



Australian Government



Northern Australia Infrastructure Facility

# Procurement Policy

April 2019

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## Document Review and Approval

VERSION	AUTHOR/REVIEWER	REVISION	APPROVAL	APPROVAL DATE	NEXT REVIEW DATE
1.0	Chief of Staff	Original	Board	4 April 2019	April 2020
1.1	Chief Operating Officer	Review	Board	4 April 2019	April 2020

## Document purpose

This Policy sets out how NAIF procures goods and services in a way which drives value and is consistent with NAIF's obligations under the PGPA Act (defined below) and other laws. This Policy does not cover recruitment of persons employed by or operating under an employment contract with NAIF but (subject to the terms of this Policy) will apply to the procurement of consultancy services and the procurement of goods and services under the Due Diligence Costs Policy.

# 1. Definitions

The following definitions apply when used in this Policy.

**Commonwealth Procurement Rules** or **CPRs** means the Commonwealth Procurement Rules under section 105B(1) of the PGPA Act, as in force from time to time. Whilst NAIF is not bound by the CPRs, NAIF has regard to the key principles of the CPRs in this Policy.

**Core Principles** means the core principles as outlined in Section 5 of this Policy.

**Cost Indemnity Agreement** means an agreement under which the Proponent agrees to pay for or reimburse NAIF for Due Diligence Costs, the form of which has been approved by Legal.

**Director** means a member of the NAIF Board.

**Director & CEO Travel and Expenses Policy** means NAIF's Director & CEO Travel and Expenses Policy, as updated from time to time.

**Due Diligence Costs** has the meaning given to it in the Due Diligence Costs Policy. These include but are not limited to:

- site visits to undertake analysis of project operations or to better understand how the Project Proponent will conduct its operations in the project location;
- flights to projects situated in remote locations;
- independent expert advice required to properly conduct project due diligence – for example market analysis, specialist reports, environmental or technical reports; and
- legal and other advice and resources required to support project due diligence analysis or drafting of facility documentation for execution.

**Due Diligence Costs Policy** means NAIF's Due Diligence Costs Policy, as updated from time to time.

**EFA** means the Export Finance Australia.

**EFA Service Level Agreement** means the service agreement between NAIF and EFA.

**Executive Management** means a person working in the executive leadership team and reporting directly to the CEO.

**GST** means The Goods and Services Tax, as defined by the *A New Tax System (Goods and Services Tax) Act 1999*.

**Indigenous enterprise** means an organisation that is 50 per cent or more owned by indigenous people that is operating a business. It may take the form of a company, incorporated association or trust. A social enterprise or registered charity may also be an Indigenous enterprise if it is operating as a business.

**Indigenous enterprise databases** means appropriate databases listing accredited Indigenous enterprises, including, without limitation:

- **(BBF)** Black Business Finder, an online database established to give Aboriginal and Torres Strait Islander businesses an opportunity to be involved and benefit from the rapidly expanding major project program in Queensland. More information is available at: <http://www.bbf.org.au>.
- **(Supply Nation)** means Supply Nation, the organisation dedicated to growing diversity in supply chains, providing Australia's leading database of verified Indigenous businesses and delivering support services and advice to corporate, government and not-for-profit entities. More information is available at <http://www.supplynation.org.au>.

**Indigenous Procurement Policy** means the Commonwealth's Indigenous Procurement Policy, as updated from time to time, which can be accessed at:

<https://www.pmc.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp>.

**Instrument of Delegation** means the Instrument of Delegation approved by the Board or any subsequent or replacement delegation.

**Investment Mandate** refers to the Northern Australia Infrastructure Facility Investment Mandate Direction 2018.

**Legal** means NAIF Staff in the legal team.

**PGPA Act** means the *Public Governance, Performance and Accountability Act 2013* (Cth) and any associated rules.

**Procurement Practices** means the procurement practices outlined in Section 8 of this Policy.

**Project** has the meaning given in the Investment Mandate.

**Project Proponent** has the meaning given in the Investment Mandate.

**Staff** refers to persons employed by, or operating under an employment or similar contract with NAIF including full time or part time employees, consultants, contractors, and EFA personnel working on NAIF matters under the EFA Service Level Agreement.

