

Procurement Complaints Management Procedure

Introduction

1. The National Blood Authority (NBA) is committed to conducting procurement in a manner that is in accordance with the Commonwealth Procurement Rules (CPRs).
2. The NBA has developed this Procurement Complaints Management Procedure to ensure that the concerns of any supplier whose interests are affected by the NBA's conduct in relation to procurement are adequately addressed. NBA staff must follow this procedure whenever a supplier (including a potential supplier) makes a complaint about the conduct of an NBA procurement process.
3. Following the introduction of the *Government Procurement (Judicial Review) Act 2018*, the NBA is required to observe certain procedures in relation to complaints about **covered procurements**, which are procurements to which both Divisions 1 and 2 of the CPRs apply (i.e. procurements with an estimated value of \$80,000 (including GST) or more excluding purchases from existing panels).
4. The procurement of blood plasma products or plasma fractionation services is exempt from the rules of Division 2 of the CPRs and therefore those categories of procurement are not covered procurements.
5. In this procedure, a reference to a **supplier** means a person, partnership or other group who supplies, or could supply, goods or services.

Procedure for covered procurements

6. Parties wishing to make a complaint (complainant) should initially raise a complaint in writing to the NBA Chief Executive who can be contacted using the following details:
Chief Executive
National Blood Authority
Locked Bag 8430
CANBERRA ACT 2601
or at procurement@blood.gov.au .
7. The written complaint must include the following information:
 - (a) the name of the complainant and the procurement to which the complaint relates;
 - (b) a statement as to what part(s) of the CPRs the NBA may have breached, or may be proposing to breach, in conducting the procurement;
 - (c) copies of, or references to, evidence of information to support the complainant's view;
 - (d) a statement as to how the complainant's interests have been affected by the NBA's conduct;
 - (e) a statement as to the complainant's desired outcome.
8. Upon receipt of the written complaint, the NBA will:
 - (a) confirm that the complaint is in relation to a covered procurement (or otherwise deal with the complaint in accordance with the non-covered procurements procedure below);
 - (b) suspend the procurement process that is the subject of the complaint (unless a **public interest certificate** is in force in relation to the procurement – refer to **Attachment A – Issuing Public Interest Certificates**) and notify all potential suppliers in relation to the procurement process of the suspension; and
 - (c) appoint an investigator to investigate the conduct alleged in the complaint who will:

- (i) within 5 working days of its receipt, acknowledge the complaint, notify the complainant if a public interest certificate is in place in relation to the procurement, and provide an indication of the timeframe for a formal response to the complainant regarding the outcome;
 - (ii) liaise with the complainant to obtain further information or clarification as required;
 - (iii) conduct an investigation and prepare a report;
 - (iv) following appropriate internal consultation, notify the complainant of the outcome of the investigation and provide them with a copy of the report.
9. A suspension of a procurement process will be lifted when the earliest of the following occurs:
- (a) the complainant informs the NBA that it considers the complaint to be resolved;
 - (b) the complainant withdraws the complaint;
 - (c) the NBA Chief Executive issues a public interest certificate in relation to the procurement; or
 - (d) if court proceedings in relation to the conduct have been initiated, the court makes a finding that the NBA's conduct was or was not in contravention of the CPRs.
10. The NBA will notify all potential suppliers of the continuation of the procurement following suspension and any revised details associated with the process (e.g. revised submission timeframes).
11. If the complainant is not satisfied with the NBA's handling of its complaint, the complainant may decide to apply for compensation or injunctive relief in the Federal Court or Federal Circuit Court pursuant to the *Government Procurement (Judicial Review) Act 2018*, or pursue an external option such as approaching the Commonwealth Ombudsman or Australian Government Procurement Coordinator.
12. A flowchart showing the procedure for dealing with complaints about covered procurements is provided at **Attachment B**.

