



Sharing confidential information

Purpose

The Commonwealth Procurement Rules (CPRs) require that submissions are treated as confidential before and after the award of a contract but recognise that the need to maintain the confidentiality of information should be balanced against the public accountability and transparency requirements of the Australian Government. Therefore, the CPRs provide that relevant entities should include provisions in request documentation and contracts alerting potential suppliers to the public accountability requirements of the Australian Government, including that submissions and confidential information provided as part of tendering may be shared between Commonwealth entities for purposes which service the Commonwealth's legitimate interests such as compliance monitoring and other non-commercial purposes.

This guidance provides more information for Commonwealth entities and tenderers to support consideration regarding the sharing of confidential information provided through tendering.

CPRs paragraphs 7.22 to 7.26

Treatment of Confidential Information

7.22 When conducting a *procurement* and awarding a *contract*, *relevant entities* should take appropriate steps to protect the Commonwealth's confidential information. This includes observing legal obligations, such as those under the *Privacy Act 1988*, and statutory secrecy provisions.

7.23 *Submissions must* be treated as confidential before and after the award of a *contract*.

7.24 Once a *contract* has been awarded, the terms of the *contract*, including parts of the *contract* drawn from the *supplier's submission*, are not confidential unless the *relevant entity* has determined and identified in the *contract* that specific information is to be kept confidential in accordance with the 'confidentiality test' set out in the guidance on Confidentiality Throughout the Procurement Cycle.

7.25 The need to maintain the confidentiality of information should always be balanced against the public accountability and transparency requirements of the Australian Government. It is therefore important *for officials* to plan for, and facilitate, appropriate disclosure of procurement information. In particular, *officials* should:

- a. include provisions in *request documentation* and *contracts* that alert *potential suppliers* to the public accountability requirements of the Australian Government, including disclosure to the Parliament and its committees or other Commonwealth

entities where it serves the Commonwealth's legitimate interests such as for policy development, research, compliance, regulatory and other non-commercial purposes;

b. when relevant, include a provision in contracts to enable the Australian National Audit Office to access contractors' records and premises to carry out appropriate audits; and

c. consider, on a case-by-case basis, any request by a *supplier* for material to be treated confidentially after the award of a *contract*, and enter into commitments to maintain confidentiality only when such commitments are appropriate.

7.26 When confidential information is required to be disclosed, for example following a request from a parliamentary committee, reasonable notice in writing **must** be given to the party from whom the information originated.

Context

There are many legitimate reasons why an entity (other than the procuring entity) might seek access to confidential information in a submission¹ or why a procuring entity may otherwise wish to disclose such information with another Commonwealth entity.

In addition to informing future procurement activities, the sharing of submission information may be proposed to inform policy development, or other non-procurement, related purposes.

Examples where information can be shared may include:

- where an entity may need to undertake a complex procurement and seeks to understand market capability where public information is not accessible. The ability of an entity to develop an ATM for a complex procurement that draws together relevant information from similar projects may result in a more efficient tender process for potential suppliers and a better procurement outcome for the Commonwealth.
- a policy entity is seeking goods and services capability information from submissions to undertake policy analysis in a particular sector.
- a regulatory or compliance entity is seeking access to submissions to identify potential anticompetitive practices.

Process of considering requests

Where not already in existence, Commonwealth entities should put processes in place to consider requests for confidential submission information.

The process should take into consideration the context of the procurement to which the submissions were made, including:

- any legal restrictions on sharing the submission such as privacy, confidentiality, legislative secrecy and security requirements;
- any specific probity requirements or considerations that may need to be taken into account; and

¹ Submission – any formally submitted response from a potential supplier to an approach to market. Submissions may include tenders, responses to expressions of interest or responses to request for quote.

- the reasons for the entity seeking the information.

Memorandums of understanding between entities may be useful to document compliance and controls for more sensitive information.

Below is an example of the considerations that two Commonwealth entities may need to take into account in order to share confidential information.

Entity A seeks access to submission information from a procurement undertaken by Entity B. Entity A should:

- develop a business case that justifies the need and specifies the purpose of the information use (taking into account the scale, scope and risk of the procurement and the information it is seeking access to)
- ensure processes are in place to manage officials' access to, and entity storage of, the information within the relevant security requirements, should the information be provided
- confirm the collection and use of any personal and sensitive information requested from submissions complies with the *Privacy Act 1988* (Privacy Act)
- ensure the information is not further shared for any purpose without the written agreement of Entity B.