## 2. Purpose of Policy

As a corporate Commonwealth entity under the PGPA Act, NAIF must promote the proper use and management of public resources for which NAIF is responsible. Public resources should be used in an efficient, effective, economical and ethical manner. It is important that procurement of goods and services achieve value for money and encourage competition.

Prior to the introduction of this Policy, NAIF has had regard to the procurement policies of EFA where applicable in complying with its obligations under the PGPA Act, including seeking value for money and effective competition. As NAIF has matured as an organisation, it has sought to formalise NAIF's values and practices in respect of procurement by adopting this Policy. This will support Staff in the application and strengthening of the principles which have been employed to date by NAIF, including NAIF's legal requirements.

This Policy applies to all NAIF Staff.

Travel and accommodation expenses for Directors are managed in accordance NAIF's Director & CEO Travel and Expenses Policy. Directors should not directly procure any other goods and services on behalf of NAIF, but should refer these procurement decisions to the CEO.

Failure by Staff to comply with the obligations set out in this Policy may result in disciplinary action.

## 3. Review and Approval

This Policy is reviewed annually, or more frequently if required, by or on behalf of the Executive Management to ensure it remains aligned with governing legislation. The Board approves all material amendments and reviews the Policy at least every two years.

The Manager, Risk & Compliance ensures material changes to the Policy are communicated to Staff in a timely manner.

## 4. Responsibilities

Role	Responsibility
<b>Board and Board Audit &amp; Risk Committee (BARC)</b>	The Board is responsible for approving this Policy in line with Section 3 of this Policy. The BARC is responsible for reviewing this Policy and endorsing it for Board approval.
<b>CEO</b>	The CEO is responsible for: <ul style="list-style-type: none"> <li>overseeing this Policy and ensuring adequate and appropriate resources are allocated to implement, develop, maintain and comply with this Policy</li> <li>implementing appropriate remedial, disciplinary or other action for failure to comply with this Policy</li> <li>encouraging Staff to comply with this Policy and make any recommendations for continuous improvement</li> </ul>
<b>Chief Operating Officer</b>	The Chief Operating Officer is responsible for approving all invoices in accordance with the Instrument of Delegation.
<b>Manager, Risk &amp; Compliance</b>	The Manager, Risk & Compliance is responsible for: <ul style="list-style-type: none"> <li>arranging training for Staff on this Policy including the consequences of a breach</li> <li>providing advice to Staff on compliance with this Policy</li> <li>monitoring the effectiveness of this Policy</li> <li>reporting any known breaches of this Policy</li> </ul>
<b>Legal</b>	Legal is responsible for providing advice to Staff on legal issues relating to compliance with this Policy.
<b>All Staff</b>	Staff are responsible for complying with this Policy including by: <ul style="list-style-type: none"> <li>attending relevant training and understanding procurement obligations;</li> <li>assisting the CEO, Chief Operating Officer, Manager, Risk &amp; Compliance and Legal where required</li> <li>raising any compliance issues with Manager, Risk &amp; Compliance and Legal as appropriate</li> <li>providing all invoices to the Chief Operating Officer with confirmation they are correct and consistent with this Policy and the terms of the procurement and confirming the goods or services have been provided</li> <li>following relevant procedures and providing feedback for continuous improvement</li> </ul>

## 5. Core Principles

### 5.1 Efficient, Effective, Economical and Ethical Procurement

NAIF is bound by the PGPA Act. Pursuant to the PGPA Act, governance of NAIF must promote the proper use and management of public resources for which NAIF is responsible. For the purposes of this requirement under the PGPA Act, “proper” means efficient, effective, economical and ethical.

