Australian Government
Department of Finance

Consideration of relevant regulations and/or frameworks

1. Where regulations or regulatory frameworks apply to a procurement, officials should ensure that they are followed.

CPRs Paragraph 10.19	Officials **must** make reasonable enquiries that the procurement is carried out considering relevant regulations and/or regulatory frameworks, including but not limited to tenderers' practices regarding: a. labour regulations, including ethical employment practices; b. workplace, health and safety; and c. environmental impacts.

What is the purpose of the rule?

2. To reinforce the requirement for suppliers to comply with applicable regulations or regulatory frameworks.

What does it mean?

3. The requirement at paragraph 10.19 of the CPRs reaffirms the Government's commitment to efficient, effective, economical and ethical procurement, which includes procurement officials making reasonable enquiries that their procurement is carried out in accordance with relevant regulations and/or regulatory frameworks.

4. In achieving value for money, officials are already required to consider relevant financial and non-financial costs and benefits, including the environmental sustainability of proposed goods and services (refer paragraph 4.5 (e) of the CPRs). Further, paragraph 6.7 of the CPRs notes that entities should not seek to benefit from supplier practices that may be dishonest, unethical or unsafe.

5. The three examples specified in Paragraph 10.19 cover labour, Workplace Health & Safety, and environmental regulations. This list is provided by way of example, and is not exhaustive. Where one of these areas of regulation is not applicable, or other forms of significant regulation apply, then officials should use their judgement to guide the appropriate enquiries.

What do procurement officials need to do?

6. When planning a procurement, officials should consider if any regulatory frameworks or regulations apply, for example the *National Construction Code* or the *Safework Australia* regulatory framework.

Note - paragraph 7.2 of the CPRs require officials to maintain documentation commensurate with the scale, scope and risk of the procurement. This includes documents related to the process that was followed and relevant decisions.

7. Officials should determine how best to satisfy the requirements of paragraph 10.19 of the CPRs depending on their procurement and entity requirements.

8. Officials should seek advice internally or externally if they are unsure about relevant regulations or regulatory frameworks for a procurement. This could be from subject matter experts, or from procuring officials in other entities sourcing similar goods and services.

9. To assist officials, below are some possible tools and options that may be used. Officials may:
    a. require that, as a part of their response, potential suppliers certify (e.g. via a statutory declaration or warranty) that they comply with the regulations and/or regulatory frameworks, as identified in the request documentation;
    b. require that successful suppliers provide assurance of compliance with the regulations and/or regulatory frameworks, such as by suppliers providing an independent audit report;
    c. undertake their own investigation to confirm that potential or preferred suppliers have not breached the regulations and/or regulatory frameworks, and do not have a judicial decision against them (not including decisions under appeal); and
    d. require that potential suppliers demonstrate their sustainability credentials.

10. Entities may include appropriate clauses in contracts to ensure suppliers comply with relevant laws. An example of this is included in the *Commonwealth Contracting Suite*. Officials may also wish to consider relevant clauses available through *ClauseBank*.

> Extract clause from Commonwealth Contracting Suite
>
> *C.C.21 Compliance with Laws:*
>
> *The Supplier must comply with, and ensure its officers, employees, agents and subcontractors comply with the laws from time to time in force in any jurisdiction in which any part of the Contract is performed.*

11. In addition, where specific regulations and regulatory frameworks apply throughout the duration of a contract, these should be referenced in contract documentation.

12. If a regulation or regulatory framework is referenced in contract documentation and applies throughout the life of the contract, officials should satisfy themselves that the regulation or regulatory framework is being met. The level of assurance necessary will depend on the likelihood and impact of the regulation or regulatory framework not being met throughout the life of the contract.

13. Entities should ensure that any requirements to comply with regulations are necessary and appropriate, and do not add unnecessary burden to potential suppliers or discriminate against potential suppliers, particularly SMEs.
    a. Officials should be mindful of minimising red tape and additional costs to suppliers bidding for government contracts.

14. **Paragraph 10.19 of the CPRs does not require comprehensive compliance auditing that would add materially to the cost for taxpayers**. The purpose is to ensure that there is reasonable evidence to give officials sufficient confidence in the veracity of any representations made.

15. There are a number of resources across Government that may be useful for considering relevant regulations. Some examples are provided below:
    a. Labour and ethical employment practices.
        - The Attorney-General's Department website provides information outlining relevant laws and treaties on *protection from exploitation* and the *right to freedom from slavery*.
        - The national *Modern Slavery Reporting Requirement*, established under the *Commonwealth Modern Slavery Act 2018*, provides procuring officials with an accessible way to investigate some potential suppliers' modern slavery supply chain risks, and business efforts to mitigate these risks. The reporting requirement applies to Australian and foreign entities operating in Australia with annual consolidated revenue of at least $100 million. These statements are publicly available, with the first statements due by 31 December 2020.
        - The Fair Work Ombudsman administers a number of laws and regulations that govern Australia's workplaces, such as the *Fair Work Act 2009* and the *Fair Work Regulations 2009.* The Fair Work Ombudsman's website also includes resources to assist with labour contracting, information on suitable questions to ask suppliers and model clauses for contracts.

    b. Workplace Health and Safety
        - *Work Health and Safety Regulations 2011* – made under the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.
        - Safe Work Australia has a number of resources and publications available, such as *model codes of practice*.

    c. Environmental impacts
        - The *Sustainable Procurement Guide* provides guidance on waste management and considering the entire life cycle of goods and services in procurement.
        - The *Environment Protection and Biodiversity Conservation Act 1999*, the Commonwealth's key environmental legislation.

Example

Entity A needs to procure cleaning services for multiple premises across Australia.

During the planning and scoping phase, Entity A determines that the successful tenderer will need to comply with relevant workplace laws.

When setting out the specifications in the statement of requirement, Entity A includes a requirement in the approach to market documentation that tenderers need to certify compliance (via a statutory declaration) with relevant workplace laws (for example, the *Fair Work Act 2009*) in their tender submission.

The term of the contract is 3 years. Given this, Entity A includes specific clauses in the resulting contract requiring:

a. ongoing compliance with the relevant workplace laws during the term of the contract; and
b. notification within 48 hours of any instances of non-compliance, including information on action taken to rectify the issue.