ACT Government

PROCUREMENT, CONTRACT MANAGEMENT AND ASSURANCE FRAMEWORK

JUSTICE AND COMMUNITY SAFETY DIRECTORATE

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DEFINITION OF TERMS

Term	Definition
ACTIA	ACT Insurance Authority
ACTGS	ACT Government Solicitor
APP	Annual Procurement Plan
Charter	Charter of Procurement Values
CWI	Capital Works, and Infrastructure
DGI	Director-General Instructions
Direction	The Government Procurement (Charter of Procurement Values) Direction 2020
Director	Director of Procurement and Contract Management with Corporate Services
EFT	Electronic Funds Transfer
FMA	Financial Management Act 1996
GP Act	*Government Procurement Act* 2001
GST	Goods and Services Tax
Guide	Procurement Values Guide
ICT	Information Communication Technology
JACS	Justice and Community Safety Directorate
LIPP	Local Industry Participation Policy
PAC	ACT Legislative Assembly Public Accounts Committee
PC (Followed by numerical)	ACT Government Procurement Policy Circular/s
PSMA	*Public Sector Management Act* 1994
PSF	Protective Security Framework
Regulation	*Government Procurement Regulation* 2007
REOI	Request for Expression of Interest
RFP	Request for Proposal
RFQ	Request for Quotation

Term	Definition
RFT	Request for Tender
SERBIR	JACS Senior Executive for Business Integrity Risk
SLJC	Secure Local Jobs Code 2019
SME	Small to Medium Enterprise
TRIPARTITE AGREEMENT	An agreement consisting of three parties
WHS Act	*Work Health and Safety Act 2011*
WHS	Work Health Safety

OVERVIEW

The Procurement, Contract Management and Assurance Framework provides a framework for undertaking procurement, contract management and related compliance activities in the Justice and Community Safety (JACS) Directorate.

The Framework has been developed in consideration of the specific Acts, Regulations and Policies which govern procurement in the Territory and in JACS. The Framework incorporates recommendations resulting from internal audits on procurement and contract management, and the Australian National Audit Office's Better Practice Guide on Developing and Managing Contracts.

The Framework also incorporates the new Government Procurement (Charter of Procurement Values) Direction 2020.

The Framework has been formulated as a set of principles for all business units in JACS to meet ACT Government standard procurement and contract management requirements.

POLICY STATEMENT

JACS is committed to implementing a best practice approach within procurement, contract management and related compliance activities. JACS commits to abiding by the principles outlined in this Framework and related legislation and whole of government policies, frameworks, and guidance material.

1. OBJECTIVES

The purpose of the provisions contained in this Procurement, Contract Management and Assurance Framework are to:

a. ensure the transparency of Government procurement through the application of standard procurement procedures

b. achieve uniformity of the procurement procedures

c. achieve economy and efficiency in the procurement of goods, works and services, and

d. ensure fair and equal access to the suppliers, consultants, and contractors for award of contracts for supply of goods, services or works.

2. PRINCIPLES

Agencies must undertake Government procurement in a manner that is consistent with the following principles and legal requirements:

a. value for money

b. accountability and effective competition

c. assessing and managing risk

d. probity and ethical behaviour

e. optimising whole of life costs

f. providing local suppliers that wish to do business with Government the opportunity to do so through the Local Industry Participation Policy

g. providing opportunities for Aboriginal and Torres Strait Islander enterprises through the Aboriginal and Torres Strait Islander Procurement Policy

PART 1 - PROCUREMENT

1. ACT GOVERNMENT PROCUREMENT

1.1 RELEVANT LEGISLATION

1.1.1 Procurement in the Territory is governed by specific Acts and Regulations. These are the *Government Procurement Act 2001* (the GP Act), the *Government Procurement Regulation 2007* (the Regulation), the Secure Local Jobs Code 2019, The *ACT Work Health and Safety Act 2011* (the WHS Act) and the ACT Work Health and Safety Regulation 2011 (the WHS Regulation) all of which can be accessed from the ACT Legislation Register.

1.2 GOVERNMENT PROCUREMENT ACT 2001

1.2.1 In summary the GP Act defines 'procurement' as the process of:

a. acquiring goods, services, works or property by purchase, lease, rental, or exchange

b. disposing of goods, works or property including by sale.

1.2.2 The Act does not apply to the grant of a licence, lease of land, or to the sale of a lease of land under the *Planning and Development Act 2007*.

1.3 GOVERNMENT PROCUREMENT REGULATION

1.3.1 The GP Act is supported by the Regulation. Among other things, the Regulation sets quotation and tender thresholds for Territory procurement activities and prescribes information that should be kept confidential including, to avoid significant adverse effect upon the financial or property interests of the Territory and its suppliers and or where disclosure of particular information would unreasonably constrain the development or consideration of policy alternatives by government.

1.4 GOVERNMENT PROCUREMENT (CHARTER OF PROCUREMENT VALUES) DIRECTION 2020

1.4.1 On 8 September 2020, the Government Procurement (Charter of Procurement Values) Direction 2020 (Direction) was introduced and is under section 13 of the Regulation. It applies to all new procurements regardless of dollar value.

1.4.2 The Direction incorporates the Charter of Procurement Values (Charter). The Charter aims to reflect community standards by expressing the ACT Government's expectations of itself and its suppliers, through six procurement values that the ACT Government seeks to embed in its procurement. The Charter must be considered in the management of procurement activities, in addition to any legislative requirements and relevant policies that may be applicable. From 1 January 2021, Procurement Values that have been applied in any procurement process must also be reported in all notifiable contracts on the ACT Government Contracts Register.

1.4.3 The ACT Government is committed to considering social, ethical, economic, and environmental procurement practices at every stage of procurement lifecycle - "Procuring the right things, in the right way, from the right people for the right reasons". By actively

considering the Procurement Values, Government will ensure that the efficient and effective management of public resources and the pursuit of value for money reflects the current values of the ACT Government and the community.

1.4.4 More information on the Charter can be found on the Procurement ACT website.

1.5 THE CHARTER OF PROCUREMENT VALUES (GUIDE)

1.5.1 The Procurement Values Guide (Guide) provides detailed information and guidance to Territory Entities and Suppliers on the application of the Direction and the Procurement Values to individual procurements.

1.5.2 The six Procurement Values are:

a. Aboriginal and Torres Strait Islander People's Economic Participation

This value aims to increase the economic participation of Aboriginal and Torres Strait Islander Enterprises.

b. Business Development and Innovation

This value aims to build stronger communities by ensuring local businesses have equal opportunities to compete for government contracts arising from procurement.

c. Diversity, Equality, and Inclusion

This value aims to build capacity for people who face social barriers and barriers to equal opportunity in employment, such as people with disability, culturally and linguistically diverse people, children, and young people, older Canberrans, women, veterans and LGBTIQ+ people.

d. Environmental Responsibility

This value aims to reducing the draw on natural resources, consumption, and greenhouse gas emissions in procurement.

e. Fair and Safe Conditions for Workers

This value aims to ensuring that workers in businesses that have ACT Government contracts, have a fair and safe work environment.

f. Transparent and Ethical Engagement

This value aims to engage only with suppliers that demonstrate business practices that are transparent, honest, ethical, and safe including their supply chains.

1.6 ACT WORK HEALTH AND SAFETY ACT 2011

1.6.1 In summary, the WHS Act sets specific due diligence obligations on a person or persons conducting a business or undertaking (PCBU). A PCBU must ensure, so far as reasonably practicable, the health and safety of:

a. workers engaged, or caused to be engaged, by the person;

b. workers whose activities in carrying out work are influenced or directed by the person, while the workers are at work in the business or undertaking.

1.6.2 The WHS Act also states that a PCBU must also ensure that the Due Diligence requirements prescribed in Division 2.4, section 27 of the WHS Act are applied and risk management obligations are met. This includes applying safety in design principles.

1.7 GOVERNMENT PROCUREMENT (SECURE LOCAL JOBS) CODE 2019

1.7.1 All procurements for construction, cleaning, security, and traffic management require:

a. tenderers to have a Secure Local Jobs Code Certificate for a response to be accepted

b. a Labour Relations, Training and Workplace Equity Plan for cleaning, security or traffic management work worth more than $25,000 GST inclusive

c. a Labour Relations, Training and Workplace Equity Plan for construction work worth more than $200,000

d. standard Secure Local Jobs contract terms in contracts and purchase orders.

1.7.2 Services worth $200,000 or more, where labour is 50% or more of the cost, will require a Secure Local Jobs Code Certificate from 7 November 2019 unless listed as an excluded service.

1.7.3 Businesses will need to meet workplace standards in the Secure Local Jobs Code and have a Secure Local Jobs Code Certificate to respond to a procurement request and for the duration of the project. Subcontractors used on the project will also need a Code Certificate unless they are an excluded service.

1.7.4 On 1 February 2022, the Ethical Treatment of Workers Evaluation was introduced to strengthen ACT Government procurement practices and ensure contracts are awarded to businesses that meet the high labour standards our community expect.

1.7.5 The Ethical Treatment of Workers Evaluation ensures supplier behaviour and business practices align to the Fair and Safe Conditions for Workers Procurement Value.

1.7.6 Under the Ethical Treatment of Workers Evaluation tenders will be assessed against the Fair and Safe Employment Criteria.

1.7.7 The Ethical Treatment of Workers Evaluation applies to any procurement:

a. to which a Secure Local Jobs Code (SLJC) applies

b. that has a total estimated value of $200 000 or more.

1.7.8 Further information can be found on the Secure Local Jobs webpage.

1.8 ABORIGINAL AND TORRES STRAIT ISLANDER PROCUREMENT POLICY

1.8.1 The ACT Government launched the Aboriginal and Torres Strait Islander Procurement Policy on 31 May 2019. The ACT Government's aim for the Policy is to support the objectives of the ACT Aboriginal and Torres Strait Islander Agreement 2019-2028. The Agreement includes the focus area of employment and economic participation for Aboriginal and Torres Strait Islander peoples in the Canberra Region.

1.8.2 The ACT Government has identified two target areas that offer the greatest opportunity for Aboriginal and Torres Strait Islander enterprises:

a. opportunities that Aboriginal and Torres Strait Islander small to medium enterprises (SMEs) have the capacity and capability to deliver individually, and

b. opportunities for Aboriginal and Torres Strait Islander enterprises as sub-contractors on large projects.

1.8.3 The Aboriginal and Torres Strait Islander Procurement Policy instigates a cultural change within the Territory to reduce some of the barriers to government procurement encountered by Aboriginal and Torres Strait Islander enterprises. Each Territory Entity is required to identify and act upon opportunities for Aboriginal and Torres Strait Islander enterprises in its procurement activities.

1.8.4 Further information can be found on the Procurement ACT website for Aboriginal and Torres Strait Islander Procurement Policy.

1.9 ACT GOVERNMENT PROCUREMENT CIRCULARS AND E-LEARNNG MODULES

1.9.1 Procurement Circulars are issued to transmit policies, procedures, directions, guidance, and instructions in relation to procurement and contract activities.

1.9.2 A full list of all current ACT Government Circulars including procurement factsheets and better practice guidance can be found at Procurement ACT.

1.9.3 Procurement ACT has designed e-learning Modules (Modules) that support the Territory to deliver better procurement outcomes.

1.9.4 These e-learning Modules cover topics such as Government Procurement (Charter of Procurement Values) Direction 2020 (Direction), procurement delegations, value for money, probity and Aboriginal and Torres Strait Islander Procurement Policy. These Modules are aimed at Territory officers who are undertaking or planning to undertake procurement activities.

1.9.5 Please login to HRIMS Learning to enrol in these Modules. For further information contract Procurement ACT at procurementACT@act.gov.au

1.10 PROCUREMENT THRESHOLDS

1.10.1 The table below outlines the minimum procurement process that Territory entities are generally required to follow, depending on the anticipated whole of life contract value (including GST), as prescribed in the Regulation.

