.

⁴⁶ CPRs s 7.21b.

⁴⁷ Privacy Act 1988 (Cth).

⁴⁸ CPRs s 7.22.

⁴⁹ CPRs s 7.23.

⁵⁰ CPRs s 7.23.

Procurement method

The CPRs provide details on how Defence officials will go about procuring goods and services from the global community of suppliers. The method of procurement will be either via ‘open’ tender or ‘limited’ tender. Open tender requires publishing on *Austender* a notice inviting all potential suppliers to participate in the procurement (this may be referred to as ‘open approach to market’) and inviting submissions.⁵¹ This approach is the default method of procurement for a contract at or above A\$80,000 for goods and services (or A\$7.5 million for construction) unless an exemption applies by way of Appendix ‘A’ CPRs. Note, where a standing offer ‘panel’⁵² arrangement has been established through an open tender, then each procurement from the panel is categorised as an open tender, irrespective of whether the Defence official seeks quotes from one, some or all members of the panel.

A limited tender involves Defence approaching one (‘sole source’) or more specific suppliers to make submissions in relation to a particular procurement.⁵³ This is only appropriate in instances where the procurement is below A\$80,000 for goods and services (or A\$7.5 million for construction), or an exemption (Appendix ‘A’ CPRs) applies, or in special circumstances, for example, where no submissions were received in response to an open approach to market;⁵⁴ where there are reasons of extreme urgency brought about by unforeseen events (such as where a natural disaster has occurred and Government has directed Defence to procure goods or services in support of its emergency response);⁵⁵ where the goods or services can only be supplied by a particular supplier and no alternative exists (this requires evidence and is usually the case where only one supplier can provide the goods or service due to intellectual property restrictions).⁵⁶ Justifications for using a limited tender must be reported on publicly on *Austender*. Suppliers should be aware of the rules surrounding limited tender to ensure there is no uncompetitive conduct on the part of Defence, noting, that if a limited tender process has been utilized where it should not have been, potential suppliers can file a complaint with Defence under the JR Act. Given the restricted operation of this kind of procurement method, suppliers should expect to compete for a Defence contract by way of open tender.

⁵¹ CPRs s 9.8.

⁵² Australian Government, Department of Defence, Defence Procurement Policy Manual (Webpage) <<https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/defence-procurement-policy-manual>> ‘panel’ – ‘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 specific period’.

⁵³ CPRs s 9.9.

⁵⁴ CPRs s 10.3 a(i).

⁵⁵ CPRs s 10.3b.

⁵⁶ CPRs s 10.3b.

The Additional Rules relating to some Defence procurements

CPRs included in Division 2 are additional to those which comprise Division 1. They apply in relation to procurements above the relevant threshold, being A\$80,000 for goods or services (A\$7.5 million for construction), except where an exemption applies.⁵⁷ Exemptions are provided for in Appendix 'A' of the CPRs and include procurements (and leasing) of land;⁵⁸ procurements funded by international grants (or loans or other assistance) when the provision of assistance is subject to conditions inconsistent with the CPRs;⁵⁹ procurements for the direct purpose of foreign assistance;⁶⁰ procurements of goods or services (including construction) outside Australian territory for consumption outside Australian territory;⁶¹ contracts for labour hire (noting that this does not include the engagement of consultants);⁶² procurements of goods or services from a business that primarily exists to provide services of persons with a disability.⁶³ Potential suppliers ought to be familiar with all of the exemptions since procurements to which Division 2 does *not* apply have less onerous rules governing the arrangement.

Request documentation must include specific details

Whilst all procurements must have request documentation publicized for potential suppliers to factor into a tender submission, those procurements to which Division 2 applies require specific details to be communicated. A failure to do so by Defence is subject to a complaint under the JR Act. These requisite details include a description of the nature, scope and quantity (or estimated quantity if unknown) of the goods or services to be procured as well as details of any technical specifications, conformity certification, plans, drawings or instructional materials (noting that specifications or conformity certifications must not be prescribed in order to create an unnecessary obstacle);⁶⁴ any conditions for participation (see below);⁶⁵ minimum content and format requirements;⁶⁶ evaluation criteria and the weighting of any

⁵⁷ CPRs s 10.1.

⁵⁸ CPRs Appendix A, 1.