Procedure for non-covered procurements

13. A complainant should initially raise a complaint in writing to the contact officer named in the request documentation setting out:
- (a) their name and the procurement to which the complaint relates;
 - (b) a statement as to what the complainant considers was defective in the procurement process;
 - (c) copies of, or references to, evidence of information to support the complainant's view; and
 - (d) a statement as to what the supplier wishes to achieve from the complaint process.
14. The NBA will acknowledge the complaint within 5 working days of its receipt, and will seek to address the complaint within 10 working days of receipt. The NBA officer may contact the complainant for further information or clarify the complainant's concerns.
15. If the complainant is not satisfied with the NBA's handling of its complaint, the complainant may write to the NBA Chief Executive for internal review of the complaint, or pursue an external option such as approaching the Commonwealth Ombudsman or Australian Government Procurement Coordinator.

Further information

16. For further information, please contact the NBA's Procurement Officer on (02) 6151 5070 or at procurement@blood.gov.au.

Attachment A – Issuing Public Interest Certificates

What is a *public interest certificate*?

A ***public interest certificate*** is a document issued by the NBA Chief Executive under section 22 of the *Government Procurement (Judicial Review) Act 2018* that states it is not in the public interest for a particular procurement process to be suspended while applications for injunctions are being considered or complaints are being investigated.

In what circumstances can a *public interest certificate* be issued?

The NBA Chief Executive may issue a public interest certificate where a delay to the covered procurement would cause a real adverse impact to the public interest such as in relation to the health, national security, safety, public security or economic or financial well-being of the people of Australia or the functioning of any portion of the Australian Government.

The NBA is a statutory agency within the Australian Government Health portfolio that manages and coordinates arrangements for the supply of blood and blood products and services on behalf of Australian governments. The NBA's role is to ensure access to a secure supply of safe and affordable blood products, including through national supply arrangements and coordination of best practice standards within agreed funding policies under the national blood arrangements.

The NBA Chief Executive will use his or her judgement in choosing to issue a certificate and in documenting how a suspension would have a real adverse consequence for the public interest. The NBA Chief Executive may issue a public interest certificate in circumstances including where a procurement relates to:

- the collection, production and distribution of blood products and services necessary to ensure a sufficient supply of blood products and services in all the States and covered Territories;
- national blood arrangements relating to safety measures, quality measures, contingency measures and risk mitigation measures for the supply of blood products and services;
- the facilitation and funding of research, policy development and other action about matters relating to blood products and services; or
- any other matter considered relevant by the Chief Executive,

and:

- a delay in the procurement process would cause a real adverse impact to the health of Australian people or any other matter of public interest.

Who can issue a *public interest certificate*?

A public interest certificate can only be issued by the NBA Chief Executive or an appropriate delegate as per the delegation powers in section 110 of the *Public Governance, Performance and Accountability Act 2013*.

When can the *public interest certificate* be issued?

The public interest certificate may be issued at any stage during the covered procurement process. However, the NBA will endeavour to determine if a public interest certificate will be required as soon as possible in the procurement process (and prior to any potential complaints).

Where should the public interest certificate be published?

Once a public interest certificate has been issued by the NBA Chief Executive, the NBA will notify potential suppliers that a public interest certificate is in force.

AusTender

Where a public interest certificate has been issued prior to the initial approach to market (ATM), the NBA will notify potential suppliers on AusTender and provide a copy of the certificate with the ATM documentation.

Where the ATM has:

- already been published and there is a subsequent need for a public interest certificate, the NBA will notify potential suppliers of the public interest certificate through an ATM addendum with a copy of the certificate; or
- closed and there is a need for a public interest certificate, potential suppliers that submitted a tender must be notified, in writing, that a public interest certificate is in force and be provided with a copy of the certificate.

Not using AusTender, including Limited Tender

Where an ATM is not required to be published on AusTender, for example, when undertaking a Limited Tender, the NBA will advise the potential supplier(s) if a public interest certificate is in force and be provided with a copy of the certificate as soon as practicable after the public interest certificate has been issued.

Attachment B – Covered Procurements Complaints Flowchart