1.10.2 These are the minimum process requirements that procurement officers are required to follow. Ultimately the procurement activity risks, and risk level will decide whether a broader approach to market is appropriate in the circumstances.

1.10.3 Where an estimated value is determined and is under the stated threshold by 10 per cent or less, the basis for selecting that estimated value should be recorded in accordance with the Territory Records Act for audit purposes before undertaking the procurement process. This is because there is a possibility that when the final offers are received, the actual preferred offer may exceed the next threshold. This could create a perception that the officer managing the process may have underestimated to avoid the requirements of a higher threshold. JACS records management system is TRIM.

1.10.4 Please note that procurement activities where the total dollar value for the required goods / service and or works is unknown, then the activity is in the highest procurement threshold of $200,000 or more. However, in instances where procurement values are unknown, it is considered best practice to undertake further market research and then approach market with a Request for Expression of Interest (REOI) and or a Request for Proposal (RFP). This will allow the Territory to form an estimated benchmark for potential cost for the proposed activity and to gauge market interest.

Estimated total value of contract (including GST)	Minimum procurement process
Under $25,000	**JACS requires at least 1 written quote and any conflict of interests declared, considered, and recorded.** Currently the Regulation requires at least 1 oral quotation from a supplier for the procurement of goods, services or works with a total estimated value of less than $25,000. However, for all JACS procurement activities, obtaining written quotation(s) is 'best practice' and should be obtained in all but exceptional circumstances. Key steps 1. Statement of Requirements (SOR) 2. Procurement Values – consider how they are being applied 3. Risk Management Plan (if required) 4. Contract/purchase order Timeframe 4-6 weeks
$25,000 and less than $200,000	**Must seek at least 3 written quotations against requirements** from suppliers for the procurement of goods, services or works where the total estimated value is $25,000 or above and less than $200,000.

Estimated total value of contract (including GST)	Minimum procurement process
	To ensure full compliance it is recommend staff use of the whole of government procurement tools (e.g. PACT templates) to facilitate the process. Noting supplementation of an evaluation plan and report may be required to ensure **Value for Money** assessment is robust. Key steps 1. Register the procurement and obtain a Procurement Unique Identifier (PUI) 2. Procurement Plan Minute (PPM) 3. Procurement values – consider how they are being applied 4. Procurement templates • Statement of Requirements (SOR) • Risk Management Plan • Evaluation/Negotiation Plan • Evaluation report • Letters 5. Contract Timeframe 3 - 6 months **Note:** JACS staff involved in the procurement process must declare any conflicts of interest. The Procurement Chair is to note these and record and manage them as part of the procurement process.
$200,000 or more	Must invite public tenders for the procurement of goods, services, works with a total estimated value of $200,000 or more. To ensure full compliance it is recommended to engage delivery partner (e.g. Procurement ACT for Goods and Services and Major Projects Canberra for Construction) to facilitate the process on behalf of the Directorate. Key steps 1. Register the procurement and obtain a Procurement Unique Identifier (PUI) 2. Statement of Requirements (SOR) 3. Procurement values – consider how they are being applied 4. Procurement Plan Minute (PPM) 5. Risk Management Plan 6. Evaluation/Negotiation Plan 7. Evaluation report

Estimated total value of contract (including GST)	Minimum procurement process
	8. Letters 9. Contract Timeframe 6-12 months **Note**: **Conflict of interest declarations must be monitored and considered by the delegate <u>throughout</u> the procurement and records kept accordingly.**

2. GOODS AND SERVICES PROCUREMENT - ROLE AND RESPONSIBILITIES

2.1 Goods and Services Procurement is a division of Procurement ACT in the Chief Ministers, Treasury and Economic Development Directorate (CMTEDD) and provides a range of tendering, contract, procurement policy and risk management services and advice to Territory entities and the community.

2.2 For goods and services procurements, Procurement ACT provides advice on and/or facilitates the procurement process for all procurement activities considered high risk or complex or with a total estimated value of $200,000 or more. This includes:

a. preparing procurement plans, obtaining quotes, and facilitating tenders

b. assisting in evaluating tenders and quotations

c. preparing contracts for goods and service procurements, in consultation with the ACT Government Solicitor (ACTGS) as required or instructed by the Territory entities, and

d. maintaining the ACT Government Contracts Register for contracts of $25,000 or more.

2.3 Procurement ACT also:

a. establish and manage whole-of-government contracts and panel arrangements;

b. develop procurement policies,

c. develop procurement templates; and

d. provide secretariat services to the Government Procurement Board.

2.4 Complete Records are required to be retained by the JACS delegate. JACS officers and Procurement ACT are to ensure all records are retained by JACS, including the tender records.

3. GOVERNMENT PROCUREMENT BOARD ROLE AND RESPONSIBILITIES

3.1 The GP Act prescribes the Government Procurement Board's functions and responsibilities, which are to:

a. review and give advice to Territory entities on procurement issues

b. review and give advice on:

i. procurement proposals and activities referred to the board by a Minister or responsible Director-General or Chief Executive, or

ii. procurement proposals for procurement matters declared by the Minister

c. review procurement proposals of Territory entities in accordance with the Regulation consider, advise on and, if appropriate, endorse procurement practices and methods for use by Territory entities

d. provide advice to the Minister on any issue relevant to the procurement activities of Territory entities or the operation of the Act, and

e. exercise any other function given to the board under the Act or any other Territory law.

3.2 Under the Regulation, the Government Procurement Board must review procurement proposals for procurement activities with a total estimated value of:

a. $5 million or more for Territory entities which are administrative units, unless covered by an endorsed Strategic Procurement Plan

b. $1 million or more for Territory entities other than administrative units (e.g. Public Trustee for the ACT) - unless the proposed procurement is covered by an endorsed Strategic Procurement Plan

c. $1 million or more for information and communication technology (ICT) procurements that include an element of system development or redesign, and

d. $1 million or more for all disposal activities.

3.3 Further guidance material and tools can be found on Procurement ACT's website.

4. GOVERNMENT PROCUREMENT BOARD TWO PASS PROCESS

4.1 Goods and Services procurements valued over $5 million and ICT procurements with an element of system development and a value of over $1 million, are subject to a two-pass review by the Board. This provides directorates and Delegates with strategic input from the Board early in the planning process when establishing significant Territory commitment associated with key procurements, and to minimise time and efforts in developing procurement documentation prior to the Board's initial consideration. The first pass is a Strategic Review where directorates outline the procurement options that have been considered and which one may best support the strategic objectives, identify strategic risks, opportunities for cross-agency collaboration, and high-level contract management principles.

4.2 Once the Strategic Review has been endorsed by the Board, directorates (and, in particular, the procurement Delegate) will have confidence that they have a supported approach and can proceed with the development of the procurement documentation.

4.3 The second pass is a Procurement Review where the Board examines the details of the procurement as captured by the documents, in particular the governance arrangement and contract management details. As well as looking to validate the strategy originally tabled, the

Board will be looking for evidence that its guidance and/or comments provided at the Strategic Review have been appropriately considered and actioned. This review will check that the procurement meets the relevant Territory's legislative and policy requirements.

4.4 Procurement ACT, Goods and Services Branch will provide templates for both review stages and provide assistance to directorates throughout the process.

4.5 Based on the Annual Procurement Plan (APP) data, Procurement ACT will contact business units directly if they have a procurement scheduled which will need to go through a two-pass review. If you have a procurement which you are not sure is on the APP or have any questions, send an email to goodsandservices@act.gov.au and a Procurement Officer will contact you.

5. JUSTICE AND COMMUNITY SAFETY DIRECTORATE PROCUREMENT

5.1 JUSTICE AND COMMUNITY SAFETY DIRECTORATE PROCUREMENT PROCESSES

5.1.1 All staff involved in procurement activities must be aware of, and adhere to the appropriate procurement processes and obligations, noting that business units/agencies may have implemented specific guidelines or requirements.

5.1.2 The need for the goods, services or works must be clearly identified and approval sought from an appropriate Delegate to commence a procurement process, regardless of value. This includes consideration of internal capability or leveraging existing contracts or arrangements where appropriate.

5.1.3 For all JACS procurement activities, obtaining written quotations is 'best practice' and should be obtained in all but exceptional circumstances. Records must be kept appropriately for all procurement activities.

5.2 PROCUREMENT REPORTING AND EXEMPTION REVIEWS

5.2.1 The Office of the Chief Operating Officer within Corporate Services provides a reporting function for the Directorate (e.g. ACT Legislative Assembly Public Accounts Committee, Annual Procurement Plan, JACS Annual Report – Government Contracting etc). In conjunction with Procurement ACT, the Director of Goods and Services Procurement can assist Business Units in facilitating a compliant process when submitting procurement exemptions (Select, Single Select and Confidential Text) through TRIM to the Director General.

5.3 VALUE FOR MONEY

5.3.1 The GP Act states that a Territory entity must pursue value for money in undertaking any procurement activity. Documented evidence of value for money assessment is required, including for single select procurements. In pursuing value for money, defined in the GP Act to mean the best available procurement outcome, the Territory entities must have regard to the following:

a. probity and ethical behaviour
b. management of risk (including WHS risk)
c. open and effective competition
d. optimising whole of life costs
e. anything else prescribed by the Regulation.

5.3.2 To achieve best value for money outcomes when evaluating suppliers' quotations/tenders, decisions must be made based on an assessment covering WHS risks and all the costs and benefits associated with each procurement activity. This may include considering such factors as but not limited to:

a. any risks associated with the proposal, including WHS risks
b. the supplier's experience in related delivery
c. the supplier's performance and financial history
d. the proposed methodology
e. fit for purpose considerations of the proposed Goods, Services and or works
f. the quality of the proposed Good and/or Service
g. environmental factors / considerations (energy efficiency etc)
h. the whole of life costs of the proposal (including but not limited to any ongoing maintenance costs, disposal costs, licensing costs, consumable costs, and sustainability benefits)
i. the flexibility of the proposal to adapt to possible change and other requirements (timing, Government / Cabinet decisions etc).

5.3.3 All purchasing is to be conducted in an environment where "open and effective" competition is a prime operating principle. The objective of this principle is to ensure equality of treatment to potential suppliers and the highest level of cost effectiveness in the procurement outcome. To ensure full compliance it is always recommended to utilise whole of government tools and templates, and where the procurement is complex or high value the support of a delivery partner (MPC or Procurement ACT).

5.4 PROCUREMENT METHODOLOGY

5.4.1 Business units are required to undertake an open approach to the market for procurements with an estimated total value of $200,000 (including GST) or more through a delivery partner. For procurements below this threshold, business units/agencies are recommended to use the standard procurement templates available on the JACS intranet and the Procurement ACT's website.

5.4.2 In certain circumstances, the responsible Director-General or Chief Executive Officer for a Territory entity may, in writing, exempt the entity from quotation and tender requirements for a procurement proposal. A Value for Money assessment is still required via a standard tendering process. Examples where limited tendering may be appropriate include:

a. where the goods or services can be provided by only one supplier.
b. for additional deliveries of property or services for reasons of compatibility with existing equipment or services.
c. use of another jurisdiction's common use arrangement or contract social procurements.

The procurement methods outlined in the Regulation are explained in further detail in the following table:

Procurement Method	Description	Specific Approach
Direct Sourcing	• Direct sourcing is generally used for procurements with an estimated total value of less than $25,000.	**Request for Quotation (RFQ)** or **Request for Tender (RFT)** is sent to a single supplier.
Select Sourcing	Select sourcing is generally used for procurements with an estimated total value of less than $200,000. The GP Act prescribes minimum quotation and tender requirements in this regard. Territory entities invite a selection of suppliers to bid for the work through issuing a Request for Quotation (RFQ). • The selected suppliers may respond by providing the required information and addressing the assessment criteria. • All responses are evaluated against the assessment criteria outlined in the RFQ. • A preferred supplier is identified, and, if mutually acceptable contract terms can be negotiated, engaged by way of contract.	**Request for Quotation (RFQ)** or **Request for Tender (RFT)** is sent to a selection of potential suppliers.
Public Tendering	Public tender requirements apply, public tenders (**via a delivery partner**) must be used for all procurement with a total estimated value $200,000 or more. Territory entities publicly invite potential suppliers to bid for the goods, services or works through issuing a Request for Tender (RFT) through Tenders ACT. • Interested suppliers may tender by providing the required information and addressing the assessment criteria. • All tenders are evaluated against the assessment criteria outlined in the RFT. • A preferred supplier is identified, and, if mutually acceptable contract terms are agreed, it is then engaged by way of contract. A Request for Proposal (RFP) is used when the Territory is relying on the market to provide ideas and options which could suit required outcomes. An RFP may include only a	**Request for Tender (RFT)** or **Request for Proposal (RFP)** is advertised publicly through the Tenders ACT portal.