⁵⁹ CPRs Appendix A, 3.

⁶⁰ CPRs Appendix A, 5.

⁶¹ CPRs Appendix A, 8.

⁶² CPRs Appendix A, 14.

⁶³ CPRs Appendix A, 15.

⁶⁴ CPRs ss 10.6a, 10.9-13.

⁶⁵ CPRs s 10.6b.

⁶⁶ CPRs s 10.6c.

criteria (indicating importance);⁶⁷ dates for delivery⁶⁸ and any other terms specifically relevant to a particular procurement.⁶⁹

Conditions of participation

One aspect which potential suppliers may find burdensome under Division 2 of the CPRs, are the ‘conditions for participation’ which may be imposed.⁷⁰ Such conditions are limited to those which ensure the supplier has the requisite legal, commercial, technical, and financial skills to meet the requirements of the particular procurement.⁷¹ Suppliers can expect to be required to demonstrate the efficacy of internal control measures in regard to employment practices, workplace health and safety and environmental impacts.⁷² The financial state of affairs of a supplier can, too, be critical as Defence officials can exclude a potential supplier based on poor financial status, for example, on grounds of insolvency or bankruptcy.⁷³ Imposing conditions of participation are, in effect, a safeguard imposed by Defence to minimise legal and financial risk.

Time limits

Potential suppliers need to be mindful of time limits imposed for tender submissions. The *minimum* timeframe in which to submit a tender/lodge a submission of 25 days from the date and time published on *Austender*.⁷⁴ Note, however, that this can be extended by 5 days where Defence does not make request documentation available on *Austender* and/or where Defence does not accept electronic submissions.⁷⁵ Only in special circumstances, can a time frame of less than 25 days, but no less than 10 days, be imposed by Defence. Such circumstances include where Defence has published details of the procurement in an annual procurement plan on *Austender* at least 40 days in advance (but no more than 12 months in advance);⁷⁶ when commercial goods or services are procured (includes those goods or services routinely purchased by non-government buyers for non-government purposes, including any common modifications);⁷⁷ or where a state of urgency applies.⁷⁸ In the case of

⁶⁷ CPRs s 10.6d.

⁶⁸ CPRs s 10.6e.

⁶⁹ CPRs s 10.6f.

⁷⁰ CPRs s 10.

⁷¹ CPRs s 10.15.

⁷² CPRs s 10.19.

⁷³ CPRs s 10.18.

⁷⁴ CPRs s 10.22.

⁷⁵ CPRs s 10.23.

⁷⁶ CPRs s 10.24a.

⁷⁷ CPRs s 10.24b and Appendix B.

⁷⁸ CPRs s 10.24c.

a multi-stage procurement, each approach to the market must conform with these rules on time limits.⁷⁹ Notably, late submissions must not be accepted unless by fault of Defence.⁸⁰ Delay of submission by virtue of courier delivery would not be considered mishandling by Defence.⁸¹ Understanding the timing requirements is important not only for ensuring correct tender submission but also to hold Defence to account should Defence be in breach of these rule for any given procurement, in which case, a supplier has a valid complaint under the JR Act.

Contract awards to successful tenderer

Unless a contract award to the successful tenderer is not in the public interest (e.g. unforeseen events have occurred; new information which fundamentally changes to the objects of the procurement), Defence must award the contract.⁸² Defence must not cancel a procurement on the grounds of avoiding Division 2 rules.⁸³ Again, suppliers ought to be familiar with this rule to ensure they lodge a complaint under the JR Act as a necessary action towards holding Defence to account.

Additional relevant Defence policy

Two additional key policies Defence officials have regard to when undertaking procurement-related activities include the Defence Procurement Manual (DPPM)⁸⁴ and the Procurement and Contracting Requirements (PCRs).⁸⁵ It is helpful for suppliers to know of the existence of these policy documents as they support the rules underpinning the CPRs and influence decision-making by Defence officials.

DPPM

The DPPM is a user-friendly online Manual designed to support Defence officials in carrying out a procurement of goods or services in accordance with the CPRs and other related Defence-specific requirements. It provides access links to guidance notes, templates, and training resources relevant to each phase of a procurement life cycle. Suppliers are free to access this document published by the Australian

⁷⁹ CPRs s 10.25.