Principle	Consideration
<b>Efficient</b>	Efficient relates to the achievement of the maximum value for the resources used. In procurement, it includes the selection of a procurement method that is the most appropriate for the procurement activity, given the scale, scope and risk of the procurement.
<b>Effective</b>	Effective relates to the extent to which intended outcomes or results are achieved. It concerns the immediate characteristics, especially price, quality and quantity, and the degree to which these contribute to specified outcomes.
<b>Economical</b>	Economical relates to minimising cost. It emphasises the requirement to avoid waste and sharpens the focus on the level of resources that the Commonwealth applies to achieve outcomes.
<b>Ethical</b>	Ethical relates to honesty, integrity, probity, diligence, fairness and consistency. Ethical behaviour identifies and manages conflicts of interests, and does not make improper use of an individual’s position. Consider whether the proposed use is consistent with the core beliefs and values of society – that is, would another official in a similar situation undertake a similar course of action? Ethical behaviour also means not benefitting from supplier practices that may be dishonest, unethical or unsafe.

### 5.2 Value for Money

Whilst not bound by the Commonwealth Procurement Rules (CPRs), Staff should have regard to the key principles set out in the CPRs when making procurement decisions. Achieving value for money is the core rule of the CPRs. In achieving value for money, Staff must consider a number of factors when engaging in procurement activities.

Price is not necessarily the sole consideration. Other important factors may include, to the extent relevant:

- the quality of the goods and services;
- fitness for purpose of the goods and services;
- the potential supplier’s relevant skills, expertise, background, experience and performance history;
- flexibility of the potential supplier’s proposal (including innovation and adaptability over the lifecycle of the procurement);
- environmental sustainability of the proposed goods and services (such as energy efficiency, environmental impact and use of recycled products); and
- whole-of-life costs, including costs for additional goods and services which may be necessary to procure following the initial procurement.

### 5.3 Effective competition

Competition is a key element of NAIF’s procurement framework. Effective competition requires non-discrimination and the use of competitive procurement processes. Participation in procurement also imposes costs on potential suppliers. These costs should be considered in procurement decisions.

Staff must promote effective competition by:

- selecting an appropriate method of procurement having regard to the scale, scope, required timing and risk of the proposed procurement;
- ensuring appropriate openness to participants in the procurement process;
- being non-discriminatory through appropriate procurement methods;
- providing adequate and timely information to participants in the procurement process; and
- where requested or otherwise deemed appropriate, providing unsuccessful tenderers with reasons why their proposal was unsuccessful.

All Staff involved in procurement activities should be aware of the definition and consequences of unlawful anti-competitive practices and the provisions of applicable competition laws, including the *Competition and Consumer Act 2010* (Cth). Legal and the Manager, Risk & Compliance can provide further guidance on this as needed.

## 6 Compliance

Procurement by NAIF must be in compliance with all laws and policies applicable to NAIF. In addition to the PGPA Act, competition laws and any other applicable laws, Staff should have regard to obligations under the following laws and policies:

### 6.1 Laws

#### 6.1.1 *Privacy Act 1988* (Cth)

Staff must comply with privacy obligations. See the NAIF Privacy Policy.

#### 6.1.2 Murray Motion

The Senate Order, also known as the Murray Motion, requires each Minister to table a letter in the Senate for each reporting period, outlining compliance with the Senate Order for each entity in their portfolio. In order to support compliance with the Senate Order, NAIF publishes an internet listing twice a year that identifies contracts entered into during the preceding calendar or financial year, valued at or above \$100,000 (GST inclusive), along with details relating to each of those contracts.

#### 6.1.3 The Australian Government Building and Construction WHS Accreditation Scheme

NAIF must comply with its obligations under the scheme in relation to 'building work' that is funded directly or indirectly by NAIF including ensuring contracts for relevant building are with accredited builders. This is applicable to building work:

- directly funded by NAIF with a value of \$4 million or more;
- indirectly funded by NAIF with a value of \$4 million or more where the value of NAIF's contribution to the project is at least \$6 million and represents at least 50% of the total construction project costs; and
- indirectly funded by NAIF with a value of \$4 million or more where the value of NAIF's contribution to the project is at least \$10 million.