Entity B has undertaken a procurement and received submissions. They receive a request for information from Entity A. Entity B needs to:

- consider if the ATM documentation notified potential suppliers that confidential information may be shared for the purposes proposed
- consider if the proposed disclosure of information from the submission is consistent with any other obligations of confidence owed to potential suppliers
- understand any limitations to sharing confidential information, including applicable legislative secrecy and security provisions, and obligations under the Privacy Act, where the disclosure involves personal information
- consider the business case. Approval of the release of information is at the discretion of Entity B. Entity B may reject the request if it is considered to be inconsistent with the CPRs, creates a significant resourcing imposition on the entity or if the request is unnecessary for the stated purpose. Entity B will need to provide the basis for their decision
- document all decisions, and the basis for those decisions
- consider if the release of data sought in the request is necessary to meet the purpose of the request or if it could be met with other means

Non-commercial purposes

The sharing of confidential information must not seek to benefit the commercial offerings of government entities. As part of the wide range of functions and activities undertaken by government, there are a number of government entities that operate in the commercial space to varying extents such as Australia Post, the Commonwealth Scientific and Industrial Research Organisation, the Australian Government Actuary (within the Treasury), the Australian National University and the Australian Institute of Family Studies.

Commonwealth entities must not use the confidentiality provisions in the CPRs to gain access to confidential business or pricing information to improve the competitiveness of any offering that it provides to the market, or to consider any other commercial aspects of its

offering, including the expansion of its offering to the market (government or commercial). Entities that receive a request for access to submission information that is for commercial purposes must not share this information.

In accordance with sections 27 and 28 of the *Public Governance, Performance and Accountability Act 2013*, officials must not use or disclose information obtained through their official duties to gain an advantage for themselves or others, or to cause detriment to their entity, the Commonwealth or any other person.

Existing arrangements where certain information is already shared

Arrangements where submission information are currently shared between Commonwealth entities include cooperative procurement arrangements. For example, the head contract agreement/panel deed for the Whole-of-Australian-Government MAS Panel and People Panel allow sharing of information with other Commonwealth entities (as buyers) on the pricing schedules, categories of services provided under the panel arrangement and the supplier's 'pitches' regarding their capability and capacity.

The amendments to the CPRs do not alter these arrangements.

Seeking information for a future procurement

CPRs paragraph 5.2 states: 'Participation in *procurement* imposes costs on *relevant entities* and *potential suppliers*. Those costs should be considered when designing a process that is commensurate with the scale, scope and risk of the proposed *procurement*.'

Commonwealth entities may seek submission information for a broad range of reasons consistent with CPRs paragraph 7.25, including regarding 'policy development, research, compliance, regulatory and other non-commercial purposes' where those reasons serve the Commonwealth's legitimate interests. However, this must be considered against the scale, scope and risk of the procurement. These considerations are not cost-free and the value of the purpose of accessing submission information should outweigh the costs imposed on relevant entities.

It is reasonable to expect that access to submission information to inform a future procurement opportunity will be more appropriate for complex, higher risk procurements where market information is not readily available.

Where information has been shared for improving the design process of another procurement, the principles of competition should continue to be applied and should not be used to discriminate against potential suppliers or limit potential suppliers' ability to compete for procurement opportunities. If there is a limited number of potential suppliers in a market, future procurements should not result in a limited tender to only the successful tenderer from the earlier ATM solely because of the consideration of the similar previous procurement which has occurred. The procurement method selected will still need to comply with the provisions set out in section 9 of the CPRs 'Procurement Method'.

Submission information provided for any one procurement will be subject to the context and circumstances of that procurement (including factors from the procuring entity and supplier perspectives) and may not be a substitute for another similar procurement. For example,

economic cycles, market and individual supplier capacity and technology maturity may impact similar procurements undertaken at different points in time in a variety of ways, including pricing and delivery timeframes.

Best practice procurement processes involve informing potential suppliers of past ATMs that were considered in the design process of a procurement in order to provide full transparency to tenderers and allow them to make their best submissions and for the Commonwealth to get best value for money.

Commonwealth Contracting Suite and ClauseBank

From 17 November 2025, the clauses of the Commonwealth Contracting Suite (CCS) ATM terms will be/have been revised to alert potential suppliers to the purposes for which submission information may be shared within the Commonwealth. The new clauses have also been made available in the ClauseBank for inclusion in ATM terms. [ClauseBank | Department of Finance](#)

Protecting information and confidentiality

Commonwealth entities are subject to strict privacy and confidentiality obligations to ensure tenderer information is managed appropriately throughout the procurement lifecycle. In addition to the CPRs and the relevant contractual clauses, entities must also comply with the Privacy Act and the Protective Security Policy Framework, which set out requirements for handling personal information (including sensitive information), as well as maintaining robust security controls.

The AusTender Terms of Use, privacy statements, and request documentation have been updated as required to ensure that potential suppliers are notified that their submissions may be disclosed to other Commonwealth entities.