⁸⁰ CPRs s 10.28.

⁸¹ CPRs s 10.29.

⁸² CPRs s 10.35.

⁸³ CPRs s 10.36.

⁸⁴ Australian Government, Department of Defence, Defence Procurement Policy Manual (Webpage) <<https://www.defence.gov.au/business-industry/procurement/policies-guidelines-templates/defence-procurement-policy-manual>>.

⁸⁵ This document is not publicly available.

Government, demonstrating transparency in regard to how Defence ‘does business’ with potential and existing suppliers. The Manual is updated regularly.

PCRs

The PCRs are not designed to provide officials with guidance on how to achieve an optimal procurement outcome. Rather, they are mandatory actions, steps, and consultations which must be undertaken as part of the procurement process, and they align with directions outlined in the CPRs. Defence officials must comply with the PCRs and retain full responsibility and accountability for decisions. Usefully, relevant PCRs are identified in the DPPM for each stage of the procurement life cycle for ease of reference. Like the DPPM, the PCRs usefully incorporate relevant law and Defence-specific policy to support appropriate decision-making by Defence officials.

Online resources

In the interest of ensuring the global community of suppliers is well informed of the Australian Government’s position on Defence contracting, this article provides links to key Australian Government webpages in Table 1 below. All links complement themes included in this article.

Table 1

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|--|---|
| <p>Australian Government, Department of Defence <i>Selling to Defence</i>. This includes links to basic information potential and existing suppliers may find useful when contracting with Defence.</p> | <p><https://www.defence.gov.au/business-industry/procurement/selling-to-defence>.</p> |
| <p>Australian Government, Department of Defence <i>Contracting with Defence</i>. This includes links to specific aspects of contracting with Defence suppliers may find helpful.</p> | <p><https://www.defence.gov.au/business-industry/procurement/contracting-with-defence>.</p> |
| <p>Australian Government, Department of Defence <i>Suppliers and Contractors Resources</i>. This includes information on Australian Defence Force packaging standards; Defence barcoding and packaging requirements; and Quality Evidence for specified items.</p> | <p><https://www.defence.gov.au/business-industry/procurement/contracting-with-defence/suppliers-contractors-resources>.</p> |
| <p>Australian Government, Department of Defence <i>Contracting Templates</i>. The links to the standard form templates is useful where suppliers want to become familiar with standard terms included in Defence contracts.</p> | <p><https://www.defence.gov.au/business-industry/procurement/contracting-templates>.</p> |

Conclusion

The purpose of this paper has been to outline key Australian law and policy applicable to the procurement of goods or services by Defence. Central to procurement-related activities are the CPRs, which may be thought of as the ‘heart’ of the Australian Government’s procurement framework. The majority of the paper, thus, explores the CPRs which govern the decision-making of a Defence official engaging in a procurement. From a supplier’s perspective, understanding the CPRs is useful for three key reasons:

- 1) It supports potential suppliers in framing tender submissions—potential suppliers can tailor submissions with an awareness of core values underpinning all Defence procurements, associated practices/processes, and requirements which apply to particular kinds of procurements (i.e. where Division 2 CPRs applies, whether open or limited tender).
- 2) It empowers potential suppliers in regard to expectations – potential suppliers can expect more onerous requirements on part of the supplier and Defence in regard to procurements over A\$80,000 for goods and services (and A\$7.5 million for construction) where Division 2 CPRs applies. Understanding what to expect may influence how a supplier prepares for and submits submission documents (i.e. knowing that Defence is likely to impose ‘conditions for participation’ for a particular procurement ensures a supplier has optimal internal control measures in place which may include being able to demonstrate the upskilling of staff in regard to workplace health and safety practices).
- 3) It empowers potential and existing suppliers to hold Defence to account by understanding that all procurement complaints will be investigated by Defence and breaches of particular CPRs are reviewable under the JR Act to ensure fair treatment.

In addition to outlining the CPRs, the article draws the reader’s attention to the DPPM and CPRs—Defence policy documents which procurement officials draw upon. Given that both have an effect on procurement-related decision making, it is useful for suppliers to understand their basic function. The paper concludes with practical summary of self-help resources the community of global suppliers may turn to in order to enhance their extant knowledge on how Defence does business.