Legal can provide further guidance on the WHS accreditation scheme as needed.

### 6.2 Policies

This Policy applies in conjunction with other NAIF policies. In particular and without limitation, Staff must have regard to the following to the extent applicable or appropriate:

- NAIF's Code of Conduct, in particular with regard to any gifts, entertainment and inducements from suppliers or potential suppliers
- NAIF's Director & CEO Travel and Expenses Policy in connection with any Director and CEO travel and expenses
- NAIF's Travel and Expenses Policy
- NAIF's Due Diligence Costs Policy in connection with the procurement of due diligence costs
- NAIF's Anti-Corruption Policy
- NAIF's Fraud Control Policy
- NAIF's Conflicts of Interest Policy
- NAIF's Instrument of Delegation

# 7. Types of Procurement & Expenditure

## 7.1 General

Subject to the other provisions of this Policy, Staff must have regard to the Core Principles (refer to Section 5) and Procurement Practices (refer to Section 8).

## 7.2 Due Diligence Costs

In respect of Due Diligence Costs (including procurement of transaction-specific legal and accountancy services), Staff may depart from the Core Principles and Procurement Practices where each of the following have been satisfied:

- a Cost Indemnity Agreement has been signed by the Proponent;
- a particular method of procurement has been agreed with the Proponent (which may include seeking a lesser number of quotes than the number stipulated in Section 8.1);
- the Due Diligence Costs Policy has been complied with; and
- the procurement is otherwise on acceptable terms to relevant Staff.

In these circumstances, Staff should still have regard to the Core Principles and Procurement Practices to the extent reasonably practicable in the circumstances.

## 7.3 Consultant's Costs

The CEO may engage an individual (including through a corporate or other entity) at NAIF's cost to act as a consultant to provide services to NAIF (rather than as an employee of NAIF), on a case-by-case basis.

The CEO may depart from the Core Principles and Procurement Practices where:

- there is a critical or urgent need for specialised skills to provide the relevant services; and
- there are no readily available and suitable internal resources to provide the relevant services,

and **provided** NAIF also benchmarks the appropriate cost and determination as to suitability through appropriate consultation with the human resources department of EFA and/or any other relevant service providers who can provide readily available benchmarks on an urgent basis. This may include benchmarking against one or more of the following:

- remuneration arrangement of other Staff or consultants to NAIF in comparable roles;
- the remuneration arrangements of the proposed consultant in former employment or consulting roles;
- appropriate remuneration benchmarks used for comparable roles under NAIF's Remuneration Policy.

In these circumstances, the CEO should still have regard to the Core Principles and Procurement Practices to the extent reasonably practicable in the circumstances.

## 7.4 Engagement of legal counsel

See Section 7.2 of this Policy if the cost of the legal counsel is a Due Diligence Cost.

In addition, Staff must consult with Legal on any decision to procure legal services. Engagement of legal counsel must be undertaken directly by Legal on behalf of NAIF in accordance with this Policy.

## 8. Procurement Practices

### 8.1 General guidelines for Quotations & Tenders

These guidelines apply to all procurement of goods and services by Staff unless otherwise indicated in this Policy.

The value of the service should be estimated by Staff *prior to* obtaining quotes or commencing the tender process.

The following guidelines should be followed, unless an exemption applies (see Section 8.2 of this Policy). If an exemption applies, the details of the exemption should be recorded by Staff.

Procurement Value (incl GST)	Minimum Quote / Tender Requirement
\$5,000 or less	1 verbal or written quote (consider more quotes in appropriate circumstances)
\$5,001 - \$30,000	1 written quote (consider more quotes in appropriate circumstances)
\$30,001 - \$75,000	2 written quotes (consider more quotes in appropriate circumstances)
\$75,001 - \$300,000	3 written quotes (consider more quotes in appropriate circumstances)
\$300,001 or more	As determined by the CEO having regard to the Core Principles

Staff must retain written quotes on file. Where more than one quote is received, Staff must also retain on file the reasons for choosing one proposed supplier over the alternative(s).