Procurement Method	Description	Specific Approach
	limited outline of the Territory's required outcomes on which basis respondents are requested to propose a solution.	
Open Tendering (Multi-Stage Process)	Two stage open tendering may be used for any procurement. Territory entities publicly invite (**via a delivery partner**) all potential suppliers to bid for the work. • Interested suppliers may respond by providing the required information and addressing the assessment criteria. • All responses are evaluated against the assessment criteria outlined in the Request for Expression of Interest (REOI) (generally excluding price). • A list of preferred suppliers is shortlisted and the procurement proceeds onto a second, RFT stage. An REOI is used when the Territory wishes to gauge the market in terms of their interest, capability, and/or availability. Respondents to an REOI will generally be assessed for their capability to undertake the work at the time it is required and their experience in undertaking work of a similar nature. Following assessment, respondents may be shortlisted and invited to participate in a select request for tender process.	**Request for Expression of Interest (REOI)** Is advertised publicly through the Tenders ACT portal.

5.5 WHOLE OF GOVERNMENT AND PANEL CONTRACTS

5.5.1 In May 2006, the ACT Government agreed that where whole of government contracts are in place, use of these contracts by directorates and business units is mandatory. If you are in any doubt about when you should use a whole of government contract, please contact Procurement ACT.

5.5.2 Procurement ACT has established and administers numerous common use contracts with a number of panel or single suppliers, for example stationery and travel services.

5.5.3 A Panel Contract, which may also be referred to as a Panel Arrangement, Standing Offer Arrangement or Preferred Supplier Arrangement is a contractual arrangement with a group of contractors for the provision of services as and when required, under a schedule of rates or on a quotation basis. Types of services provided include legal, probity, accountancy and auditing services, and small trades for construction projects.

5.5.4 The key reasons for establishing whole of government arrangements and Panel Contracts are to:

a. obtain better overall value and quality of service from a combined spend across the ACT

b. set a consistent measurable benchmark for WHS standards in procurement

c. provide efficiencies for the ACT through not individually and repeatedly undertaking procurements and managing contracts for the same items

d. capture detailed data that can be used to inform government policies and help identify further savings

e. help by promoting more sustainable practices and more innovative services.

5.5.5 Further information on whole of government and Panel Contracts can be obtained from the following link to Procurement ACT.

5.5.6 A digital marketplace is available for ACT Government using the Australian Government's Digital Transformation Agency (DTA) marketplaces for procurement of hardware, software, cloud and digital services for purchases over $25,000. The marketplace can be used as another option for procurement of ICT goods and services, however, if the marketplace is not suitable, standard procurement processes should be used.

5.5.7 The DTA will charge a fee to use its hardware and software marketplaces. The fee is 2% of the total value of each contract over $25,000 (excl. GST). It is capped at $200,000 for contracts over $10m. The fee will need to be considered as part of the value for money assessment for each procurement.

5.5.8 To purchase digital services, cloud, hardware, or software through the DTA marketplaces, please use the ICT Procurement Request for Procurement available at the following link. Service Catalogue - Commercial Services and Infrastructure Group (service-now.com)

5.6 JUSTICE AND COMMUNITY SAFETY DIRECTORATE STAFF ROLES AND RESPONSIBILITIES ON PROCUREMENT

PURCHASING OFFICER

5.6.1 The Purchasing Officer, may also be known as the Project Manager, and is responsible for:

a. identifying and documenting the need for the procurement. This includes consideration of internal capability or leveraging existing contracts or arrangements where appropriate

b. seeking necessary approvals from a Financial Delegate prior to commencing the procurement process

c. ensuring that the intended purchase is in the best interest of JACS

d. obtaining necessary quotes/tenders to ensure that value for money is obtained

e. ensuring that all WHS obligations are met during the procurement process

f. meeting the procurement obligations while maintaining high standards of probity, which includes ensuring all parties involved in a procurement activity go through a conflict-of-interest declaration process.

g. ensuring records are kept appropriately in accordance with the *Territory Records Act 2002* for further information refer to the Records Management page of the JACS intranet.

EXECUTIVE BRANCH MANAGERS / HEAD OF BUSINESS UNITS RESPONSIBILITIES

5.6.2 When undertaking procurement for business units/agencies within JACS, the Executive Branch Managers / Head of Business Unit have responsibility to:

a. ensure that the JACS's purchasing meets procurement legislation and the Regulation with due regard to procurement principles as outlined in the guidelines and circulars issued by the Government Procurement Board

b. under section 39 of the Act, provide a signed copy of contracts (or amendments) which include a confidentiality clause and are valued at $25,000 or more to Goods and Services Procurement for lodgement with the ACT Legislative Assembly within 21 days of the end of each relevant reporting period (defined as a 12-month period ending on 31 March or 30 September)

c. ensure the Direction and Charter of Procurement Values applies to all procurements from 8 September 2020

d. ensure that in every procurement valued at $25,000 or more, a process is undertaken by all staff involved in the procurement to declare and manage any conflicts of interest and provide a copy to the Procurement Chair or relevant Business Unit delegate

e. review processes in place within their business unit to ensure that the GP Act, the Regulation and associated procurement policies and procedures are being applied appropriately

f. for their business unit, ensuring procurements identified in the APP are accurate and complete and are reviewed to ensure it remains current

g. contracts over $25,000 report on procurement values and are notified and registered/published on Tenders ACT

FINANCIAL DELEGATE

5.6.3 The management of delegations is crucial to the legitimacy of decisions and actions undertaken in the ACT Public Service.

5.6.4 Under section 20 of the *Public Sector Management Act 1994*, the Director-General may delegate their functions under law to officers in JACS. A function includes a power, duty, or authority. A fundamental effect of delegating a function is that a person to whom the function is delegated must use their own discretion when exercising said function. This is important as it means when exercising a delegated power, the officer must ensure that all relevant considerations are taken into account.

5.6.5 Regarding procurement and contract management, under section 31A of the *Financial Management Act 1996* (FMA) Directors-General have the power to enter into and or vary contracts and or memorandums of understanding relating to operations of the Directorate and have the ability under section 20 of the PSMA to delegate this power to officers within JACS.

5.6.6 Officers within JACS that have these powers are known as Financial Delegates, who may also be the Project Sponsor if the procurement is part of a project, is responsible for ensuring that the proposed procurement:

a. is for a legitimate business purpose

b. is efficient, economical, and ethical, and

c. complies with relevant legislation, regulations, guidelines, and circulars.

5.6.7 NOTE: The Financial Delegate is also accountable for ensuring all procurement activities are adequately documented, from identifying the need, through the quotation/tender process, and the contract management phase.

5.6.8 Staff with financial delegations are authorised to commit and spend public money for the procurement of goods and services. Exercising of a financial delegation must be within budget and condition limits for areas of control.

5.6.9 The Financial Delegate must ensure that expenditure is within their delegation limits. If the value of the procurement exceeds their delegation, it is their responsibility to seek appropriate approvals prior to acceptance of a quote or tender, and execution of contract documentation.

5.6.10 Staff with financial delegation are encouraged to check the delegations table and ensure that they actually have the appropriate delegation to exercise the relevant powers under the relevant Act. For further information on delegation and levels of delegation within JACS, please refer to the JACS Delegation page on the JACS Intranet.

CONTRACT MANAGER – ALL CONTRACTS REQUIRE ONE

5.6.11 The Contract Manager, who is often the Purchasing Officer, and may also be the Project Manager is responsible for ensuring that the supplier has delivered the goods, services or works in a satisfactory manner, and within the scope and budget of the original request.

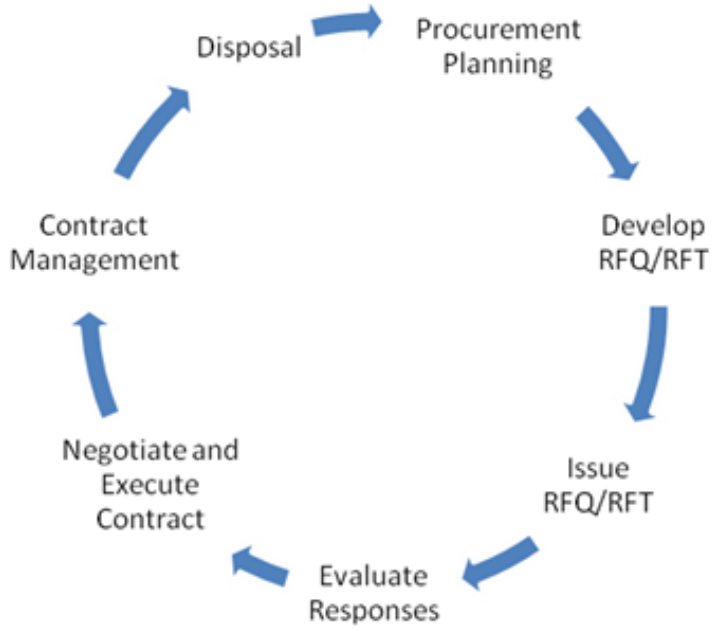
5.6.12 This extends to ensuring the correct identity and quantity of goods, the condition of the goods and the satisfactory standard of any service delivery. Verification that goods, services, or works are received satisfactorily is made on the invoice/supporting documentation and/or the accounts payable cover sheet (available from the Shared Services Finance intranet) by the Contract Manager to provide assurance to the Financial Delegate.

5.7 PROCUREMENT LIFE CYCLE

5.7.1 Each procurement activity has a life cycle, and it is the responsibility of the Purchasing Officer, and/or Project Manager, to identify this life cycle and consider each stage during the development of the procurement and contract management processes.

5.7.2 The ACT Government is committed to considering social, ethical, economic, and environmental procurement practices at every stage of the procurement lifecycle. By actively considering the Procurement Values in the Planning, Sourcing and Managing phases, Government will ensure that the efficient and effective management of public resources and the pursuit of value for money reflects the current values of the ACT Government and the community.

5.7.3 Planning is procuring the right things. Sourcing is procuring in the right way. Managing is procuring from the right people for the right reasons.



5.8 SECURITY IN PROCUREMENT

5.8.1 In delivering services and outcomes, JACS may elect to use outsourced service providers.

5.8.2 Compliance with the ACT Government's Protective Security Framework (PSF) must be included in contracts between JACS acting on behalf of the ACT Government and external service providers.

5.8.3 The JACS Business Unit Head and Delegate, with the assistance of the Agency Security Adviser, are responsible to ensure that the appropriate protective security related requirements are included in the approach to market and operating instructions. This may include:

a. security risk management and governance processes and responsibilities
b. personnel security requirements of outsourced service provider's staff, for example background screening of staff accessing JACS information and/or premises
c. physical security of outsourced service provider's premises and offices
d. information communication technology security arrangements of the outsourced service provider's systems used to access, store or process JACS information
e. compliance and incident reporting processes.

5.8.4 All contracts are to ensure that contracted entities failing to comply with the PSF requirements may constitute a breach of contract.

SECURITY AND WHS RISK ACCEPTANCE IN PROCURED SERVICES

5.8.5 While they may elect to outsource a function or activity, the acceptance of any security and WHS related risks remains with JACS. The delegates for protective security and WHS related risks in outsourced services are as if the service or activity was being delivered by JACS directly.

