

5.8 REPORTING REQUIREMENTS

INTRODUCTION

- 1 This chapter applies to all procurements undertaken in Defence and Defence Materiel Organisation (DMO). For information on notifications of open approaches to the market refer to chapter 5.5.
- 2 This chapter covers:
 - Annual Procurement Plans;
 - AusTender, for procurements valued at \$10,000 or above (GST inclusive);
 - Interim Defence Contract Register, for procurements valued at \$100,000 or above (GST inclusive);
 - Buy Australian for procurements valued at \$100,000 or above;
 - Consultant, Professional Service Provider (PSP), and Contractor reporting; and
 - Other reporting requirements
- 3 Please note that Defence and DMO report separately as DMO is a prescribed agency.

MANDATORY POLICY

- **Defence officials must meet the reporting requirements contained within the *Commonwealth Procurement Guidelines* and the Department of Finance and Deregulation (DOFD) Financial Management Guidance No 15 *Guidance on Procurement Publishing Obligations* (FMG 15).**
- **All new Standing Offer arrangements must be manually reported on AusTender under the Standing Offer Notices Section.**
- **DMO officers must comply with the specific procedures and reporting requirements contained within DMI (FIN) 01-0-025 Engagement of External Service Providers when engaging Consultants, Contractors and PSPs.**

OPERATIONAL GUIDANCE

ANNUAL PROCUREMENT PLANS

- 4 Australian Government Policy requires agencies, including Defence, to publish an Annual Procurement Plan (APP) on AusTender by 1 July each year, and to update it regularly to ensure it remains current. Details of the requirement, and what should be contained in the APP, are contained in FMG No 15.
- 5 DMO Procurement and Contracting Branch undertakes this task on behalf of both Defence and DMO. Information from DMO and Defence Groups on contracts with a value of \$1 Million or above is requested in May and November each year.

AUSTENDER

- 6 Paragraph 7.24 of the *Commonwealth Procurement Guidelines* (CPGs) requires that Defence and DMO separately report all contracts and agency arrangements, including standing offer arrangements and amendments to these arrangements, with a value of \$10,000 or above (including GST where applicable) on AusTender, at www.tenders.gov.au. This must be done

within six weeks of entering into the agreement. Further information regarding the reporting requirement in paragraph 7.24 of the CPGs is contained in FMG 15.

- 7 AusTender is the single location for standing offer reporting and accessing details of current Defence and DMO standing offers.

What is to be reported on AusTender

- 8 The CPGs require Defence and DMO to report:

- all contracts for the procurement of property or services, including purchase orders, oral or written contracts, leases, corporate credit card transactions, service contracts and maintenance agreements with a value of \$10,000 or more. Where the contract is raised under a standing offer deed, reference must also be made to the appropriate Standing Offer Number – Identification (SON-ID). For further information on SON-ID refer to paragraph 20;
- all standing offers deeds;
- contract amendment(s) with a value of \$10,000 or more. The notification should not include the original contract value as that should have been reported within the first six weeks of the contract date; and
- contracts raised against a standing offer where the value of the contract is or exceeds \$10,000.

Contract value on AusTender

- 9 For reporting purposes, the contract value is the total value of the Contract, including GST where applicable (*FMG 15* Paragraph 5.15). This does not take into account any options, extensions, renewals, or other mechanisms that may be exercised at a future date to increase the value of the contract.

Reporting of contract amendments on AusTender

- 10 Contract amendments and amendments to contracts raised under standing offer deeds (arrangements) which, when added to the previous value, increase the value of the contract to \$10,000 or greater, are required to be reported as if it was a new contract. For example, a contract with an initial value of \$8,000 would not be reported, however if an amendment or a series of amendments occur that increases the total value of the contract to \$10,000 or more, this contract would then have to be reported. The amended contract should be reported at the time that the amendment takes the total value of the contract to \$10,000 or more. The contract value to be reported will be the total value of the contract.
- 11 Contract amendments and amendments to contracts raised under standing offer arrangements, where the value of the amendment is equal to or greater than \$10,000, are required to be reported separately. Only the additional value to the contract or standing offer, brought about by the contract amendment, is to be reported not the new total value of the contract.
- 12 There is no requirement to report price variations resulting from exchange rate fluctuations or increases in the cost of labour and materials which fall within the approved terms of a contract. Price variations which do not fall within the approved terms and conditions will constitute an amendment and should be reported where the additional expenditure is equal to or greater than \$10,000.
- 13 Where an option for further quantities is exercised in a contract, the additional expenditure must be reported where it is equal to or greater than \$10,000. Only the additional value to the contract brought about by the exercise of the option to purchase the further quantities is to be reported, not the new total contract price unless the initial value of the contract was less than \$10,000 and has therefore not been previously reported.