### 8.2 Exemptions

Staff may depart from the Core Principles and Procurement Practices in the following circumstances.

- **(Due Diligence Costs)** Procurement in accordance with Section 7.2.
- **(Consultant's Costs)** Procurement in accordance with Section 7.3.
- **(Indigenous procurement)** Procurement sourced using an Indigenous enterprise in accordance with Section 9.
- **(Limited supply)** It is recognised that NAIF will often require specialised goods and services. There may not be sufficient suppliers with the requisite specialised expertise in an area for multiple quotes to be sought. This is particularly relevant for NAIF as it operates in Northern Australia and in a niche project financing space. In these circumstances, quotes should be sought from a lesser number of suppliers to the number stipulated in Section 8.1.
- **(Urgent need)** In urgent circumstances, there may not be sufficient time to follow the Core Principles and Procurement Practices.
- **(Advantageous conditions)** Special offers may be made to NAIF which have exceptionally advantageous conditions that will arise in the very short term, e.g. from unusual disposals, unsolicited innovative proposals, liquidation, bankruptcy, or receivership, and which are not routine procurement from regular suppliers.
- **(Ongoing business)** Where NAIF has already obtained goods and services from a supplier, there may be a requirement to obtain follow up services or additional deliveries of goods. Examples include, in respect of services, where there is a need to ensure continuity of advice or work output or maintenance of confidentiality, and in respect of goods, may include replacement parts, extensions, servicing existing equipment, software, services or installation.
- **(Particular expertise)** the engagement of an expert (such as a solicitor or barrister or consultant, with particular or specialised skills, expertise, experience or background) for advice, including litigation matters or disputes.
- **(EFA policy)** EFA may procure goods and services on behalf of NAIF provided it does so in accordance with the EFA Service Level Agreement or otherwise with the prior written consent of NAIF, having regard to this Policy.
- **(EFA)** NAIF may procure goods and services from EFA pursuant to the EFA Service Level Agreement.

In these circumstances, Staff should still have regard to the Core Principles and Procurement Practices to the extent reasonably practicable in the circumstances.

## 9. Indigenous procurement

As an entity which is not prescribed for the purposes of the CPRs, NAIF is not required to comply with the Commonwealth's *Indigenous Procurement Policy*. However, supporting and facilitating Indigenous economic participation outcomes is an important goal for NAIF, so Staff should have regard to that policy as far as is reasonably practicable to do so.

Executive Management must arrange for appropriate training of Staff on the availability and use of Indigenous enterprise databases.

Staff are encouraged to:

- attend appropriate training on the Indigenous enterprise databases;
- use Indigenous enterprise databases when procuring goods and services;
- consider if any Indigenous enterprises are available and able to provide goods and services in accordance with the Core Principles.

The Chief Operating Officer (or Staff member nominated by the Chief Operating Officer) must keep a register of all procurement with Indigenous enterprises including:

- the type of goods and services; and
- the procurement value.

This Section 9 will be reviewed annually as a part of the broader review of this Policy in accordance with Section 3 consistent with NAIF's goals to support Indigenous economic participation outcomes.

This Section 9 does not apply to procurement of goods and services by credit card, travel and accommodation expenses or where a relevant exemption under Section 8.2 applies.

## 10. Record keeping

Staff must retain written quotes on file. Where more than one quote is received, Staff must also retain on file the reasons for choosing one proposed supplier over the alternative(s). If an exemption as set out in Section 8.2 of this Policy is relevant, Staff must record this exemption on file.

The Chief Operating Officer (or Staff member nominated by the Chief Operating Officer) must keep a register in relation to indigenous procurement as set out in Section 9.

## 11. Payments to suppliers

Invoices from suppliers of goods and services must be sent to the Chief Operating Officer for processing for payment.

## 12. Seeking assistance

If Staff have any queries or need any assistance in relation to their responsibilities under this Policy, they should discuss them with the CEO, Chief Operating Officer, Legal and/or the Manager, Risk & Compliance.