5.9 ETHICS AND FAIR DEALING

5.9.1 In pursuing value for money, section 22A (3) of the GP Act requires JACS to have regard to probity and ethical behaviour. In addition to conducting procurements according to the ordinary meaning of those terms, JACS' officers must also comply with their obligations under the *Public Sector Management Act 1994* (PSMA) and its associated Standards.

5.9.2 For example, by virtue of section 9, members of, and advisers to, procurement and evaluation teams who are public servants:

a. must take all reasonable steps to avoid conflicts of interest and declare conflicts that cannot reasonably be avoided (refer 4.11)
b. must not take improper advantage of their jobs or information, not improperly use information accessed through their jobs, nor disclose confidential information gained through their jobs or apply improper influence, favouritism, or patronage.

5.9.3 Key probity objectives in the conduct of procurements include:

a. fairness, consistency, and accountability
b. impartiality, identification, and management of conflicts of interest
c. appropriate confidentiality and security
d. integrity and confidence in processes and decisions.

5.9.4 The ethical standards outlined in the Goods and Services Procurement Policy Circular PC21 on ethical behaviour should be followed throughout the Procurement Life Cycle, including when dealing with contractors/consultants.

5.10 CONFLICT OF INTEREST

5.10.1 The PSMA and associated standards provide the statutory context within which the Territory's public employees are required to disclose and take action to avoid conflicts of interest.

5.10.2 All relevant personnel involved in a procurement process, including advisers (whether or not public employees) must not be decision-makers and not participate in any decision-making process if at any time a conflict of interest exists or is likely to arise, unless the conflict has been fully documented in a conflict of interest disclosure document and dealt with conclusively and satisfactorily.

5.10.3 All relevant personnel involved in a procurement process, including advisers (whether or not public employees) must declare any actual, potential, or perceived conflicts of interest at the beginning of their involvement in the procurement process and then following the close of approach to market once the identity of respondents is known.

5.10.4 Following closing dates of REOIs, RFQs and or RFTs, a list of respondents should be provided to everyone involved on or advising evaluation teams, and they must check the list of respondents and notify the evaluation chairperson (or other nominated officer) whether or not they have any actual or potential conflict of interest, or of circumstances that may cause a perception of conflict.

5.10.5 Actual, potential, or perceived conflicts of interest, which could lead to bias, or perceptions and claims of bias in procurement processes can arise from relevant relationships or interests held by JACS' officers. It is not practicable to outline what is "relevant", but the following should be disclosed in order to assess the degree of relationship or interest, and whether any JACS' officers, his/her relative or associate, a contracted company, its subsidiary, or parent company has a relevant conflict:

a. personal relationship (e.g. relative) with, or financial interest in or other association with a respondent (e.g. shareholdings, guarantees)

b. contractual or other connection or alliance with a respondent for a similar product or service to the procurement.

5.10.6 Even if no financial or other benefit is likely to be gained from a relationship, association, contractual or other connection, perceptions of bias may arise.

5.10.7 Public confidence in the integrity and honesty of all JACS personnel is crucial. A real or apparent conflict of interest can jeopardise that confidence. All disclosures of conflicts must be fully documented, outlining how they have been resolved including whether any personnel need to be excused from participating in a procurement project.

5.10.8 Refer to the JACS Conflict of Interest Policy for more information on conflicts of interest.

5.10.9 Business Unit Heads and/or Financial Delegate/s should ensure all procurement activities of $25,000 or more require staff involved to complete a 'Declaration of Conflict of Interest'. Conflicts should be documented and held on an official file.

5.10.10 A copy of the form is available on the JACS Intranet (search for 'Declaration of Conflict-of-Interest Form').

5.10.11 If a contractor or consultants is engaged to provide advice or services in relation to a procurement process, they should be made to observe the requirements of Section 9 of the PSMA as a contractual obligation.

5.10.12 The principals, risk assessment and communication protocols standards are outlined in the Probity in Procurement Guide

5.11 PROCUREMENT WITH A TOTAL ESTIMATED VALUE UNDER $200,000 (GST INC)

5.11.1 This process and document development will be dependent on the estimated value, scale, scope and associated risk of the goods, services or works to be procured. For more information on procurement threshold and requirements refer to Procurement (sharepoint.com) including steps for under $25,000 (GST Inc) projects.

a. Procurement planning

Procurement Planning stage involves identifying the need for the goods, services or works, and

seeking the appropriate approvals to undertake the required procurement activity, and developing the appropriate documentation. For simple procurements under $200,000 procurement templates are available from the JACS intranet and Procurement ACT.

Step	Action
1	Identify the need for the goods, services or works. Document the Statement of Requirements **Note: all procurements must consider all Charter of Procurement Values in their planning and document how it will be achieved**
2	Register the procurement via the Procurement Unique Identifier form Procurement Unique Identifier (sharepoint.com)
3	Develop a business case or minute to the Financial Delegate to explain the need, issues, and financial implications and seek Financial Delegate approval to proceed with process
4	Follow the process specified on Procurement ACT's website for the purchase of goods and services under $200,000 using procurement templates available on JACS intranet and Procurement ACT
Records Management: **Ensure that all draft and final documents are kept and stored on the appropriate records management solution (TRIM) or official files.**	

b. Issue Request for Quotation

The Request for Quotation stage involves issuing documents for response. Depending on the value between $25,000 (GST Inc) to under $200,000 (GST Inc), it is recommended this process is to be facilitated by using procurement templates available on JACS intranet and Procurement ACT.

Step	Action
1	Seek quotations on the following basis: • for expenditure under $25,000 (GST Inc) obtain at least one quotation (please note written quotes should be obtained in all but exceptional circumstances) • for expenditure between $25,000 (GST Inc) to under $200,000 (GST Inc) obtain at least three written quotations. **Note:** **JACS pursues best value for money. The number of quotes sought is a minimum requirement and depending on the procurement activity undertaken, additional quotations/market research may be warranted.**
2	The business unit will need to form a tender evaluation team. A chair will be nominated, and role of team members (one member must be external to Business Unit) documented in the procurement evaluation and recommendations.
Records Management: **Ensure that all draft and final documents are kept and stored on the appropriate records management solution (TRIM) or official file.**	

c. Review Responses and undertake a Conflict-of-Interest Process

Step	Action
1	Upon receipt of responses, all staff involved in the process must complete a Conflict of Interest Declaration.
2	All disclosures of conflicts must be fully documented, outlining how they have been resolved including whether any personnel need to be excused from participating in a procurement project.
3	Provide a copy of all completed declarations to the Procurement Chair or relevant Business Unit delegate.
Records Management: **Ensure that all Conflict of Interest documents are kept and stored on the appropriate records management solution (TRIM) or official file.**	

d. Evaluate Responses

The evaluation stage involves undertaking an evaluation of responses received in accordance with the criteria implemented in the procurement planning stage.

Step	Action
1	Confirm that all responses received meet the requirements and evaluate the responses against the evaluation criteria outlined in the procurement planning stage. Use the document/s provided on Procurement ACT's website to record the evaluation outcomes.
2	Prior to executing a contract, it is essential that JACS ensures that contractors/ consultants have appropriate insurance policy(ies) that provide adequate protection for the Directorate. It is the responsibility of the Contract Manager to ensure that those policy(ies) are maintained throughout the contract period. Advice on these policies can be obtained from the ACT Insurance Authority.
3	Advise the Financial Delegate of the outcome, and if appropriate seek approval to proceed with engaging the preferred supplier. **Note: The delegate must be assured that the directorate will obtain the best value for money outcome based on the assessment of responses received. These responses must include a weighted criteria and evaluation of WHS.**
Records Management: **Ensure that all draft and final documents developed as part of the evaluation process, including handwritten notes from the evaluation team, and correspondence with potential/selected suppliers is kept, and stored on the appropriate records management solution (TRIM) or official file.**	

e. Execute Contracts

The Execution Contracts stage involves engaging with the preferred supplier.

Step	Action
1	Advise the preferred supplier of the outcome.
2	Conduct contract negotiations if or as required and forward a copy of the Purchase Order, Short Form Contract or Services Agreement to the preferred supplier for their execution and ask the supplier if any text in the contract should be redacted as confidential in the published version of the contract if the contract is of a value of $25,000 or more. **Note: if a contractor / provider wishes to use their own form of terms and conditions of contract then legal advice is required.** **Note: if a contractor / provider wished to change any clauses within the standard contract then contact the Director of Goods and Service Procurement and if required then seek legal advice.**
3	Should the contract include any confidential text, approval should be sought in the evaluation process by seeking the Director-General endorsement of the Tender Evaluation Report. If the contractor/consultant requests confidential text while in contract negotiations, a brief will need to be prepared for Director-General approval with a public text version of the contract included, prior to the contract being executed. Please note that all requests for confidential text must be reviewed by the Director of Goods and Services Procurement in TRIM prior to the request / brief being sent to the Director-General. The Confidential Text Request Brief Template can be found at **Attachment B** of this Framework and is also accessible through the JACS Intranet (search for 'Confidential Text Request Brief Template' under the Procurement category). Approval must be sought before the agreement is executed.
4	Arrange for the Financial Delegate to execute the Purchase Order, Short Form Contract or Services Agreement on behalf of the directorate.
5	Notify the contract on the JACS Contracts Register, and if $25,000 or more, the contract will also need to be notified on the ACT Government Contracts Register. The Business Units will arrange for the contracts to be placed on the ACT Government Contracts Register at Procurement ACT website. It may be noted that from 1 January 2021, all notifiable contracts require reporting on the procurement values used in the procurement.
Records Management: **Ensure that all draft and final contract documents are kept and stored on the appropriate records management solution (TRIM) or official files.**	

f. Contract Management

The Contract Management stage involves the day-to-day management of the contract, including supplier relationships, delivery schedules, monitoring key performance indicators, and acceptance of goods, services or works.

This Framework provides specific details on the requirements of JACS for how contracts are to be managed and reported against.

Step	Action
1	If the contract is to be managed by another officer, ensure handover of all contract information, including a copy of the contract, contact details for all stakeholders, and any other relevant information is provided to the Contract Manager.
2	The Contract Manager is responsible for ensuring: • Goods, works or services when received are checked to ensure that they are satisfactory and in accordance with order/contract. • Acknowledge/supporting documentation or accounts payable cover sheet to confirm that goods, services, or works has been received and accepted. • Submit the signed invoice/supporting documentation through Converge to the Financial Delegate for approval. • Forward approved invoice and any supporting documentation to Shared Services for payment. For further guidance, refer to DGFI 2.3 *Payment of Accounts*. **Note: Major Project Canberra (MPC) uses Project Management and Reporting System (P-MARS) system to process invoices.** **Note: MPC may be consulted in any project regardless of value that require a Secure Local Jobs Code (SLJC.**
3	Review the overall performance of the contract and ensure the original scope has been met. For more information on contract management including steps refer to Procurement (sharepoint.com)
4	Finalise the contract at end of life, ensuring all services have been received and all invoices are paid and complete.
5	Advise the Financial Delegate of the completion of the contract and identify if there is a need to establish a new procurement process for additional supply, or other goods, services or works that may be required for the project.
Records Management: **Ensure that all draft and final documents are kept and stored on the appropriate records management solution (TRIM) or official files**	

g. Disposal

The Disposal stage may only impact procurement activities for the purchase of goods, however, should be considered for all activities to implement review dates of reports and findings delivered by consultants, as some reviews may have a life span.

Step	Action
1	For any disposal process: staff need to read and follow the steps identified in DGFI 6.1 *Asset Management*. DGFI: 6.1 should be read in conjunction with the Procurement Policy Circular on the Disposal of Assets.
Records Management: **Ensure that all draft and final documents are kept and stored on the appropriate records management solution (TRIM) or official files.**	

5.12 PROCUREMENTS OF $200,000 OR MORE IN VALUE

a. Procurement Planning

The Procurement Planning stage involves identifying the need for the goods, services or works, and seeking the appropriate approvals to undertake the required procurement activity, and developing the appropriate documentation.

b. Engage Procurement ACT

For all procurement activities over $200,000, JACS staff need to engage with Procurement ACT or Major Projects Canberra to facilitate the full procurement process.