Entities should ensure that they do not enter into contracts which further restrict the sharing of the supplier's tender submission without careful consideration. If such an arrangement is required, the contract should identify which elements of the tender submission should not be shared. Where an entity does enter into such an arrangement, entities should ensure that they have appropriate arrangements in place which identify such an arrangement, to ensure that such information is not inappropriately disclosed.

Supplier complaints

If a tenderer has a complaint regarding the sharing of their submission and other confidential information provided as part of tendering being shared within the Commonwealth, the tenderer should direct their complaint to the entity responsible for the relevant procurement process.

- Information regarding how to make a complaint to an entity should be available on the entity's website
- If the issue is not resolved with the government entity, the tenderer can consider raising the complaint with [the Australian Government Procurement Coordinator](#) or [the Commonwealth Ombudsman](#).

Frequently Asked Questions:

Why are you changing the rules around information sharing between Commonwealth Entities?

The CPRs effective 17 November 2025, introduced amendments to paragraph 7.25 to clarify that officials should include provisions in request documentation and contracts that alerts potential suppliers that submissions may be shared within the Commonwealth where it serves the Commonwealth's legitimate interests such as for policy development, research, compliance, regulatory and other non-commercial purposes.

Other obligations, such as those set out in the Privacy Act, will continue to apply.

Can a potential supplier decline to have their information shared?

A potential supplier cannot prevent the sharing of their information if the disclosure is consistent with paragraphs 7.22 to 7.26 of the CPRs, relevant ATM documentation and any contract resulting from a procurement process.

Entities should ensure that they do not enter into contracts with the successful applicant which further restrict the sharing of the supplier's tender submission without careful consideration. Should, in extremely limited circumstances, an entity enter into such an arrangement, the entity should ensure that it has appropriate arrangements in place which identify such an arrangement, to ensure that such information is not inappropriately disclosed.

Will Commonwealth entities be able to access pricing information they previously could not?

Pricing information for panel arrangements has previously been able to be shared to support procurement activity. Pricing information may be shared within government, where the sharing of that information serves the Commonwealth's legitimate interests (such as improving market research for future procurement processes and improving value for money outcomes). However, pricing information cannot be shared for commercial purposes – meaning that submissions, including pricing details, cannot be shared with agencies who would also be bidding to provide similar services to other agencies.

How do I access submission information?

Your entity will need to approach the relevant entity with a business case. Details are provided under 'Process of considering requests' in the guidance.

The detail of the business case should be commensurate with the scale and scope of the request. For instance, should high-level de-identified information be requested, a simple email request outlining the scope of the request and the use of the information, may be sufficient. Where access to full submissions is requested, a more fulsome business case may be required.

I have been approached for confidential submission information. Can I provide it?

Yes, you may disclose the information if your ATM included clauses notifying potential suppliers about the disclosure, the disclosure is consistent with the CPRs and the disclosure is otherwise consistent with any contractual or legal requirements which apply in the circumstances such as the Privacy Act and any legislative secrecy and security provisions. If your ATM did not contain such clauses or you are otherwise uncertain, you should seek legal advice.

I am a tenderer. My information has been inappropriately shared. What can I do?

There are several actions that you may wish to take, depending on the severity and context of the instance. These include:

- Lodge a complaint with the procuring entity, or the entity that you consider has inappropriately shared your information
- Lodge a complaint with the [Procurement Coordinator](#)
- Lodge a formal complaint under the [Government Procurement \(Judicial Review\) Act 2018](#) if you believe a breach of the CPRs has occurred during a covered procurement
- Escalate to the [Commonwealth Ombudsman](#)
- Take other steps in accordance with legal advice.

Which ATMs does this apply to?

ATMs released after the commencement of the CPRs 17 November 2025 should, consistent with paragraph 7.25, include provisions that alert potential suppliers to disclosure of confidential submission information. This guidance applies to these ATMs. For ATMs issued prior to this date, the ability to share confidential information may be more limited unless specifically provided for in the relevant ATM.

I am a tenderer. How can I be confident that my information is being maintained securely and not being shared inappropriately?

Commonwealth entities are subject to strict privacy and confidentiality obligations to ensure tenderer information is managed appropriately throughout the procurement lifecycle. In addition to the CPRs and the relevant contractual clauses, entities must also comply with the Privacy Act and the Protective Security Policy Framework, which set out requirements for handling personal and sensitive information, as well as maintaining robust security controls.

I am an official. Can I access the confidential information held by another branch/division within my entity?

You should consult with your entity's procurement area or legal team in the first instance, and apply the same principles outlined in this guidance.

Further advice

Further questions can be directed to your central procurement team (or equivalent) or procurementagencyadvice@finance.gov.au