What is not to be reported on AusTender

- 14 The following arrangements must not be reported in AusTender as per FMG 15:
- grants (whether in the form of a contract or conditional gift);
 - payments of monthly or other accounts payable (invoices) which are payable under a contract which has previously been reported;
 - payments or fund transfers, not in return for the provision of goods or services, e.g. between agencies, or within agencies (and are therefore not a procurement);
 - contracts for the sale or disposal of public property or assets (such as a contract arising from the sale of Commonwealth land by tender);
 - tax payments made to the Australian Taxation Office, including fringe benefit tax, that are not part of a payment made in exchange for property or services;
 - contracts for investments or divestment as described in the CPGs;
 - statutory appointments, appointments made by a Minister using the executive powers (for example, the appointment of a person to an advisory board) or payments to employees, e.g. travelling allowances or other allowances to Commonwealth public servants;
 - petty cash reimbursements for officers who have paid for supplies from their own funds (except where the cost of those supplies is \$10,000 or more);
 - refunds to customers for a prior payment made for a product or service;
 - payments to credit card providers against amounts due;
 - creation of multi-use lists, as these do not constitute a procurement in their own right but may be utilised for a subsequent procurement process; and
 - supplies procured outside Australia to be used completely outside of Australia.
- 15 To ensure that the arrangements listed in paragraph 13 are not reported in AusTender the following gazettal blocking reasons are used in the Resources and Output Management and Accounting Network (ROMAN) system:
- EM = Employee transactions but not procurement reimbursements;
 - EX = Chief Exec approval for Exemption under FOI Act 1982;
 - GR = Grants;
 - IN = Contracts for investment or divestment;
 - NO = The contract is not in return for property or services;
 - OS = Procurement made overseas and will be used overseas only;
 - PU = Contract is confirmed already published in AusTender;
 - RF = Refund to customers re prior receipts for property or services;
 - SA = Contract for sale or disposal of public property or assets; and
 - TX = Tax payment made to the Australian Taxation Office.

Exemption from reporting on AusTender

- 16 The Secretary or CEO DMO may direct in writing that certain procurement contract details are not to be published on AusTender as they are exempt from disclosure under the *Freedom of Information Act 1982* (Cth) (FOI Act). This power has been delegated in both Defence and

the DMO. The delegation of exempt notification of contract details is outlined in FINMAN 2 – *Schedule F2-6* (for Defence) and DMO CEI 2.1 Annex F to (for DMO).

- 17 All requests for exemption of a procurement activity from inclusion on AusTender are to receive approval from the appropriate delegate prior to the taking of any action which would prevent that procurement activity from being published on AusTender.
- 18 Defence is required, under the *Public Service Act 1999* (Cth) section 63, to report such exempt procurement activities in the Defence Annual Report. Information will be reported in the annual report by Group and will state:
- the section of the FOI Act the exemption relates to;
 - the number of activities exempt under each section; and
 - the total value of the exemptions for each section.
- 19 Procurement officers seeking to exempt a DMO contract from reporting (gazettal) should submit a request in accordance with the current DPPI on Requesting Professional Services from the Office of Special Counsel Defence Materiel Organisation.

Who is responsible for reporting on AusTender

- 20 The Contract Approver is responsible for ensuring the reporting of contracts, agency agreements, standing offers, and amendments to these arrangements with a value of \$10,000 or above.
- 21 Although this obligation does not necessarily mean that the specified delegate must generate the report to AusTender themselves, the specified delegate is responsible for ensuring that the reporting activity occurs. Where responsibility for reporting is assigned to another officer, the specified delegate must ensure that all relevant information is provided to, or is available to, the action officer so as to ensure that all reporting requirements are met within the required timeframe.
- 22 For Foreign Military Sales acquisitions, the total value of the Foreign Military Sales case must be reported. Individual requisitions against that case need not be reported. Responsibility for the reporting of Foreign Military Sales cases, and activities conducted through Counsellor Defence Materiel (CONDMAT) offices, rests with the Contract Approval.

How contract information is reported on AusTender

- 23 In Defence and DMO the information required by AusTender is provided via the ROMAN system, the Standard Defence Supply System (SDSS) and the Card Management System (CMS). The completion of the correct fields in ROMAN, SDSS, and CMS will result in the contract, and contract amendment, information being sent to AusTender.
- 24 Contracts should be reported in ROMAN via the SA405 form. If a contract has two or more purchase orders then an outline agreement must be created. This can be done via the SA405 form, which is available from Webforms on the DRN. The SA405 form contains the necessary fields to provide the information required by AusTender. If the contract has been created under a standing offer arrangement the Standing Offer Number (SON-ID) allocated by AusTender and the Outline Agreement number created for the supplier are also to be identified in the SA405.
- 25 The reporting function on ROMAN is called gazettal. Any questions relating to the gazettal function on ROMAN should be directed to the ROMAN help desk on free call 1800 636 603.