Step	Action
1	Identify the need for the goods, services or works.
2	Follow the process on Procurement ACT's website for procurements of $200,000 or more to develop the procurement process and seek Financial Delegate approval to proceed with process.
Records Management: **Ensure that all draft and final documents are kept and stored on the appropriate records management solution (TRIM) or official files.**	

5.13 SUSTAINABLE PROCUREMENT

5.13.1 Use procurement to advance the priorities of government and achieve value for money through a consideration of environmental, social, and economic cost and non-cost factors on a whole of life basis.

5.13.2 This approach seeks to add value, using procurement to require social and environmental standards, encourage suppliers to adopt socially responsible and ethical practices and support innovation in the market.

5.13.3 JACS must integrate the practice of sustainability into the procurement of goods, services, and construction. This applies to both the establishment of new, and the renewal of existing contracts including panels and standing offer arrangements.

5.13.4 Sustainability considerations related to each procurement must be addressed during the procurement planning process. Incorporating sustainability considerations later in the procurement cycle offers limited opportunity to add value through improved sustainability outcomes.

5.14 LOCAL INDUSTRY PARTICIPATION POLICY (LIPP)

5.14.1 The ACT Government implemented the Canberra Region Local Industry Participation Policy (LIPP) to ensure competitive local businesses are given every opportunity to compete to bid for Government contracts.

5.14.2 In summary the LIPP requirements at each procurement threshold are as follows:

Threshold	Procurement Requirement	LIPP Requirement	Who ensures the Requirements are met?
Procurement value is <$25,000	Minimum of 1 quote	None	Directorate Officer
Procurement value is between $25,000 and $200,000	A minimum of 3 written quotes must be sought (unless an exemption is obtained)	Where possible: (1) one quote must be sought from a respondent located in the Canberra Region; and (2) one quote must be sought from an SME.	Directorate Officer
Procurement value is $200,000 or more and under $5 million	Public tender (unless an exemption is obtained)	Economic Contribution Test must be completed / submitted. Assessment of the same will be allocated a default 10% weighting in evaluation process.	Procurement ACT and Major Projects Canberra
Procurement value is $5 million or more	Public tender (unless an exemption is obtained)	Submission of a Local Industry Participant Plan is mandatory. Assessment of the same will be allocated a default 10% weighting in evaluation process.	Procurement ACT and Major Projects Canberra

5.14.3 A checklist is available to guide officers as to what steps they could take to determine whether a business is an SME or located in the Canberra region. It is up to officers to give their best efforts to obtain quotes from SMEs and local businesses. It also may be useful to view the social procurement and Indigenous procurement supplier lists for possible SME suppliers.

5.14.4 An SME is defined as a business that has fewer than 200 full time employees or equivalent (FTEs). This is different to ACT Government's old definition of a regional SME, which was a combination of an SME and a business located in the Canberra region.

5.14.5 More information relating to this policy can be found on Procurement ACT's website under Local Industry Participation Policy.

5.15 SUPPLIER CERTIFICATION

5.15.1 Completion of the Ethical Suppliers Declaration is required for tenders for prescribed works and services and to contracts for prescribed works and services having a total consideration, or estimated total consideration, worth $25,000 or more.

5.15.2 'Prescribed works and services' refer to those works and services that will require the exertion of labour by employees in the performance of a contract. Examples include maintenance, construction, cleaning, horticultural and gardening services. The principle would not normally apply to other types of services, such as legal or accountancy services, general consultancies, or ICT services.

5.15.3 Requests for tenders for prescribed works or services must contain provisions to require tenders to certify that they are complying with their employee and industrial relations and employment obligations (Secure Local Jobs Code – see section 1.7). This will help the relevant Territory entity ensure that it has complied with undertakings that the Territory has made through the Memorandum of Understanding with Unions ACT. The Ethical Suppliers Declaration is a Statutory Declaration.

5.16 JACS SELECT AND SINGLE SELECT EXEMPTION PROCESS

5.16.1 'Select or Single Select Procurement' means a procurement above the relevant quotation or tender threshold that needs an exemption from the quotation and tender requirements of the Regulation from the responsible Director-General or delegate.

5.16.2 A procurement that seeks a single quotation or three quotations in accordance with the quotation and tender requirements (that is, a procurement that does not need an exemption) is not referred to as a select or single select procurement.

5.16.3 When Business Units are considering submitting an application for an exemption, two staged approval from the Director-General is required to facilitate compliance. Initially an Exemption Request brief with a Procurement Plan Minute (PPM) as a supporting Attachment needs to be developed to seek Director-General approval to issue RFQ or RFT to a limited number of supplier/s. After supplier/s response/s is/are received a formal evaluation process is required with the evaluation report to be submitted to the Director-General for the second and final exemption delegate approval. In addition, Procurement ACT can assist in this process and are required to facilitate all applications over $200K including single selects.

5.16.4 The Director of Procurement and Contract Management within Corporate Services can assist in any select and single select exemption process.

5.17 CREDIT CARD PURCHASES

5.17.1 Credit card purchases are not covered by this Procurement, Contract Management and Assurance Framework. Specific guidelines are set out in DGI 4.1 Use of Credit Cards.

5.18 PROVISION OF LABOUR HIRE

5.18.1 The provision of labour hire (contractors and consultants) is a procurement activity. There are two JACS specific Director- General Instructions in relation to labour hire, DGI 2.8.1 Engagement of Consultants and DGI 2.8.2 Engagement of Contractors.

5.18.2 Furthermore, the ACT Government has partnered with Comensura and implemented a business management solution, Contractor Central, to simplify the management of our contingent workforce. Contractor Central was implemented across all ACT Government directorates in August 2017.

5.18.3 Contractor Central is a centralised system that enables business to easily engage with ACT Government through an online process.

5.18.4 This also extends ACT's access to the established NSW Contingent Workforce Scheme, SCM0007. Please visit the NSW Government's Procurement website for the terms and conditions for participating in the Scheme, including supplier fees.

5.18.5 On 27 May 2021, the ACT introduced a licensing scheme for labour hire providers that will better protect workers and promote responsible practices in the labour hire services industry.

5.18.6 All labour hire providers operating in the ACT are required to hold a licence from 27 November 2021 onwards in accordance with the *Labour Hire Licensing Act 2020* (the Act).

PART 2 - CONTRACT MANAGEMENT

1. JUSTICE AND COMMUNITY SAFETY DIRECTORATE CONTRACT MANAGEMENT

1.1 Every transaction to obtain goods or services undertaken by business units involves a contract whether explicitly agreed in writing, or implicitly implied through actions. It is best practice for all contracts to be in writing – (Purchase Order, Short Form Contract, Services Agreement, GC21 contract, Infrastructure Contract, Service Funding Arrangement etc). Properly managed contracts can ensure that services are delivered within specification and at the agreed cost. Improperly managed contracts may impact negatively on JACS. Adverse effects of poor contract management include but are not limited to:

a. poor supplier, buyer, or other stakeholder relationships
b. negative public perception
c. legal disputes
d. budget impacts
e. goods and services outside of specification
f. complete service delivery failure
g. failure to identify and impose WHS requirements.

1.1.1 Successful contract management is dependent on the effective selection, engagement and management of contractors/consultants which requires a professional and structured approach, noting that contractors/consultants should be engaged to obtain expertise that is not otherwise available within JACS.

1.1.2 Undertaking the correct procurement process will assist in engaging contractors/consultants in accordance with the highest standards of probity and resulting in contracts which should be, and are seen to be, without prejudice or favour. It is also essential that contractors/consultants are engaged under a contract tailored to the project. All contracts should include the agreed:

a. terms and conditions (including WHS requirements)
b. value
c. timeframe
d. deliverables.

1.1.3 Procurement processes that may result in contracts of $200,000 or more in value or which have complex requirements, will be undertaken by Goods and Services Procurement, and contracts will be drafted in the appropriate template, such as the ACT Government Solicitor Goods or Services Agreements, and may require additional information about specified personnel, insurances, confidential text, deliverables, and performance measurement particularly with regard to past and current WHS performance.

2. CONTRACT MANAGEMENT LIFE CYCLE

2.1 The Contract Management stage within the Procurement Life Cycle includes all administrative duties associated with managing the contract daily.

2.2 The specific nature of contract management varies from contract to contract. At the simplest level it can involve:

a. the receipt of goods
b. a check of the goods against the order
c. payment of the contractors/consultants.

2.3 More complex, high value, high risk, or long-term contracts may involve:

a. active monitoring of day-to-day activities and WHS performance
b. certification of payment
c. negotiation of variations
d. management of disputes and risks
e. liaison with the public
f. relationship management (vendor)
g. maintenance of records to provide an audit trail.

2.3.1 The contract management requirements should be considered during the procurement process, including the administrative tasks and performance measures for all parties to allow for enough resourcing to be allocated to the tasks.

3. CONTRACT MANAGEMENT PLAN

3.1 It is important to document the contract management process, and this can be best achieved through the development, monitoring, and evaluation of a Contract Management Plan. In developing the Contract Management Plan, and before the contractors/consultants commence work under the contract, the Contract Manager should:

a. read the contract (it may be appropriate to also read the contractors/consultants offer and any related correspondence and file notes)
b. note JACS' obligations e.g. WHS, access to site, payments, approvals
c. prepare a checklist of major milestones
d. inspect work site prior to commencement e.g. cleaning contracts
e. ensure contractors/consultants insurance policies are current and seek advice if any doubt exists about the terms and conditions, including exclusions detailed in a policy
f. ensure performance securities/guarantees have been received
g. inspect contractors/consultants WHS plan and obtain advice as needed from the JACS WHS team in PWS
h. establish lines of communication with the contractors/consultants.

3.2 While each contract will have different requirements, the following provides a general list of considerations which a Contract Management Plan may include:

a. Key Tasks and Milestone Dates

3.2.1 It is important to outline the key tasks to be undertaken by all parties to the contract, including the milestone dates that impact the tasks, (these may include submission and review dates), the agreed payment schedule, agreed acceptance criteria (if any), and the anticipated completion date.

3.2.2 Ensuring that key tasks and milestone dates are clearly documented and agreed to will assist in managing the ongoing outputs of the contract, and the relationships between all parties.

b. Stakeholder Identification and Responsibilities

3.2.3 Identifying the stakeholders to the project and the contract, as well as their responsibilities, is of high importance as it ensures the Contract Manager can monitor the relationships, communications, and inputs/outputs by all parties.

3.2.4 Stakeholder identification should include position, name, project role, delegation, and influence on the project. This information should be captured for all stakeholders, including the project team, project sponsor, Financial Delegate, contract manager, contractor and key personnel, and the staff/teams within the business unit and JACS that will be impacted by the delivery of the contract.

3.2.5 This information may have also been captured in a project management plan.

c. Communication

3.2.6 All communication activities should be recorded throughout the contract management process and stored on the appropriate file. It is important for the contract manager to understand what communication expectations exist amongst the stakeholders. This may also include consulting with employees as per WHS requirements.

3.2.7 A communication plan may assist with managing all communications and ensuring stakeholder expectations are met. All stakeholders to the contract need to understand their responsibilities for communicating information. A plan may have been prepared as part of project management activities, and should include the stakeholder, type of information, format and tools, timing, and responsibility.

d. Receipt and Acceptance of Goods and Services

3.2.8 The receipt and acceptance of goods and services process is important as this is the final stage where issues such as errors in quantity, quality, scope, and poor performance will be identified.

3.2.9 As JACS makes payments based on the satisfactory acceptance of goods and services, it is important for the Contract Manager to execute their delegated authority to raise such issues and ensure they are addressed appropriately prior to payment. Contract Managers must ensure that Goods, Services and or Works received are correct as per the Contract and any related conditions of said contract (meeting agreed Acceptance Criteria etc). This may include rejecting and arranging for the return of goods without payment. Any charges for miscellaneous fees e.g. freight, insurance, maintenance, etc may only be charged by contractors/consultants in accordance with the agreed terms and conditions of the contract.

3.2.10 After receipt and acceptance, and completion of all contract requirements, the Contract Manager should arrange for the release of any securities/guarantees to the contractors/consultants if these were required under the contract.

e. Schedule of Payments

3.2.11 The Contract Manager is responsible for the certification and timely payment of accounts in accordance with the contractual arrangements. JACS preferred method of payment is electronic funds transfer (EFT).

3.2.12 The ACT Government implemented an Invoice Automation or Accounts Payable Invoice Automation Solution (APIAS) in September 2017. This has improved the accounts payable process by implementing a digital system to replace the paper-based method and transformed the way invoices are processed across Government. APIAS delivers several benefits including minimising duplication, increased invoice cycle transparency, strengthened controls and improved timeliness of payments to suppliers.

3.2.13 The ACT Government has introduced a new online system for managing and reporting on capital works across government, known as the Project Management and Reporting System (P-MARS). This is now operational for capital works projects delivered by Major Projects Canberra and is expected to be introduced for all capital works thresholds in the future.

3.2.14 P-MARS has been designed to establish a systematic approach to managing, reporting, and delivering capital works projects for the ACT Government. This means that current contract management systems and processes will eventually be replaced by P-MARS for construction/capital works projects.

3.2.15 The implementation of P-MARS will affect schedule payments by allowing contractors to electronically submit payment claims, electronically submit invoices for payment and track the payment status of invoices.

3.2.16 More information about P-MARS can be found at Major Projects Canberra.

f. Risk Management

3.2.17 Planning for and managing risk is an essential task of the Contract Manager. A risk management plan may have been prepared during the project management and/or procurement processes and may consider contract management risks. If not, a plan should be prepared that identifies, analyses, evaluates, and proposes treatment of the risks that may be encountered during the contract management stage or as a result of the contract. All risk management planning must consider WHS risks and hazards.

3.2.18 See DGFI 1.2 *Risk Management* for additional information. Best practice advice on risk management in the ACT Public Service, including templates and plans, is available from the ACT Insurance Authority (ACTIA).

g. Security in Contracts

3.2.19 In delivering services and outcomes, JACS may elect to use outsourced service providers.

3.2.20 Compliance with the Protective Security Framework (PSF) must be included in contracts between JACS acting on behalf of the ACT Government and external service providers.

3.2.21 The JACS Business Unit Head and contract delegate, with the assistance of the Agency Security Adviser, are responsible to ensure that the appropriate protective security related requirements are included in the approach to market, contract, and operating instructions. This may include:

i. security risk management and governance processes and responsibilities
ii. personnel security requirements of outsourced service provider's staff, for example background screening of staff accessing JACS information and/or premises
iii. physical security of outsourced service provider's premises and offices
iv. information communication technology security arrangements of the outsourced service provider's systems used to access, store or process JACS information
v. compliance and incident reporting processes.

3.2.22 All contracts are to ensure that contracted entities failing to comply with the PSF requirements may constitute a breach of contract.

h. Risk Acceptance in Contracted Services

3.2.23 While they may elect to outsource a function or activity, the acceptance of any security related risks remains with JACS. The delegates/officers for WHS and protective security related risks in outsourced services are as if the service or activity was being delivered by JACS directly.

i. Performance Management

3.2.24 Progressive monitoring of contractors/consultant's performance identifies, anticipates, and facilitates correction of shortcomings before the Directorate and the contractors/consultant's relationship is adversely affected.

3.2.25 While it is the ongoing and main responsibility of the Contract Manager to evaluate the contractors/consultants against the requirements of the contract, it is also necessary to assess the extent to which the contract has achieved JACS' objectives. The evaluation of contractors/consultant's performance should be continued throughout the contract and at completion. This process must include an assessment of WHS performance over the life of the contract.

3.2.26 The details of performance monitoring should be specified in the contract, and activities to assist the Contract Manager to undertake continual performance management may include:

i. Progress meetings which may be implemented by the Contract Manager and should follow proper meeting procedures by developing appropriate agenda items and maintaining records of proceedings for the information of all parties and to facilitate accountability
ii. Requiring the contractors/consultants to provide written reports on performance as one of the contract deliverables
iii. Expediting the follow-up of contract deliverables that are overdue, checking to ensure that the contractors/consultants will honour the original delivery date or encouraging an earlier delivery than originally intended
iv. Inspections to ensure that the goods or services conform to the contract standard.
v. Quality assurance audits which may reduce the need for quality control inspections, however inspections may still be necessary for new or untried goods or services, or where formal quality assurance is not a contract condition
vi. Service level performance audit to assess service delivery compared to those agreed in the terms of the contract may be required. The audit may be

undertaken in-house or by an experienced independent auditor, a peer review process may also be appropriate.

j. Dispute Resolution

3.2.27 Contractual disputes arise when the parties cannot agree upon areas of contract interpretation. Disputes can occur for example over the interpretation of the contract conditions, the project specification, the performance of either party under the contract, or the effects of unexpected events.

3.2.28 All contracts must include methods of dispute resolution, which may include:

i. negotiation
ii. mediation
iii. expert appraisal (depending on subject matter)
iv. arbitration (depending on subject matter).

3.2.29 The Contract Manager can minimise the likelihood of disputes by ensuring that they maintain close liaison with the contractors/consultants throughout the contract period and effectively deal with and record problems when they arise, and the treatment process undertaken to resolve.

k. Contract Term

3.2.30 In relation to contract definitions, the contract term means the term (time-period) of the contract that is specified in the contract schedule, the contract term should align with the procurement plan minute. It is possible for the term of a contract to be changed by way of a variation and or a contract extension. Please see point 4 (c) of this Framework for information on contract variations and extensions.

l. Requirement Renewal

3.2.31 The process of renewal should be initiated in enough time to ensure the new contract is awarded and the contractors/consultants are ready to commence at the completion of the current contract.

3.2.32 The renewal process should be undertaken where there is an ongoing need for the contracted delivery of goods or services and the option of extension is unavailable or unacceptable. However, where renewal has not been possible in enough time to finalise a new contract, a limited extension of the current contract may be appropriate with approval of the appropriate delegate. The extension should not exceed the period reasonably required for finalising a new procurement and contract execution process.

3.2.33 The current contractors/consultants should be included in the planning and execution of any transition activities.

3.2.34 If the contract appears to move beyond the initially intended scope, timeframes, or value, generally, a new procurement decision needs to be made.

m. Transition Out Requirements

3.2.35 Where a new contract is to be commenced and an outgoing contractor/consultant is impacted, the transition out requirements must be considered and planned for. It is

important to consider all stakeholders in the planning and implementation stages and ensure relationships are maintained.

3.2.36 A transition in/out plan may be of benefit to provide a transparent approach to the task, and ensure all stakeholders understand their roles and responsibilities in the process.

n. Contract Finalisation

3.2.37 Following the final receipt, acceptance and payments being completed, a final evaluation process will determine the degree of success by comparing the contract outputs with the original desired outcomes.

3.2.38 This can often be complicated by changes in expectations, policies, or requirements during the contract period. The contractors/consultants are responsible for achieving the outputs required by the contract; it is not the contractor/consultant's fault if the required outputs do not result in achievement of the JACS' objectives.

3.2.39 It may be appropriate to prepare a contract finalisation report for the Financial Delegate to outline the successes and shortcomings in the contract delivery, and to also consider and implement outcomes of lessons learnt.

4. OTHER ADMINISTRATIVE CONSIDERATIONS

4.1 Other administrative considerations which may not need to be included in the contract management plan however may arise during the contract management stage include:

a. Record Keeping and Audit Trail

4.1.1 All documentation including the bids received and the evaluation as part of the procurement activities must be kept for record and audit purposes, and the *Territory Records Act 2002* sets out standards for the disposal and custody of ACT Government documents, including records that document tender and contract activities. This includes records in any format, for example electronic records, files, cards, and plans.

4.1.2 The Contract Manager should maintain comprehensive and accurate records in relation to all contract activities, including daily management tasks, communications, meetings, payments, and the outputs of the contractor/consultant.

4.1.3 JACS recommends that all draft and final documents are kept and stored in TRIM and/or an official file. However, it must be noted that these records are important in establishing and maintaining an audit trail, and therefore version control must be maintained.

4.1.4 Further guidance material and tools can be found on the JACS Records Management intranet site.

b. Contract Delays

4.1.5 Delays usually originate with a problem that occurred earlier while performing the contract work.

4.1.6 The Contract Manager should act as soon as a potential cause of delay is identified to:

i. identify the existence of an actual or anticipated delay

ii. determine if the likely delay will impact on delivery or completion
iii. decide who is at fault
iv. determine the duration of the delay
v. select the appropriate action to resolve the problem.

c. Variation and Extensions within the Scope of the Contract

4.1.7 The Contract Manager should ensure that a variation and or extension are within the scope of the contract and that the nature of the contract is not altered. Some contracts contain optional extension clauses, enabling JACS to extend the contract without re-inviting public tenders.

4.1.8 The Contract Manager is responsible for managing contract variations and extensions. Where appropriate, advice should be obtained prior to issuing a contract variation. End users or other stakeholders may not be amenable to a variation therefore they may need to be consulted before the Contract Manager agrees to a variation.

4.1.9 Where it is proposed to vary and or extend the contract, it is required that both JACS and the contractors/consultants agree. Circumstance may arise where JACS must insist on a variation; the contract may or may not include provision for a unilateral decision by the Directorate.

4.1.10 If the contract is the provision of services, suitable performance measures will need to be developed to ascertain whether performance has been satisfactory.

4.1.11 It is also imperative when approving variation/s and or extension/s to contracts, that an officer with the appropriate delegation approves any variation and or extension to a contract.

4.1.12 Access further information on the Variation documentation (Letter of Variation, Goods and Services Contract Variation Request Form, etc).

d. Assignment and Novation of Contracts

4.1.13 During a contract it may be necessary to assign or novate the contractual arrangement. The process of assignment or novation allocates different contractual obligations on the parties.

4.1.14 Assignment is an agreement by which one party to a contract transfers their rights or interests (not obligations or liabilities) to another party. Where a contract specifies, an assignment of rights in a contract can sometimes take place without the consent of the other contract party. However, Territory template contracts contain a clause which prevents the contractor from assigning the contract, in whole or in part, without first obtaining the written consent of the Territory. Consent takes place by written correspondence.

4.1.15 An agreement that has the effect of substituting one party for another party without changing the rights and obligations under the original agreement is called a novation. Novation is the making of a new agreement in substitution for an earlier one, with the earlier agreement being discharged. Under a novation, a third party will take over the rights and obligations of an original party whose rights and obligations are being novated. A

novation is a tripartite agreement and usually takes the form of a deed executed by the original parties and the new party.

4.1.16 Novation and assignments may be subject to approvals under legislation. The novation or assignment agreements must be in writing, and it is preferable that advice is sought from the ACTGS in advance of agreeing to an assignment or novation.

e. Discharge of Contract

4.1.17 The most natural way in which a contract may be discharged is by each party completing their contractual obligations. A contract may otherwise be discharged:

i. by mutual agreement - the contract may be discharged without any party performing its part of the contract

ii. upon termination for breach of contract - where a party breaks a fundamental or important obligation imposed by a contract. The injured party generally has the right of action for damages against the party in default. The injured party may also be entitled to treat the contract as terminated and therefore discharged where the other party renounces the contract or makes its performance impossible

iii. incapable of performance - where the non-fulfilment has not resulted in the contract being incapable of further performance, and does not amount to a major breach of the contract the injured party may sue for damages for any loss suffered, but is not released from further performance of the contractual obligations

iv. by contractor's/consultant's default - it is important to follow the process as outlined in the contract when treating contractors/consultants as being in default; if the correct procedure is not followed at the correct time, JACS may be unable to obtain the necessary remedy

v. by frustration such as impossibility of performance - brought about by the discontinuance of circumstances contemplated by the parties, which will completely frustrate the contract. The causes of impossibility include matters such as the death of one party, the winding up of one party, bankruptcy, or the appointment of a receiver to one party, outbreak of war preventing performance or by legislation.