Reporting of Standing Offer notices on AusTender

- 26 DOFD requires that all new standing offer arrangements must be manually reported on AusTender under the Standing Offer Notice Section. There is no requirement to report a value against the new standing offer in AusTender. This is the responsibility of the Contract

Approver. As part of this reporting process AusTender issues a unique Standing Offer Notice ID (SON- ID).

- 27 All new standing offers also require an Outline Agreement to be created in ROMAN for each supplier under the standing offer. Separate Outline Agreements must be established for each contractor under a standing offer panel. Where both Defence and DMO can access the standing offer two Outline Agreements must be created for each contractor. Further information on Outline Agreements can be obtained from the following FinD website links http://intranet.defence.gov.au/find/skilling/documents/Contracts/Business_Process_for_OA.pdf, http://intranet.defence.gov.au/find/skilling/documents/Contracts/CON_M3_T3_Step_create_a_so.pdf
- 28 Each contract created under a standing offer (order) that is valued at \$10,000 or above, must be reported in ROMAN referencing the SON ID, which was issued by AusTender at the time that the standing offer arrangement was first reported, and the relevant Outline Agreement number.

INTERIM DEFENCE CONTRACTS REGISTER

- 29 An Interim Defence Contracts Register (IDCR) has been developed to capture the information required by Senate Order 192. For further information on Senate Order 192 consult Financial Management Guidance No 8 – *Listing of Contract Details on the Internet (Meeting the Senate Order on Departmental and Agency Contracts)* – January 2004.

What is to be reported on the IDCR

- 30 To meet the requirements of Senate Order 192 officers are required to enter information into the IDCR for the following categories of ongoing Defence contracts and all new contracts that are valued at \$100,000 (including GST) or above:
- agreements between Defence or DMO and an Australian Government body that is a separate legal entity to the Commonwealth of Australia that are executed as a contract or a deed;
 - contracts for consultancy services;
 - contracts for the purchase of goods;
 - contracts for the purchase of services;
 - contracts for in-service support;
 - contracts for the purchase of land or buildings;
 - contracts for research;
 - deeds, including confidentiality and intellectual property deeds;
 - disposal contracts¹;
 - employment contracts (other than *Certified Agreements* or *Australian Workplace Agreements*);
 - financial guarantees and performance guarantees;
 - Foreign Military Sales procurements;
 - grants and funding arrangements that have a contract attached;

¹ Although disposals are not required to be reported on AusTender this information is required for Senate Order 192 compliance.

- head agreements executed as a contract or a deed;
 - heads of agreement/letter of intent that are executed as a deed;
 - lease arrangements;
 - orders placed under a standing offer even if the standing offer was signed prior to 1 January 2003;
 - purchase order without a formal contract; and
 - standing offers executed as a deed.
- 31 Contracts that have been exempted from Gazettal under the FOI Act subsection 33(1) should not be entered into the IDCR.
- 32 Data on applicable contracts should be entered into the IDCR following contract signature and in parallel with entry of data into ROMAN, SDSS and/or the Buying Australian database as discussed in Chapter 3.12.
- 33 Responsibility for ensuring that all relevant contracts are entered into the IDCR rests with the Contract Approver, although this officer need not necessarily undertake the actual data entry.
- 34 Where one Defence Group carries out a procurement activity on behalf of another Defence Group, the Contract Approver must determine the responsibility for IDCR data entry.

Accessing the IDCR

- 35 The IDCR can be accessed through the Defence Intranet site at [http://defrla06/DCR/DCR.nsf/\\$DBReference/What's+New?OpenDocument&item=changed#para1](http://defrla06/DCR/DCR.nsf/$DBReference/What's+New?OpenDocument&item=changed#para1) Procurement officers who require data entry rights for the IDCR should use the contact support link on the IDCR webpage.

Recording of confidentiality on the IDCR

- 36 The IDCR requires answers to the following questions relating to confidentiality:
- a) does the contract contain any confidentiality provisions that protect information in the contract?; and
 - b) does the contract contain any confidentiality provisions that protect information arising from the carrying out of the contract?
- 37 Where a commercial-in-confidence or other confidentiality provision is included in the contract, e.g. *ASDEFCON* (Strategic Materiel) clause 10.4:
- the Yes option should be selected for the first question. This will generate a pop up screen containing the four questions that comprise the confidentiality test. This confidentiality test is the same test as outlined in Financial Management Guidance (FMG) No 3 – *Guidance on Confidentiality in Procurement – July 2007*;
 - the reference and title of the relevant contract provision should be inserted, e.g. clause 10.4 – Commercial in Confidence Information;
 - the first confidentiality reason should be selected from the list, i.e. commercially sensitive information, disclosure of which is not in the relevant party's best interest; and
 - the contractor and Commonwealth should be listed as the relevant parties to whom the information is confidential.
- 38 Where the contractor, Defence or a third party has requested that a provision of the contract be kept confidential:
- the Yes option should be selected for the second question; and

- the following information should be included and based upon the information contained in the confidentiality attachment of the contract:
 - the references and titles of the relevant contract provisions, e.g. clause 8.5 – Limitation of Liability, Annex F to Attachment B - Schedule of Rates;
 - the appropriate confidentiality reason(s); and
 - the party to whom the provision is confidential, e.g. the contractor, the Commonwealth and/or a relevant third party.