4.1.18 As a rule, JACS Contract Managers should seek legal advice from ACTGS before termination for any reason other than the contract coming to its natural end.

f. Contract Termination and Cancellation

4.1.19 Where a contract is to be terminated or cancelled, JACS must ensure preservation of the Directorate's interests. Contract Managers considering the termination or cancellation of any contract should seek contractual advice from Procurement ACT and/ or ACTGS.

g. Show Cause

4.1.20 The show cause notice procedure may only be relied upon when the contract provides for it. The procedure does not exist otherwise than as a term of the contract, and then only in accordance with the procedure set out in the contract.

4.1.21 Where contractors/consultants are in breach of the contract, JACS can call upon the contractors/consultants to show cause as to why the contract should not be terminated. As a rule, Contracts Managers should seek legal advice prior to issuing a show cause notice.

4.1.22 The letter of show cause should be delivered to the contractors/consultant's address for notices specified in the contract and be sent by registered mail or hand delivered. The contractors/consultants should be required to respond to the letter within the number of days, required by the 'show cause' clause in the contract, from receipt of the notice.

h. Termination

4.1.23 A contract may be terminated by JACS on account of default by the contractors/consultants, or under the provisions of a "break clause" in the contract. Upon termination of the contract, further performance of the contract ceases but other provisions for recovery of losses, damage, etc by JACS or for compensation to the contractors/consultants remain in operation.

4.1.24 As a rule, JACS Contract Managers seek legal advice before termination for any reason other than the contract coming to its natural end.

i. Mutual Termination

4.1.25 A contract may be cancelled in whole or in part by mutual agreement of the two parties. Upon cancellation all future rights and obligations of both parties cease in respect of the part cancelled.

4.1.26 If it is intended to cancel a contract, for reasons other than contractors/consultants' default, agreement must first be reached with the contractors/consultants to cancel on mutually acceptable terms, with both parties agreeing to release the other from further responsibility under the contract. A formal agreement on mutual release is desirable.

4.1.27 Care must be taken in negotiations with the contractors/consultants to avoid any action that could result in a claim by the contractors/consultants for breach of contract.

j. Public Complaints Procedure

4.1.28 It is a required characteristic of directorate contracts where the services being provided are delivered to, or impact on the public that the contract has a complaints handling mechanism. This should include recording the nature of the complaint, date, the name and address of the complainant and notes of any action taken. All information relating to complaints regarding a contract should be kept on the contract file by the Contract Manager.

k. Product Warranties

4.1.29 Contractors/consultants may provide or pass on a manufacturer's warranty in relation to commercial goods delivered under the contractual arrangement. The warranty will be for a specific period e.g. for several months, hours or kilometres.

4.1.30 The Contract Manager should monitor any goods that may need replacement or repair.

4.1.31 Please note that the terms of warranties are to be carefully reviewed and legal advice sought as appropriate on their applications and limitations.

5. OTHER FINANCIAL CONSIDERATIONS

5.1 Other financial considerations which may not need to be included in the Contract Management Plan that may however arise during the contract management stage include:

a. Securities, Performance Guarantees and Retention Moneys

5.1.1 Securities and/or guarantees are incorporated into contracts to ensure the due and proper performance of a contract. They provide an incentive to the contractors/ consultants to satisfy its contractual obligations.

5.1.2 The Contract Manager is responsible for ensuring that the contractors/consultants submit the required form of financial securities detailed in the contract and provides as secure storage arrangements as possible.

5.1.3 The contractors/consultants should lodge a final payment claim within 28 days of the completion of the contract for all moneys the contractors/consultants consider to be due from JACS under the contract.

5.1.4 Upon certification of this claim, JACS would release any retention moneys or security held against the contract within 14 days.

b. Liquidated damages

5.1.5 Liquidated damages are a sum of money, agreed upon between the parties to a contract as damages for breach of contract, to be paid by the party at fault to the party who is innocent.

5.1.6 The contractual arrangement may provide for payment of agreed damages by the contractors/consultants when completion is not within the contract or extended contract time. These payments are known as liquidated damages. The contractual arrangement will record the amount to be paid for each day, week, or other period for which the services are not provided, or completion is delayed.

6. JACS STAFF ROLES AND RESPONSIBILITIES ON CONTRACTS OR SIMILAR

6.1 The primary responsibilities and accountabilities in relation to the use of contractors/ consultant's rest with:

a. Executive Branch Managers / Business Unit Managers, and

b. Contract Managers.

6.2 EXECUTIVE BRANCH MANAGERS / BUSINESS UNIT MANAGERS

6.2.1 When undertaking procurement and executing a contract with contractors/consultants for business units/agencies within JACS the Executive Branch Managers /Business Unit Managers have responsibility to:

a. under section 39 of the GP Act, provide a signed copy of contracts (or amendments) which include a confidentiality clause to Goods and Services Procurement for lodgement with the ACT Legislative Assembly

b. ensure that either a copy of the contract, or enough details to allow a person to obtain a copy of the contract, which is valued at $25,000 or more, is placed on the ACT Government Contracts Register website within 21 days of execution

c. ensure that from 1 January 2021 that Procurement Values are reported in notifiable contracts on the ACT Government Contracts Register website.

6.2.2 Executive Branch Managers' have a responsibility to ensure that staff being appointed as Contract Managers have the necessary skills, experience, and resources to fulfil the function, and that Contract Managers:

a. are appointed with appropriate responsibility and accountability

b. are adequately trained so that they can perform and exercise the responsibility

c. prepare the contract management plan (where relevant)

d. monitor the performance of the contractors/consultants

e. act with due care and diligence and observe all accounting and legal requirements.

6.2.3 The skills of the Contract Manager need to be matched to the requirements of the contract. Skills that are considered valuable when undertaking contract management include, but are not limited to:

a. project management

b. people management

c. communication, liaison, and negotiation

d. management accounting & reporting

e. record keeping and file management.

6.2.4 The Contract Manager needs to have a level of authority that will ensure the contract runs smoothly and that services are not interrupted. Exercising this authority requires judgement to ensure all parties are treated fairly. Approval of additional costs must be sought from the appropriate delegate and be for the total increased contract amount.

6.2.5 Where it is practical to do so, the Contract Manager should be involved at the earliest stage of the procurement, which is the time of writing the specification. Contract management arrangements should be identified and planned to include who, how, delegations, reporting requirements and relationships, and specific task responsibilities.

6.3 CONTRACT MANAGERS

6.3.1 The Contract Manager is the person charged with the daily administrative management of the contract. Primary duties are to plan activities, manage risk, monitor contractors/consultant's performance and exercise delegated authority.

6.3.2 The Contract Manager role is to ensure that:

a. JACS obtains value for money through satisfactory contractors/consultants' performance, including the achievement of contract milestones

b. both parties meet their contractual obligations

c. JACS is only paying for services and products specified in the contract

d. the desired outputs e.g., delivery of services to the community, are achieved

e. disputes are avoided by regular monitoring of performance and open lines of communication

f. all risks are effectively managed, i.e. ensuring the contractors/consultants meets WH&S obligations.

6.3.3 Responsibilities of a Contract Manager may also include:

a. establishing a contract management plan for the project

b. reviewing the contract management process (including the plan) on a regular basis

c. monitoring changes to circumstances to ensure the contract remains relevant and value for money is achieved throughout the life of the contract

d. providing liaison between internal managers and users, and suppliers to identify and resolve issues as they arise

e. monitoring the contractors/consultants continuing performance against contract obligations

f. providing the contractors/consultants with advice and information regarding developments within JACS, where such developments are likely to affect the products or services provided

g. providing accurate and timely reporting to the senior management in charge of the project, highlighting significant performance issues or problems

h. ensuring insurance policy(ies) terms and conditions provide adequate protection for JACS and are maintained throughout the contract period

i. ensuring all products provided are certified as meeting the specifications before the supplier is paid

j. maintaining adequate records (paper and/or electronic) in enough detail on an appropriate contract file to provide an audit trail

k. managing contract change procedures

l. monitor contract term and manage variations

m. resolving disputes as they arise

n. conducting post contract reviews

o. determining remedies in the event of contract breach.

7. REPORTING RESPONSIBILITIES

7.1 EXECUTIVE BRANCH MANAGER / BUSINESS UNIT MANAGERS

7.1.1 Executive Branch Manager / Business Unit Managers are responsible for:

a. under section 39 of the GP Act, providing a signed copy of contracts (or amendments) which include a confidentiality clause and are valued at $25,000 or more to Goods and Services Procurement for lodgement with the ACT Legislative Assembly within 21 days of the end of each relevant reporting period (defined as a 6-month period ending on 31 March or 30 September)

b. ensuring that either a copy of a contract, or enough details to allow a person to obtain a copy of a contract which is valued at $25,000 or more is placed on the ACT Government Contracts Register website within 21 days of execution

c. ensure that from 1 January 2021 that Procurement Values are reported in notifiable contracts on the ACT Government Contracts Register website.

d. providing information on contractors/consultants where the value is at least $25,000 (including GST) as requested by the Annual Report Coordinator for JACS for inclusion in the annual report.

7.1.2 Where a variation to the contract occurs, the reporting responsibilities above apply to the variation.

7.2 PUBLICATION OF CONTRACTS

7.2.1 In accordance with the GP Act, all ACT Government contracts with a value of $25,000 or more are to be made publicly viewable on the ACT Government Contracts Register. A notifiable contract is a written contract for procurement entered into by JACS with a value of $25,000 or more.

7.2.2 The Contract, excluding confidential information as requested by the contractors/consultants, and agreed to by JACS, must be published on the ACT Government Contract Register, which is maintained by Goods and Services Procurement, within 21 days of the execution of the contract.

7.2.3 From 1 January 2021, the Direction provides that Procurement Values are to be reported for all notifiable contracts.

7.3 ANNUAL REPORTING

7.3.1 The Annual Report Coordinator within JACS Corporate coordinates the JACS Directorate Annual Report in line with the Annual Reports (Government Agencies) Directions, which is updated and published on the ACT Legislation Register each year. Executive Branch Managers / Business Unit Heads are responsible for providing contract information where the value is at least $25,000 (GST inclusive) and other procurement and contracting information for reporting in accordance with the Annual Reports Directions.

8. ASSETS REGISTER

8.1 Any assets delivered or disposed as a result of the contract need to be recognised in accordance with the ACTPS Director General Instructions.

8.2 Capture and store asset information, including ‘as built drawings’ as a result of asset modification or asset creation.

PART 3 - COMPLIANCE

1. OVERVIEW

1.1 The processes outlined in this part are mandated by the JACS Director-General for use by all JACS staff and management when undertaking procurement and contract management activities in JACS.

1.2 This section is based upon the concept of a centralised procurement governance approach, which aligns with the Government Procurement Act, recommendations resulting from recent internal audits on procurement and contract management and the Australian National Audit Office, Better Practice Guide on Developing and Managing Contracts.

1.3 It is expected that business units/agencies will consider their current procurement practices and take necessary action to comply with the requirements stated in the Framework.

2. GOVERNANCE

2.1 Good governance is underpinned by good risk management practices, which support the organisations approach to:

a. **Performance** – whereby the organisation uses its governance arrangements to contribute to its overall performance and the delivery of goods, services, or programs; and

b. **Conformance** – whereby the organisation uses its governance arrangements to ensure it meets the requirements of the law, regulations, published standards and community expectations of probity, accountability, and openness.[1]

2.2 The Australian National Audit Office Public Sector Governance Better Practice Guide also provides several principles, which have been adopted and supports governance arrangements within JACS. In some instances, the principles have been adapted to meet the needs of JACS, including:

a. **Accountability** – the process where JACS and its staff are held responsible for their decisions and actions and submit themselves to appropriate external scrutiny. It is achieved by all parties having a clear understanding of their responsibilities and having clearly defined roles. This responsibility extends across a range of areas including probity and ethics as well as effective and efficient implementation of programs.

b. **Transparency/Openness** – is required to ensure stakeholders have confidence in the decision-making processes and actions of JACS, in the management of its activities and its staff. Being open, through meaningful consultation with stakeholders and communication of full, accurate and clear information leads to effective and timely action and stands up to necessary scrutiny.

c. **Integrity** – means the exercise of authority in accordance with the stated values and principles of the ACT Public Service and the control of fraud and corruption[2]. It is based on honesty and objectivity, high standards of propriety and probity in the stewardship of public funds and resources, and the management of JACS' affairs.

[1] Australian National Audit Office, 2003, Public Sector Governance, Volumes 1 and 2: Better Practice, Commonwealth of Australia, p 6.
[2] Australian National Audit Office, 2003, Public Sector Governance, Volumes 1 and 2: Better Practice, Commonwealth of Australia, p 6.

d. **Leadership and Stewardship** – Public Officials exercise powers and manage resources on behalf of the ACT Government and therefore are stewards of those powers and resources. It is important to govern JACS so that its capacity to serve Government and the public interest is maintained or improved over time, including the effective and efficient management of resources. It is the responsibility of senior management to act as leaders in modelling the governance behaviour they expect the organisation to follow.

2.3 It is on this basis of good governance that JACS has established the Procurement, Contract Management and Assurance Framework, and strives to achieve better practice.

3. ROLES AND RESPONSIBILITIES

3.1 The primary responsibilities and accountabilities in relation to procurement and contract management rest with:

a. Procurement ACT
b. Major Projects Canberra
c. Director-Generals
d. JACS Staff:
    i. Executive Branch Manager / Business Unit Heads
    ii. Financial Delegates
    iii. Director, Goods and Services Procurement within Corporate Services
    iv. CWI when undertaking construction projects
    v. Purchasing Officers
    vi. Contract Managers.

3.2 It is important that all stakeholders understand and execute their role in procurement and contract management activities and provide the required information to ensure that the appropriate assurance is provided to the Director-General, Executive Branch Managers and Business Unit Managers under this Framework.

4. ASSURANCE MEASURES

4.1 Assurance for procurement and contract management activities undertaken by business units/agencies is achieved through monitoring the following:

a. Procurement Assurance

i. number of procurements
ii. value of procurements
iii. correct procurement processes
iv. risk levels of procurements, and process to manage risk
v. review and approval of all limited tender requests and justifications.

b. Contract Management Assurance

i. number of contracts
ii. value of contracts

iii. contract life cycles, term, expiry dates, extensions, and market testing
iv. risk management within contract life cycle.

4.2 Executive Branch Managers / Business Unit Managers and the Financial Delegates for all activities are reminded that the first level of responsibility is with them for the assurance that staff are undertaking the activities in accordance with the relevant Framework and processes.

5. ASSURANCE REPORTING

5.1 The Director, Procurement and Contract Management within Corporate Services and the business unit of JACS, will undertake compliance reviews on a sample of procurement and contract management activities across JACS to ensure the correct processes, financial delegation approvals, and records management requirements are met.

5.2 Reporting will also be generated through the Procurement and Contract Management registers on the JACS Procurement Intranet page, and will provide oversight to the Director-General, Executive Branch Managers, and Business Unit Managers of procurement and contract management activities within their business unit.

5.3 It may be appropriate for business units to establish a process to undertake regular internal reviews of activities, such as procurement timeframes, delays, and pending contract end dates. This will assist business units/agencies to provide continuous service, and plan for upcoming procurement activities.

6. COMPLIANCE

6.1 All JACS staff and management hold responsibility for ensuring compliance with the Procurement, Contract Management and Assurance Framework and providing the required information for completing reviews as requested.

6.2 An outline of the compliance requirements is provided at **Attachment A** of this Framework.

7. NON-COMPLIANCE

7.1 Failure to comply with this Framework may result in loss of reputation, conflict of interest, breach of law or a fraud against JACS.

7.2 Other risks relating to non-compliance include but are not limited to:

a. poor supplier, buyer, or other stakeholder relationships
b. negative public perception
c. legal disputes
d. budget impacts
e. goods and services outside of specification
f. complete service delivery failure.

7.3 JACS staff are therefore accountable to the Director-General for the fulfilment of their responsibilities under this Framework. Non-compliance will be taken as a serious matter and may result in disciplinary action or be reflected in management performance reviews.

7.4 If an instance of non-compliance or the identification of fraud or risk occurs, staff should email or call the JACS Senior Executive Responsible for Business Integrity Risk (SERBIR). SERBIR is contactable via email: JACSSERBIR@act.gov.au or phone: 6207 4813.

7.5 This position generally deals with all allegations of fraud and corruption received from managers and staff including allegations received under the *Public Interest Disclosure Act 2012*, and is the best contact in relation to non-compliance with procedures and legislation.

7.6 More information about the SERBIR is available via the SERBIR page on the JACS Intranet.

8. REVIEW

8.1 This Framework will be reviewed on an ongoing basis, with a formal review to occur at a minimum of every two years.

9. ENQUIRIES

Enquiries can be made regarding this framework via JACS.Procurement@act.gov.au .

ATTACHMENT A

Checklist for Procurement Compliance	Procurements under an exemption from minimum threshold and tender requirements	Procurements with an estimated total value of Less than $25,000	Procurements with an estimated total value of $25,000 to <$200,000	Procurements with an estimated total value of $200,000 or more	If an ICT or Includes system development or redesign and is valued at greater than $1m	Procurements with an estimated total value of greater than $5m over the contract period
Establish Record file structure in TRIM	✔	✔	✔	✔	✔	✔
COIs are completed prior to market approach, reviewed when market respond(s) (required for change in circumstances and or new staff become involved in the procurement or contract mgt)	✔	✔	✔	✔	✔	✔
Engage with JACS.Procurement@act.gov.au (to verify risk assessments, and procurement requirements)	✔				✔	
Engage with JACS.Procurement@act.gov.auif seeking a new IT system or IT service	✔	✔	✔	✔	✔	✔
Engage with Good and Services Procurement	✔	If required for high risk procurements	If required for high risk procurements	✔	✔	✔
Risk Assessment and check ACTIA insurance requirements	✔	✔	✔	✔	✔	✔
Statement of Requirements	✔	✔	✔	✔	✔	✔
Pre-Tender Consultation	If there is more than one tenderer, this might be appropriate.			Pre-tender consultations also might occur here.	✔	✔
Procurement Documentation, Record of Procurement Plan Minute, Risk Plan, Evaluation Plan, Probity Statement and Summary of pre-tender consultation and Value for Money assessment as required.	✔	✔ as required	✔	✔	✔	✔
Consideration of the Government Procurement (Charter of Procurement Values) Direction 2020	✔	✔	✔	✔	✔	✔
If a residual high risk is identified in the Risk plan	✔	✔	✔	✔	✔	✔
Request for Quotation Tender	✔	✔ Seek at least 1 written quote	✔ Seek at least 3 written quotes	✔ Public Tender	✔ Public Tender	✔ Public Tender
Evaluation report including negotiation items or Negotiation Plan	✔	✔	✔	✔	✔	✔
Check validity and sufficiency of insurances	✔	✔ as required	✔	✔	✔	✔
Letter of intent	✔	✔	✔	✔	✔	✔
Letter of Decline	✔	✔	✔	✔	✔	✔

Checklist for Procurement Compliance	Procurements under an exemption from minimum threshold and tender requirements	Procurements with an estimated total value of Less than $25,000	Procurements with an estimated total value of $25,000 to <$200,000	Procurements with an estimated total value of $200,000 or more	If an ICT or Includes system development or redesign and is valued at greater than $1m	Procurements with an estimated total value of greater than $5m over the contract period
Letter of Acceptance	✔	✔	✔	✔	✔	✔
Contract Purchase Order / Short Form Contract / Services Agreement	✔	✔	✔	✔	✔	✔
Publish on the ACT Government Contract Register within 21 days of execution. Include contract, attachments, and any notifiable amendments.	✔		✔	✔	✔	✔
From 1 January 2021, report procurement values in notifiable contracts on the ACT Government Contract Register	✔		✔	✔	✔	✔

Note: Consultation with Procurement ACT and Major Projects Canberra is required for international trade agreement, pre-qualification and Private-Public Partnership thresholds and requirements that are not reflected in this table.

ATTACHMENT B

Example of the Confidential Text Request Brief – Editable version is accessible through the JACS Intranet under the Procurement category.

ATTACHMENT C

Example of the Procurement Threshold Exemption Brief and Procurement Plan Minute (PPM) Template is accessible through the JACS Intranet under the Procurement category.

DETAILS

Document Properties	Approval Details
Policy Name:	Procurement, Contract Management and Assurance Framework
Policy Number:	00087
Policy Type:	Procurement
Custodian:	JACS Corporate Services
Policy Advisor:	Director, Procurement and Contract Management
Responsible Branch:	JACS Corporate Service
Stakeholders:	JACS employees who undertake procurement, contract management and related compliance activities in JACS.
Document/Legislation References:	*Government Procurement Act* 2001 *Government Procurement Regulation* 2007 Government Procurement (Secure Local Jobs) Code 2019 Aboriginal and Torres Strait Islander Procurement Policy (ATSIPP) Government Procurement (Charter of Procurement Values) Direction 2020 *Work Health Safety Act 2011* Procurement ACT Procurement ACT Website – Various circulars *Territory Records Act* 2002 Audit Report No 57 – Purchasing Procedures and Practices, Australian National Audit Office, June 2005 Audit Report No 21 – Implementation of the revised Commonwealth Procurement Guidelines, Australian National Audit Office, January 2007 Better Practice Guide, Developing and Managing Contracts, Australian National Audit Office, February 2012 Director-General Instructions 3.1 – Procurement of Goods and Services Director-General Instructions 2.8.2 – Engagement of Contractors and consultants

Document Properties	Approval Details
	Director-General Instruction 2.8.1 – Engagement of Consultants Director-General Instruction 3.7 – Care and Custody of Assets JACS Delegations Register Goods and Services Procurement - Sustainable Procurement Policy 2015 Local Industry Participation Policy *Secure Local Jobs Code (SLJC) 2019* *Financial Management Act* 1996

AMENDMENT HISTORY

Version	Issue Date	Amendment Details	Author
0.1	September 2016	Combination of Procurement Framework, Contract Management Framework and Procurement and Contract Management Assurance Framework	Assistance Director, Infrastructure – Capital Works and Infrastructure
0.2	April 2017	Review and Update	Assistance Director, Infrastructure – Capital Works and Infrastructure
0.3	June/July 2017	Review and Update	Assistance Director, Infrastructure – Capital Works and Infrastructure
0.4	August 2017	Updates as discussed with DDG, CS	Team Leader, Coordination and Policy, Governance and Business Improvement
0.5	March 2021	Updates including Internal Audit recommendations; Aboriginal and Torres Strait Islander Procurement Policy; Government Procurement (Secure Local Jobs) Code 2019,	ICT, Capital Works, and Infrastructure

Version	Issue Date	Amendment Details	Author
		COVID-19 procurement policies, Government Procurement (Charter of Procurement Values) Direction 2020	
0.6	June 2022	Review and updates including Secure Local Jobs code – Ethical Treatment of Workers Evaluation – two stage procurement process, Aboriginal and Torres Strait Islander Procurement Policy link, factsheets and better practice guidance, steps and timeframes under procurement threshold, Records keeping link, probity in procurement guide link and contact details for the framework	Director, Contracts and Procurement JACS Corporate Services
0.7	July 2023	Review and updates including to remove references to OSQAR, include location for procurement templates and the requirement to obtain a Procurement Unique Identifier.	Director, Procurement and Contract Management, JACS Corporate Services