39 Where an order is placed under a standing offer, these questions should be answered following review of both the provisions of the order and the provisions of the standing offer under which the order was created.

Update of IDCR information

40 The information included in the IDCR will be current at the time of contract signature and should then be updated throughout the life of the contract. The IDCR should be updated when the value of the contract changes, the location of the copy of the contract changes or the confidentiality details change. The value of the contract entered in the IDCR should be changed whenever the change exceeds \$10,000 for contracts already entered or where the contract change raises the value above the \$100,000 threshold for contracts not yet entered, even if the original contract was signed prior to 1 January 2003.

BUY AUSTRALIAN

41 Defence is required to report all procurement activities of \$100,000 and over on the Defence Buying Australia website, refer to Chapter 3.12.

CONSULTANT, PROFESSIONAL SERVICE PROVIDER AND CONTRACTOR REPORTING

42 Defence is required to report on AusTender, in the IDCR, and the Defence and DMO Annual Reports if a contract is a consultancy contract. As there are areas of overlap between the AusTender, IDCR, and the Annual Reports, it is necessary to maintain consistency, completeness, and accuracy of consultancy contracts reported in all three. For example:

- a consultancy contract with a value of more than \$100,000 should be reported in all three systems ; and
- a consultancy contract with a value of more than \$10,000 should be reported in the Defence and DMO Annual Report and AusTender via ROMAN.

43 Annual Report information is collected on a monthly basis and reported to the Statutory Reporting and Accountability Section within Ministerial Support and Defence Governance.

44 For the purposes of determining whether a contractor is regarded as a Consultant, Contractor, or Professional Service Provider (PSP) the following definitions should be applied. These definitions are based on those contained within the Defence publication *Guidelines for the Recording and Reporting of Consultants and Professional Service Providers* and DMO DMI (FIN) 01-0-025 - *Engagement of External Service Providers*.

- **Consultants** are external professionals contracted to deliver an intellectual output to assist with management decision making of the agency. For example, research or investigation into a particular problem and the provision of a set of recommendations.
- **PSP** are individuals with specialist skills contracted to fill a line position.
- **Contractors** are organisations or individuals contracted to deliver goods and/or services.

- 45 DMO has specific procedures contained within DMI (FIN) 01-0-025 - *Engagement of External Service Providers* that must be complied with when engaging a Consultant, Contractor or PSP.
- 46 PSPs may be engaged on either short term or long term contracts. Care should be taken when engaging PSPs that at the completion of their contract, Defence is able to provide the services formerly provided by the PSP, if those services will still be required. This can be achieved in a number of ways, including the inclusion of a clause in the contract to transfer skills to Defence employees.

OTHER REPORTING REQUIREMENTS

- 47 In addition to the above requirements, Defence is also required by the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) to provide on an annual basis, information about Defence actions relating to ecological sustainable development which affects the environment. For further guidance, refer to the *Defence Environment Manual*.
- 48 Under the *National Environment Protection Measures (Implementation) Act 1998* (Cth), where Defence carries on activities to which the National Environmental Protection Measures (NEPMs) apply, Defence is required to report annually on the implementation of those NEPMs. For further guidance, refer to the *Defence Environment Manual*.
- 49 Individual Group Heads may determine additional requirements that need to be reported within their Groups. These requirements will only apply within the Group identified and are in addition to any other portfolio reporting responsibilities.

KEY REFERENCES

- *Freedom of Information Act 1982 (Cth)*
- *Commonwealth Procurement Guidelines*
- **DOFD Financial Management Guidance No 8 - *Guidance on the Listing of Contract Details on the Internet (Meeting the Senate Order on Departmental and Agency Contracts) – January 2004* at <http://www.finance.gov.au/ctc/>**
- **DOFD Financial Management Guidance No 15 - *Guidance on Procurement Publishing Obligations July 2007* at <http://www.finance.gov.au/ctc/>**
- *Requirements for Departmental Annual Reports – available at <http://www.pmc.gov.au/publications/index.cfm>*
- ***DMO DMI (FIN) 01-0-025 Engagement of External Service Providers***
- **Defence Chief Finance Officer Find website at <http://intranet.defence.gov.au/find/>**
- **Procurement and Contracting website at <http://intranet.defence.gov.au/dmoweb/sites/pcb/comweb.asp?page=71747>**